

# **Advancing the recovery of stolen assets in a transparent and accountable manner**

Submission by  
**the UNCAC Coalition's Asset Recovery Working Group<sup>1</sup>**  
**to the Independent Expert on Foreign Debt and Human Rights**

31 August 2022

The UNCAC Coalition's Asset Recovery Working Group is pleased to make a submission to the Independent Expert on Foreign Debt and Human Rights to contribute to the development of "a proposed non-binding set of practical guidelines for efficient asset recovery aiming at curbing the illicit transfer of funds and mitigating its negative effects on the enjoyment of human rights." In this submission, we identify challenges related to asset recovery at each stage of the process, provide examples of good practices and make recommendations for inclusion in the guidelines to promote the recovery of assets in a transparent and accountable manner.

## **Summary**

It is estimated that corruption causes the loss of an estimated USD 2.6 trillion annually at a global level, with developing countries alone losing a staggering amount of USD 1.26 trillion per year.<sup>2</sup> However, only a small fraction of the amount stolen from developing countries through corruption has been returned. According to the Stolen Asset Recovery Initiative (StAR), about USD 4.1 billion in assets were returned between 2010 and 2021.<sup>3</sup> As the number of grand corruption cases increase, processes to recover and return the proceeds of corruption continue to proceed at a very slow pace. This takes away resources that are urgently needed to help achieve the 2030 Sustainable Development Goals and to compensate the victims of corruption for the harms they have suffered. Efforts to identify and freeze assets of Russian officials and oligarchs following its brutal invasion of Ukraine highlighted how systemic weaknesses in the financial system facilitate large-scale corruption, enabling vast quantities of assets to be stolen while causing international instability and human rights violations.

The development of non-binding practical guidelines for asset recovery must directly address the significant institutional, legal and practical barriers that have hindered the asset recovery process for over a decade. Guidelines must focus not only on bolstering the implementation and enforcement of

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<sup>1</sup> The UNCAC Coalition's Working Group on Asset Recovery works to promote the transparent, accountable and effective recovery and return of stolen assets, see:

<https://uncaccoalition.org/get-involved/working-groups/asset-recovery/>.

<sup>2</sup> See: <https://press.un.org/en/2021/ga12329.doc.htm>.

<sup>3</sup> See UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021): Mapping international recoveries and returns of stolen assets under UNCAC: an insight into the practice of cross-border repatriation of proceeds of corruption over the past 10 years, [https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

existing legally-binding obligations such as the United Nations Convention against Corruption (UNCAC) but also on identifying and closing gaps in frameworks and promoting greater cooperation and coordination at the international level. States should be encouraged to formalize non-binding guidelines into binding policy and legislation to ensure the future enforceability of commitments and the meaningful international cooperation among states. If done effectively and transparently, asset recovery processes have the potential to be a powerful tool for rebuilding public trust in institutions and reducing a culture of corruption. The Global Forum on Asset Recovery (GFAR) principles provide a useful framework for the transparent and accountable return of assets.<sup>4</sup>

The UNCAC Coalition calls for the following five key recommendations to be included in non-binding guidelines to strengthen international efforts to efficiently recover illicit assets in an inclusive, transparent and accountable manner:

**1) Combat financial crime and secrecy to deter and detect illicit funds:**

*States* should ensure the establishment and effective enforcement of comprehensive anti-money laundering frameworks to deter and detect illicit financial flows and create central registries of beneficial ownership information that is accurate and freely accessible to the public. Effective, proportionate and dissuasive penalties should be put in place to deal with non-compliance. *States* should ensure that adequate legal and policy frameworks, as well as sufficient institutional capacity, are in place to restrict and prevent incoming illicit transfers.

**2) Ensure a comprehensive legal framework to freeze and confiscate assets:**

*States* must effectively implement and enforce Chapter V of the UNCAC and enact and implement comprehensive laws that have adequate civil and criminal procedures in place to freeze and confiscate assets obtained through or derived from the commission of an offense established by the UNCAC. This should include the ability to carry out non-conviction based (NCB) confiscation and mutual legal assistance requests in a timely and effective manner.

**3) Ensure transparency throughout the asset recovery process:**

*States* should apply UNCAC Article 9 obligations for promoting transparency and accountability in the management of public finances to the entire asset recovery process, making data on international asset recovery publicly available at all stages of the process (including disaggregated data by asset categories and end-use) and publishing agreements for the return of assets, challenges and good practices important for advancing asset recovery.

**4) Promote meaningful civil society engagement throughout the asset recovery process:**

*States* should provide opportunities for stakeholders to provide input at key stages of the asset recovery process, including on the negotiation of asset recovery agreements, decisions around how returned assets are used, and monitoring and evaluation processes to ensure that returned assets benefit the population in the origin country, in particular the victims of corruption. *States* should adopt frameworks to allow for the admission of public interest claims initiated by independent NGOs in relation to the recovery of proceeds of corruption which were transferred abroad. *States* should promote a safe and enabling environment for civil society to carry out anti-corruption work, legally

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<sup>4</sup> <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

requiring and effectively implementing strong protection and reward mechanisms for whistleblowers from the public and private sector who report corruption cases.

## **5. Strengthen international mechanisms to promote greater coordination and cooperation in the recovery of stolen assets:**

The guidelines should encourage *States* to collectively work together to strengthen coordination and coordination on asset recovery, possibly by creating a global asset recovery framework to ensure consistency in laws and address barriers that prevent the return of assets.<sup>5</sup> This could be done within the UNCAC or by establishing a stand alone international agreement. States with major financial centers should collectively strengthen mechanisms for cooperation and coordination to find, seize and return illicit funds globally.

## **Introduction**

Chapter V (Articles 51-59) of the United Nations Convention against Corruption (UNCAC) requires States Parties to implement an asset recovery framework. While small advances in asset recovery have taken place in the past 18 years since the first UNCAC Conference of States Parties, only a fraction of the amount looted from developing countries, where the resources are badly needed, has been returned.<sup>6</sup> A 2021 report by the Stolen Asset Recovery Initiative (StAR) identified USD 4.1 billion in assets that had been returned between 2010 and 2021.<sup>7</sup>

Significant weaknesses in international frameworks and national systems are impeding asset recovery efforts. In most of the countries where the stolen loot and proceeds of corruption are deposited, there is insufficient political will to apply the necessary detection and confiscation measures for prompt asset recovery and return. In many of the countries from which the assets have been plundered, there is no or insufficient effort to recover them.<sup>8</sup> Political considerations also prevent States from taking actions to freeze and confiscate proceeds of corruption, particularly in grand corruption cases where high-level government officials are benefiting from the looting of state

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<sup>5</sup> UNCAC Coalition and Transparency International (2020): Proposal for Asset Recovery Agreement, [https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI\\_UNCAC\\_Coalition\\_Proposal\\_for\\_Asset\\_Recovery\\_Agreement.12.6.2020.pdf](https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI_UNCAC_Coalition_Proposal_for_Asset_Recovery_Agreement.12.6.2020.pdf).

<sup>6</sup> StAR Initiative and OECD (2014): Few and Far. The Hard Facts on Stolen Asset Recovery, <https://www.oecd.org/dac/accountable-effective-institutions/Hard%20Facts%20Stolen%20Asset%20Recovery.pdf>.

<sup>7</sup> The StAR survey identified another USD 267 million of confiscated assets and USD 5.3 billion in frozen assets. See UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021): Mapping international recoveries and returns of stolen assets under UNCAC: an insight into the practice of cross-border repatriation of proceeds of corruption over the past 10 years, [https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

<sup>8</sup> For more information on the political and institutional barriers to effective policy implementation in asset recovery, see: Basel Institute on Governance (2009): The Political Economy of Asset Recovery, [https://baselgovernance.org/sites/default/files/2019-06/biog\\_working\\_paper\\_07.pdf](https://baselgovernance.org/sites/default/files/2019-06/biog_working_paper_07.pdf).

assets.<sup>9</sup> In addition, the entire asset recovery process relies on effective cooperation between jurisdictions as laid out in UNCAC Articles 46 and 54-57 and countries face many hurdles to such cooperation.<sup>10</sup>

Asset recovery and return is not often carried out in a transparent, accountable manner to ensure the fair and effective return of assets to repair the damage caused by corruption, and to ensure that the publics in the country of origin – and thus the victims of corruption – and the destination country are informed of the recovery and return process. While more focus is needed to ensure effective implementation of UNCAC Chapter V, additional measures to supplement UNCAC provisions will help achieve faster and more accountable asset recovery processes including the commitments outlined in the June 2021 UN General Assembly Special Session (UNGASS) against Corruption’s Political Declaration<sup>11</sup> (see Annex I for commitments related to asset recovery in the UNGASS Political Declaration).

### **What are the main impediments to asset recovery?**

According to the World Bank’s Stolen Asset Recovery (StAR) Initiative, “Despite the growing number of grand corruption cases causing worldwide outrage and the vast amounts of stolen assets moved to foreign jurisdictions, global recovery efforts are still struggling with severe institutional, legal, and practical challenges.”<sup>12</sup> Strategies to overcome these barriers are needed to accelerate and improve asset recovery processes and the development of practical guidelines should help to bring this about. Below are the three categories of barriers as identified by the World Bank:

**Institutional barriers:** a lack of political will to prioritize asset recovery and develop comprehensive policies, strategies and other measures to address it, including to combat money laundering.

**Legal barriers:** onerous requirements related to carrying out Mutual Legal Assistance (MLA) requests, lack of non-conviction based asset confiscation, excessive banking secrecy and procedural and evidentiary laws that are overly burdensome.<sup>13</sup>

**Operational barriers:** inadequacies with the processes and communication channels established between parties, for example causing delays and difficulties in carrying out Mutual Legal Assistance (MLA) requests.<sup>14</sup>

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<sup>9</sup> Sarah Chayes describes corrupt governments in the following way: “These are governments actually structured around the objective of extracting resources for personal gain,” she says. “They are vertically-integrated, criminal organizations bent on stealing money for private gain, that are masquerading as governments and using the tools of state power to further those ends.” see:

<https://theworld.org/stories/2015-01-28/bribery-fraud-spawn-religious-extremism-worldwide-author-says>.

<sup>10</sup> Under UNCAC Article 46.1, States are required to “afford one another the widest measure of legal mutual assistance in investigations, prosecutions and judicial proceedings.”

<sup>11</sup> UNGASS Political Declaration (2 June 2022): <https://undocs.org/A/RES/S-32/1>.

<sup>12</sup> StAR Initiative, Betti, Stefano, Kozin, Vladimir and Brun, Jean-Pierre (2022): “Orders without Borders. Direct Enforcement of Foreign Restraint and Confiscation Decisions”, <https://openknowledge.worldbank.org/handle/10986/36691>, see Introduction.

<sup>13</sup> StAR Initiative, (2011): Barriers to Asset Recovery: an analysis of the key barriers and recommendations for action, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/204221468338390474/barriers-to-asset-recovery-an-analysis-of-the-key-barriers-and-recommendations-for-action>. See also StAR Initiative (2020): Asset Recovery Handbook: A Guide for Practitioners, Second Edition, <https://star.worldbank.org/publications/asset-recovery-handbook-guide-practitioners-second-edition>.

<sup>14</sup> StAR Initiative (2011): Barriers to Asset Recovery.

In December 2021, the StAR Initiative published the findings of its survey of UNCAC States Parties that assessed trends, challenges and barriers to the asset recovery process. According to StAR, it is the first survey to systematically assess States' involvement in asset recovery processes from non-OECD countries (the majority of responses were from non-OECD countries).<sup>15</sup> A total of 78 states participated in the survey and provided information on a total of 338 cases carried out between 2010-2021.<sup>16</sup>

Encouragingly, the StAR initiative concludes that there is **an increasing number of states pursuing cross-border asset recovery cases** involving the proceeds of corruption. However, the survey also identifies significant barriers that impede and significantly slow down the asset recovery process. One of the main conclusions is that **“Across the board, states perceive two factors as especially problematic barriers to successful international asset recovery under UNCAC’s chapter V: non-responsive or overly broad MLA refusals by the country of asset location and difficulties in identifying and verifying beneficial ownership of suspected corruption proceeds.”**<sup>17</sup>

### **Identifying and tracing illicit assets**

The identification and tracing of funds acquired through corruption or other illegal activities is a major challenge due to the difficulty of locating such funds and proving that they are unlawfully acquired. The StAR Initiative’s survey found that **proving the link between the asset and criminal offense is a major barrier for States**. Through money laundering, ill-gotten assets can be disguised or mingled with legitimate funds. This is further exacerbated by financial centers that are major destinations for the proceeds of corruption, in which enablers such as financial service providers or “gatekeepers” help conceal these proceeds. Efforts to track Russian officials’ and oligarchs’ assets following Russia’s brutal invasion of Ukraine further illustrates how systemic weaknesses in the financial system facilitate large-scale corruption, enabling vast quantities of assets to be diverted.

These weaknesses demonstrate the need for effective anti-money laundering efforts to prevent and detect illicit financial flows. States that are popular destinations for the proceeds of corruption, including tax havens, must have adequate legal and policy frameworks and sufficient institutional capacity to restrict and prevent incoming illicit transfers. In many countries, Financial Intelligence Units and other bodies and law-enforcement agencies mandated with investigating suspicious transaction reports and cases of money-laundering are often inadequately staffed and resources, and in other cases they also lack sufficient independence from undue political interference and the sector they are supposed to oversee.

Comprehensive anti-money laundering (AML) frameworks that are robustly implemented and enforced in all relevant sectors are needed to close loopholes and should include the identification of the ultimate beneficiaries in business transactions. The application of AML frameworks should be extended and robustly applied to all professionals and entities providing services that offer risks of

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<sup>15</sup> UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021). The StAR Initiative identified a total of 25 factors that could represent barriers across the asset recovery process.

<sup>16</sup> The StAR Initiative divided the cases into three stages of the asset recovery process: 123 completed asset returns, 54 asset confiscations and 161 asset freezes/restraints.

<sup>17</sup> See p. 29 of the UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021).

money laundering, requiring them to carry out adequate customer due diligence, including enhanced due diligence on politically exposed persons, keep records and report suspicious transactions consistent with UNCAC Article 52 and Financial Action Task Force (FATF) recommendations 22 and 23 – while also ensuring that AML requirements are not abused and weaponized to target non-profits and non-governmental organizations.<sup>18</sup> Sanctions for violating AML requirements should be expanded to ensure they have a deterrent effect.

At the state level, relevant national authorities **may not have adequate resources and expertise and/or sufficient authority to carry out financial investigations to detect illicit financial flows<sup>19</sup> and to prove the assets were unlawfully acquired.** Serious investment in regulatory authorities is needed to ensure adequate capacity to carry out investigations that are often complex and cross borders.<sup>20</sup> In many countries, the Financial Intelligence Units (FIUs) that are central to tackling financial crimes have limited financial resources to carry out their mandates due to insufficient funding.<sup>21</sup> For example, a watchdog NGOs in Nigeria has found that while the country’s FIU receives numerous suspicious transactions reports that flag high-risk cases of possible money laundering, it does not have the capacity to investigate these cases in a timely manner so that the transactions can be halted before the assets leave the country. Frameworks need constant updating to remain steps ahead of technological advances that give greater mobility to wealth and the possibilities for hiding and disguising it.<sup>22</sup>

Transparency of the beneficial ownership of legal structures is also key for successful asset recovery. Low transparency of beneficial ownership not only facilitates the laundering of proceeds of corruption but also hampers investigations and efforts to trace and freeze illicit assets. The StAR Initiative’s survey of UNCAC States Parties identified **difficulties in “identifying and verifying beneficial ownership information of suspected corruption proceeds” as one of two most significant barriers to asset recovery.**<sup>23</sup> The establishment of centralized registries of beneficial ownership information that are freely accessible to the public will help overcome this barrier, saving time for competent authorities and also allowing access by civil society organizations, journalists, investigators and other actors. If beneficial ownership information is released as open data in a

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<sup>18</sup> Designated Non-Financial Businesses and Professions (DNFBPs), as defined by the Financial Action Task Force (FATF), include real estate agents, private equity and hedge fund managers, sellers of yachts, airplanes and other luxury goods, lawyers, accountants, company formation agents, and art dealers. Efforts should also focus on increasing international collaboration and cooperation among professionals providing services that have risks of money laundering to develop joint trust-building programs and projects to combat money laundering.

<sup>19</sup> Illicit financial flows are when money or capital is illegally moved from one country to another. Global Financial Integrity classifies an illegal movement as “an illicit flow when funds are illegally earned, transferred, and/or utilized across an international border. For examples, see:

<https://gfintegrity.org/issue/illicit-financial-flows/>.

<sup>20</sup> International Centre for Asset Recovery, Basel Institute on Governance (2015): Tracing Illicit Assets - A Practitioner’s Guide, <https://baselgovernance.org/publications/tracing-illegal-assets-practitioners-guide>.

<sup>21</sup> Transparency International cites insufficient funding of FIUs as a serious challenge based on its recent assessment analyzing the annual budget of FIUs as a share of GDP in 8 countries.

<https://www.transparency.org/en/news/reality-check-western-sanctions-russia-kleptocrats-assets-justice>.

<sup>22</sup> A challenge is the major disparity between the technological resources of the public sector compared with that of the private sector and international corporations that can rapidly develop new technologies.

<sup>23</sup> See UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021).

standardized format, for example the standard developed by Open Ownership,<sup>24</sup> this data can be easily used for analytical purposes, allowing, for example, FIUs to use algorithms to identify red flags and high-risk cases among many thousands of suspicious transaction reports they receive, so those high risk cases can be investigated. This is the practice in Denmark, which also has one of the most open beneficial ownership registries.<sup>25</sup>

The importance of beneficial ownership transparency in asset recovery efforts has also been highlighted by a resolution adopted at the 9th UNCAC Conference of the States Parties linking those issues.<sup>26</sup>

**Whistleblowers, civil society activists, journalists, human rights defenders and other actors play an essential role in uncovering and reporting corruption cases** that can lead to the identification of stolen assets. For example, the Pandora Papers was a major investigative project carried out by the International Consortium of Investigative Journalists (ICIJ), working with over 600 journalists from 150 news outlets. ICIJ tracked down and released almost 12 million confidential files that exposed how financial secrecy and the use of shell companies enables the wealthiest and most powerful to move and disguise their assets offshore, raising questions of corruption and providing potential leads for asset recovery cases.<sup>27</sup>

However, **civil society actors often face threats, intimidation, and retaliation due to their involvement in uncovering or reporting such corruption.**<sup>28</sup> Without adequate and effective reporting and protection mechanisms in place, whistleblowers may fear to speak out, enabling corruption to continue with impunity. In most countries, the legal frameworks in place for protection of whistleblowers do not provide adequate protection or are weakly implemented. Weak laws may effectively be traps structured to rubber stamp retaliation for nearly all who challenge them, putting whistleblowers in grave danger. A report by the Government Accountability Project and the International Bar Association reexamined whistleblower laws in 38 countries, concluding that these laws are not widely used, that in very few cases, courts provide effective protection of whistleblowers, and that there is a lack of transparency around case decisions and statistics regarding

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<sup>24</sup> OpenOwnership has developed the Beneficial Ownership Data Standard to serve as a framework for collecting and publishing beneficial ownership data, enabling the resulting data to be interoperable, more easily reused, and of higher quality. A common data standard enables the exchange of data between implementing countries and allows for a rapid build-up of best practice on collecting, storing and publishing beneficial ownership information. See: <https://www.openownership.org/en/topics/beneficial-ownership-data-standard/>.

<sup>25</sup> See: Summary of the UNCAC Coalition event “Preventing Corruption and Tracing Assets Through Beneficial Ownership Transparency”, 1 August 2022, <https://uncaccoalition.org/preventing-corruption-and-tracing-assets-through-beneficial-ownership-transparency-a-summary-of-our-irg-side-event/>.

<sup>26</sup> UNCAC CoSP Resolution 9/7 “Enhancing the use of beneficial ownership information to facilitate the identification, recovery and return of proceeds of crime”, <https://www.unodc.org/unodc/en/corruption/COSP/session9-resolutions.html#Res.9-7>.

<sup>27</sup> See ICIJ: <https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/>. CIFAR (2021): Transforming the Pandora Papers into Asset Recovery: 5 stories, 5 cases?, <https://cifar.eu/transforming-the-pandora-papers-into-asset-recovery-5-stories-5-cases/>.

<sup>28</sup> Front Line Defenders (2021): Global Analysis 2021, <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0>. The analysis lays out the risks and threats to human rights defenders across the globe and estimates that 358 defenders were killed in 35 countries in 2021.

whistleblower disclosures which makes it difficult to assess the effectiveness of these laws in practice.<sup>29</sup>

States should strengthen whistleblower laws and ensure their effective implementation in line with international standards and best practices.<sup>30</sup>

**Good practice example globally:** One hundred and seven countries have committed to implementing public registers of beneficial ownership information. However, only 32 countries have implemented public registers of beneficial ownership information demonstrating how far there is to go to move from commitments to strong implementation.<sup>31</sup>

**Good practice examples in the European Union:** The EU's 5th Anti-Money Laundering (AML) Directive requires all Member States to set up a centralized register of the ultimate, beneficial owners of companies and make this information available to the public.<sup>32</sup> In practice, however, public access to beneficial information is restricted in most EU countries, with Latvia and Denmark being the only EU countries to date that have created a public register with free access to information and also providing open data.<sup>33</sup>

**Good practice example in Georgia:** Georgia's company registry is freely accessible and easily searchable online.<sup>34</sup> The NGO Transparency International Georgia has set up a platform linking company ownership data with public procurement data and data on donations to political parties<sup>35</sup> and also uses the data to monitor and verify officials' asset and interest declarations and identify possible conflicts of interest and indications of wrongdoing.

<sup>29</sup> Government Accountability Project and International Bar Association (2021): Are Whistleblowing Laws Working? A Global Study of Whistleblower Protection Litigation, <https://www.ibanet.org/article/EE76121D-1282-4A2E-946C-E2E059DD63DA>.

<sup>30</sup> See the German Bundesministerium der Justiz für Verbraucherschutz: G20 High-Level Principles for the Effective Protection of Whistleblowers, [https://www.bmfv.de/SharedDocs/Downloads/EN/G20/G20\\_2019\\_High-LevelPrinciples\\_Whistleblowers.pdf](https://www.bmfv.de/SharedDocs/Downloads/EN/G20/G20_2019_High-LevelPrinciples_Whistleblowers.pdf), Official Journal of the European Union L 305/17 (2019): EU Directive (EU) 2019/1937 on Whistleblowers: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937>,

Transparency International (2013): International Principles for Whistleblower Legislation: <https://www.transparency.org/en/publications/international-principles-for-whistleblower-legislation>,

Transparency International (2018): A Best Practice Guide for Whistleblowing Legislation: <https://www.transparency.org/en/publications/best-practice-guide-for-whistleblowing-legislation>.

<sup>31</sup> See Open Ownership: <https://www.openownership.org/en/map/> Also see Open Ownership 2022: Launch of the Global Data Barometer 2022, <https://www.openownership.org/en/blog/launch-of-the-global-data-barometer-2022/>.

<sup>32</sup> Earlier this year, the European Commission proposed a draft implementing regulation for the Open Data Directive which does not require disclosure of critical company information, including beneficial ownership information. Over 127 civil society organizations have submitted a letter calling for transparency of company and beneficial ownership registers, see: <https://www.access-info.org/2022-03-09/act-now-open-company-registers/>.

<sup>33</sup> See Transparency International (2021): Access Denied? Availability and accessibility of beneficial ownership data in the European Union, <https://images.transparencycdn.org/images/2021-Report-Access-denied-Availability-and-accessibility-of-beneficial-ownership-data-in-the-European-Union.pdf>.

<sup>34</sup> See Georgia's registry: [https://enreg.reestri.gov.ge/main.php?m=new\\_index](https://enreg.reestri.gov.ge/main.php?m=new_index).

<sup>35</sup> See Transparency International Georgia: <https://www.transparency.ge/politicaldonations/en>.



Good practice in the United Kingdom: Companies House in the United Kingdom registers company information, including company filings and data on direct owners as well as the beneficial owners and makes it available to the public in a freely accessible, searchable online register.<sup>36</sup> In 2018, the UK register was accessed more than 6 billion times, creating an estimated total benefit between £1 billion and £3 billion per year.<sup>37</sup>

**Good practice example in Indonesia:** Indonesia has made progress in implementing a public registry of beneficial ownership information. A 2018 Presidential Regulation<sup>38</sup> requires that legal entities declare the identity of beneficial owners and provide ownership details and a public registry has been established.<sup>39</sup>

## Freezing and Confiscating Assets

The lack of adequate civil and criminal procedures in many countries is a major barrier to the freezing and confiscation of assets in an efficient and effective manner. This is further complicated by **discrepancies in legislation between states that hinders international cooperation**. The StAR Initiative concludes that “With more states involved in cross border asset recovery, recognition and enforcement of judgements and confiscation orders is becoming more critical than before to avoid duplication of law enforcement efforts.”<sup>40</sup>

The StAR Initiative’s survey of States identified **challenges with carrying mutual legal assistance (MLA) requests as one of the two most significant barriers to asset recovery**. It found the major challenge is the “non-responsive or overly broad MLA refusals by the country of asset location”.<sup>41</sup> Other common challenges with MLAs include language barriers, poor quality of the requests or information provided and the need for more open and effective communication channels.

The use of non-conviction based (NCB) confiscation, or asset forfeiture, is another critical tool for dealing with cases where a criminal conviction is impossible. This includes cases where the offender is dead, has fled the jurisdiction or cannot reasonably be served, is immune from prosecution, too powerful to prosecute or cannot be extradited for prosecution.<sup>42</sup> However, **many countries do not**

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<sup>36</sup> See UK’s register: <https://find-and-update.company-information.service.gov.uk/>.

<sup>37</sup> See report commissioned by Companies House and BEIS (2019), <https://www.gov.uk/government/news/new-report-estimates-value-of-companies-house-data-at-up-to-3-billion-per-year>.

<sup>38</sup> See the regulation: <https://eiti.esdm.go.id/en/perpres-13-2018/>.

<sup>39</sup> See Indonesia’s registry: <https://bo.ahu.go.id/site/login>. See Open Ownership blog (7 March 2022): Strengthening new norms in beneficial ownership transparency in Asia and the Pacific region, <https://www.openownership.org/en/blog/strengthening-new-norms-in-beneficial-ownership-transparency-in-asia-and-the-pacific-region/>.

<sup>40</sup> See StAR Initiative survey, 2021.

<sup>41</sup> See Tables 19 of the StAR Initiative’s survey on major barriers to asset recovery: [https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

<sup>42</sup> StAR Initiative (2009): Stolen Asset Recovery. A Good Practices Guide for Non-conviction Based Asset Forfeiture, [https://www.unodc.org/documents/corruption/Publications/StAR/StAR\\_Publication\\_-\\_Non-conviction-based\\_Asset\\_Forfeiture\\_E.pdf](https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Non-conviction-based_Asset_Forfeiture_E.pdf).

**have legislation in place to enable the use of NCB and so have no recourse to address cases that cannot be prosecuted through the criminal courts.**<sup>43</sup>

In other cases, the jurisdiction of origin is unable or unwilling to provide international cooperation to a criminal prosecution in a destination jurisdiction which can then stymie criminal pursuits. International cooperation in non-criminal proceedings is often essential for the success of NCB-based forfeiture and efforts to strengthen cooperation and coordination in these efforts would help to advance asset recovery efforts. The StAR Initiative's survey of States found several major barriers related to international cooperation and differences between states' legal systems, including **"problems related to enforcements of NCB confiscation orders in a foreign jurisdiction" and "differences in evidentiary requirements and standards of proof between legal systems".**<sup>44</sup>

The United Kingdom's Unexplained Wealth Orders (UWOs) are one example of a tool where interim freezing orders can be applied to suspected proceeds of crime, whereby the owner of assets has to provide evidence that he or she has obtained the assets legally. There are lessons to be learned from the United Kingdom's efforts to use this tool. In the UK, UWOs have not been widely used, with only one of the five investigative agencies with authority to apply UWOs having done so in four documented cases. The UK recently amended its law to strengthen application of the law by broadening the scope of application, extending review period and protecting against substantial legal costs associated with cases relating to UWOs.<sup>45</sup>

There is also too little confiscation and return of the proceeds of corruption in the context of nontrial resolutions in foreign bribery proceedings. Minimum standards should be developed for the use of settlements in proceeds of crime cases and should include transparency, judicial oversight and the opportunity for community stakeholders to participate.<sup>46</sup>

Another barrier is gaps in legal frameworks that may prevent a State from confiscating and repurposing assets that are frozen through targeted sanctions. Anti-corruption sanctions are increasingly being used to freeze illicit assets, especially in the wake of Russia's invasion of Ukraine. However, "only some sanctions regimes have been designed specifically to aid also in the recovery of misappropriated funds to countries of origin and, as such, provide a direct link to the seizure,

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<sup>43</sup> The StAR Initiative's survey identified the lack of NCB confiscation laws in some countries as a barrier to asset recovery. There are challenges with international cooperation, and inability to carry out NCB orders due to the lack of domestic NCB confiscation and an inability to enforce NCB orders in foreign jurisdictions. See Table 21. The report states: "With more states involved in cross-border asset recovery, recognition and enforcement of foreign judgments and confiscation orders is becoming more critical than before to avoid duplication of law enforcement efforts."

[https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

<sup>44</sup> These barriers were in the top five barriers that States identified in StAR's survey of States, see UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021), p. 28.

<sup>45</sup> Basel Institute on Governance, Andrew Dornbrier (March 2022): The UK's Unexplained Wealth Order: certainly much improved but going after dirty money remains difficult,

<https://baselgovernance.org/blog/uks-unexplained-wealth-order-certainly-much-improved-going-after-dirty-money-remains-difficult>; see also:

<https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2016-to-2021/asset-recovery-statistical-bulletin-financial-years-ending-2016-to-2021#civil-recovery-investigative-tools>.

<sup>46</sup> They should also not be used to deny requests for assistance from other affected jurisdictions.

forfeiture and recovery processes.”<sup>47</sup> For example, the United Kingdom (UK) has frozen billions of pounds in Russian assets through sanctions but current law in the UK does not allow the confiscation and repurposing of most of these frozen assets to be used to compensate victims of the invasion, a problem that also exists in other jurisdictions.<sup>48</sup>

Greater cooperation and coordination among States to identify and trace illicit funds would help accelerate asset recovery efforts. Earlier this year, several Western governments established a transatlantic task force to strengthen coordination in finding and seizing illicit Russian funds.<sup>49</sup> While this is an important step forward, the task force should take further steps to strengthen impact: it should expand its membership to include other key financial centers, ensure the involvement of financial intelligence units and other relevant government authorities, provide adequate funding for law enforcement, make information publicly available and promote cooperation with civil society and journalists.<sup>50</sup> The focus of this multilateral initiative should be expanded **to focus more broadly on seizing dirty money across the globe as well as to ensure more coordination and engagement with the Global South.**<sup>51</sup>

**Good MLA practice in Switzerland:** In principle, MLA in Switzerland may only be granted in “criminal matters”, but in practice it can be granted for non-criminal procedures since the definition of criminal matter is very broad and encompasses civil and NCB typologies.

**Good practice presumption in France:** Assets are presumed to be the direct or indirect proceeds of a offense, if the conditions of the investment have no other justification than to conceal the origin or beneficial owner of the asset.<sup>52</sup> Importantly, in France several NGOs have gained legal standing, enabling them to bring cases to initiate asset recovery proceedings in court, so-called “Biens Mal Acquis” cases.<sup>53</sup> These cases demonstrate the important role civil society can play in asset recovery

<sup>47</sup> Civil Forum for Asset Recovery (2021): Sanctions as a Tool for Asset Recovery: A Global Perspective, [https://cifar.eu/wp-content/uploads/2021/05/CiFAR\\_Sanctions-as-a-Tool-for-Asset-Recovery\\_Global-Perspective.pdf](https://cifar.eu/wp-content/uploads/2021/05/CiFAR_Sanctions-as-a-Tool-for-Asset-Recovery_Global-Perspective.pdf). EU and US sanctions regimes rely on separate laws to repatriate the funds.

<sup>48</sup> Civil society organizations are calling for new legislation to enable the re-purposing of frozen funds, multi-stakeholder consultations in the development of such legislation, transparency of data of Russian assets seized globally and in the UK, and civil society participation in the implementation and monitoring of compensation regimes for re-purposed funds. See Civil Forum for Asset Recovery et al. (June 2022): Sanction. Confiscate. Compensate. Repurposing Frozen Russian Assets for Victims in Ukraine, <https://redress.org/wp-content/uploads/2022/06/2022.06.29-UK-Briefing-Repurposing-Frozen-Assets.pdf>.

<sup>49</sup> Members of the Task Force: Australia, Canada, the European Commission, France, Germany, Italy, Japan, United Kingdom and United States. See: <https://home.treasury.gov/news/press-releases/jy0659>. The StAR Initiative makes an important conclusion based on its survey of States on barriers to asset recovery: “sn analysis of information on how asset restraints were initiated highlights the importance of proactive efforts by destination countries to go after the gains of foreign corruption that are stashed away in their jurisdiction.”

<sup>50</sup> See Transparency International’s recommendations for the Task Force: <https://www.transparency.org/en/press/statement-transatlantic-task-force-track-russian-dirty-money-critical>.

<sup>51</sup> For example, regional initiatives to promote asset recovery such as the Common Africa Position on Asset Recovery (CAPAR) which works to combat illicit financial flows and promote the recovery and return of stolen assets to Africa. See: <https://codafrica.org/wp-content/uploads/2020/10/EN-Decision-Assembly-AU-Dec.774XXXIII-CAPAR.pdf>.

<sup>52</sup> French Penal Code, Article 324-1-1, [https://www.legislationline.org/download/id/8546/file/France\\_CC\\_am012020\\_fr.pdf](https://www.legislationline.org/download/id/8546/file/France_CC_am012020_fr.pdf).

<sup>53</sup> Transparency International France, <https://transparency-france.org/aider-victimes-de-corrupcion/biens-mal-acquis/>.

through pursuing strategic litigation, as well as the challenges to ensure that the returned funds benefit those harmed by the corruption.<sup>54</sup>

## Recovering and returning assets

The final step in the asset recovery process involves the return of corrupt assets to their “prior legitimate owners” (see UNCAC, Article 57). This step should be **carried out in a transparent and accountable manner to achieve a fair and effective outcome**, which is consistent with UNCAC Articles 10 and 13 and the GFAR Principles for Disposition and Transfer of Consolidated Stolen Assets in Corruption Cases.<sup>55</sup>

In recent years, there are growing examples of asset recovery cases that have resulted in the return of significant amounts of funds to where they were stolen from. Cases include the return of the “Abacha II” funds through a trilateral Memorandum of Understanding between Switzerland, Nigeria and the World Bank, the United States returning about USD 1 billion in funds to Malaysia that were stolen from Malaysia’s 1MDB fund, and a framework agreement signed by Switzerland and Uzbekistan for the return of at least USD 131 million for assets already confiscated related to criminal proceedings brought against the daughter of the former Uzbekistan President (a Multi-Partner trust fund has been established by the UN to oversee the funds going back to benefit the Uzbekistan population).<sup>56</sup> Despite this progress, **seizing stolen assets and returning them to the country where they were stolen from is a very lengthy, onerous process** (taking many years and sometimes decades) that typically involves substantial resources.<sup>57</sup>

In addition, **the majority of asset recovery processes have not been transparent in providing civil society and the public with information about the transfer of funds and how they are being used.**<sup>58</sup>

While in several recent asset recovery cases (including the return of assets from Ireland to Nigeria and from Switzerland to Uzbekistan) bilateral return agreements have been made public, the timely release of these agreements is not standard practice: StAR found that only in 22% of asset recovery cases, the texts of agreements for the disbursement of returned funds have been made public.<sup>59</sup> Similarly, states have failed to release adequate statistical information on asset recovery cases, frozen and confiscated assets and returned assets, and timely information on individual return cases. One

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<sup>54</sup> See National Endowment for Democracy Working Paper, Tutu Alicante (May 2022, Editor’s Updated Report): To Catch a Kleptocrat: Lessons Learned from the Biens Mal Acquis Trials in France, <https://www.ned.org/wp-content/uploads/2019/06/To-Catch-A-Kleptocrat.pdf>.

<sup>55</sup> See GFAR Principles: <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

<sup>56</sup> For more details on these asset recovery cases, see the UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021): [https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

<sup>57</sup> Ibid. See Table 15 on time spans for asset recovery.

<sup>58</sup> Ibid. The StAR Initiative found that the majority of reported asset recovery cases provided little to no publicly available information about the assets being returned and how the assets were being used. See StAR Initiative Paper for the 9th CoSP. It states that “Informing the public, especially in source countries that are receiving assets from another jurisdiction, about the transfer of corruption proceeds and their intended use is an important step to enhance government accountability and increase trust.”

<sup>59</sup> StAR (2021): See page 25 for the chart and more details: [https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf).

noteworthy exemption is the United Kingdom, which in 2021 released a statistical bulletin on its asset recovery efforts.<sup>60</sup>

Lessons learned to date show how secrecy and lack of civil society participation around asset recovery processes can have harmful consequences. It promotes a distrust over the process among the public and stakeholders, restricts or limits the ability of civil society organizations and other stakeholders to monitor the management and use of funds and increases the chances for the returned funds to be squandered or used for questionable purposes that do not benefit the affected populations.<sup>61</sup> In contrast, a high degree of inclusiveness, transparency and accountability helps ensure that the returned funds are properly managed and will ultimately help improve the well-being of the people in the origin country. Consultations with a broad range of stakeholders should take place prior to the return of assets, when restitution agreements are being negotiated, to create an inclusive process where stakeholders can provide input and influence key decisions, including on how the funds are used.

**A transparent monitoring and evaluation process that involves the participation of civil society should be established upfront** given the potential for misappropriation and embezzlement of the typically significant amounts of returned funds involved.<sup>62</sup> This process should include public reporting about the use of returned funds. The StAR Initiative also recommends that making transfers to a separate designated account for the return of assets, compared to transfers to a general centralized government account, enables better monitoring mechanisms, promoting greater transparency and accountability in the process.<sup>63</sup>

Other guidance on civil society engagement in the asset recovery process is provided by the GFAR Principles<sup>64</sup>, the Oslo Statement on Corruption involving Vast Quantities of Assets<sup>65</sup>, the UN OHCHR

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<sup>60</sup> See:

<https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2016-to-2021/asset-recovery-statistical-bulletin-financial-years-ending-2016-to-2021>.

<sup>61</sup> See Transparency International France (2022): Handbook for Asset Restitution, Good Practices and Recommendations for the Responsible Return of Stolen Assets, [https://transparency-france.org/wp-content/uploads/2022/06/Handbook-for-asset-restitution\\_Transparency-France\\_230622.pdf](https://transparency-france.org/wp-content/uploads/2022/06/Handbook-for-asset-restitution_Transparency-France_230622.pdf). The handbook includes several case studies showing the negative consequences of opaque asset recovery processes, including distrust by the public and CSOs, limited opportunities for CSOs and other actors to monitor the use of funds, difficulties in tracing the funds, and mismanagement in the use of returned funds.

<sup>62</sup> Ibid, see pp. 22-29 for chart on transparency, accountability, and inclusiveness measures at different stages of the asset recovery process.

<sup>63</sup> See UNCAC CoSP9 Conference Room Paper prepared by the StAR Initiative (December 2021), p. 22, it notes that data shows a possible trend of more States using separate accounts for the asset return from 2015-2021 compared to the first half of the decade.

<sup>64</sup> See the GFAR Principles: <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

<sup>65</sup> Recommendation 64 of the Oslo Statement on Corruption involving Vast Quantities of Assets, recovered assets “should benefit, to the extent possible, the victims, the society and local communities that have been harmed by the corruption in accordance with principles of domestic law. Experts, civil society and grassroots organizations and the private sector should be invited to actively participate in the decision-making process over the managing and disposition of parts of returned assets for compensation of social damage, in line with national legislation”,

[https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo\\_Outcome\\_Statement\\_on\\_Corruption\\_involving\\_Vast\\_Quantities\\_of\\_Assets\\_-\\_FINAL\\_VERSION.pdf](https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo_Outcome_Statement_on_Corruption_involving_Vast_Quantities_of_Assets_-_FINAL_VERSION.pdf).

draft guidelines on a human rights framework for asset recovery<sup>66</sup> and principles and indicators proposed by civil society organizations.<sup>67</sup> UNCAC Article 9 obligations on transparency and accountability in the management of public finances should also be applied to the entire asset recovery process. Data on international asset recovery at all stages is crucial for assessing progress and informing effective strategies.

### **Compensating the victims of corruption**

Another major challenge is ensuring that the victims of corruption are compensated for the harms they suffer. Corruption causes a wide range of direct and indirect damages to institutions, communities, the public and individuals. The individual, collective and social damages caused by corruption can be material, for instance, where there is a financial loss, or immaterial, when, for example, opportunities are lost. In communities, the harms are often to health (tainted medicines, hospitals not built) and livelihoods (land-grabbing, environmental harm), and include loss of opportunity (reduced access to education) and diminished quality of life (prohibitively high costs of water, electricity and other public services).<sup>68</sup>

The rights of victims of corruption are recognised by the UNCAC (Articles 32, 34 and 35). However, implementation reviews indicate that while many countries do have legal frameworks that allow for reparations to victims of corruption, reparations only happen in very few cases.<sup>69</sup> Victims of corruption are hardly ever included in court proceedings, and rarely receive compensation, as they would with other crimes. Although in some countries legal frameworks allow for redress (for instance in cases of environmental litigation), lawyers and judges often do not make use of these avenues of compensation. This may be because victims have to prove the direct harm caused by corruption, which in circumstances where communities were harmed may be difficult.

States should establish legal frameworks to enable and facilitate the compensation of both individual and collective victims (communities), including when cases are resolved through settlements and when cases are linked to corruption in several countries. In addition, non-governmental organizations should have the right to have legal standing before all courts to represent individual and collective victims of corruption.

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<sup>66</sup> [https://www.ohchr.org/Documents/Issues/Development/CFI-Frameworkforassetrecovery/Draft\\_OHCHR\\_Guidelines\\_HR\\_Asset\\_Recovery.pdf](https://www.ohchr.org/Documents/Issues/Development/CFI-Frameworkforassetrecovery/Draft_OHCHR_Guidelines_HR_Asset_Recovery.pdf).

<sup>67</sup> Joint NGO Submission to the UNGASS against Corruption (2021), Civil Society Principles for Accountable Asset Return, [https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UNGASS\\_-\\_Submission\\_of\\_ANEEJ\\_CiFAR\\_CiSLAC\\_HRW\\_I\\_Watch\\_ISCI\\_TI\\_EU\\_TI\\_France.pdf](https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UNGASS_-_Submission_of_ANEEJ_CiFAR_CiSLAC_HRW_I_Watch_ISCI_TI_EU_TI_France.pdf).

<sup>68</sup> UNCAC Coalition's Victims of Corruption Working Group's Submission to the 9th CoSP (2021): <https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/NGO/CAC-COSP-2021-NGO-8.pdf>.

<sup>69</sup> See UNCAC Coalition: Civil society parallel reports on UNCAC implementation, <https://uncaccoalition.org/uncac-review/cso-review-reports/>; UNODC (2019): State of implementation of the United Nations Convention against Corruption – Criminalization, law enforcement and international cooperation, [https://www.unodc.org/res/ji/import/international\\_standards/state\\_of\\_implementation\\_uncac/state\\_of\\_implementation\\_uncac.pdf](https://www.unodc.org/res/ji/import/international_standards/state_of_implementation_uncac/state_of_implementation_uncac.pdf).

**Good practice example in Nigeria:** Nigerian civil society monitored the use of US\$322.5 million Abacha II loot returned from Switzerland for social welfare programmes as well as US\$311.79 million returned from the US and Jersey.<sup>70</sup> Participation of civil society from the point of negotiation helped to embed transparency and accountability in the process. It enabled civil society to independently monitor the disbursement of the funds to poor Nigerians.

**Good practices in UK:** In January 2022, the UK published the “Framework for transparent and accountable asset return”,<sup>71</sup> making it the first country to publish its policy for returning stolen assets to other countries. The framework makes commitments to accelerate asset recovery efforts, increase transparency by publishing MOUs and other agreements relating to asset return and strengthen civil society engagement in the asset recovery process, including CSO monitoring of returned funds.<sup>72</sup> The UK has also published extensive official statistics on asset recovery for mid-2015 through March 2021.<sup>73</sup>

**Examples of transparency around asset recovery agreements and MOUs:** Switzerland and Uzbekistan have published the [framework agreement](#) on the restitution of confiscated assets to Uzbekistan, along with the [MOU](#).<sup>74</sup>

**Practice of concern:** In some countries, no final accounting is provided for the disposition of returned assets, including for all associated costs. In one country, significant costs were incurred for hiring expensive lawyers and advisers, but no information was published about those expenditures.

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<sup>70</sup> See ANEEJ: Monitoring of Recovered Assets through Transparency and Accountability, [https://mantra-acorn.com/sites/default/files/MANTRA%20MODEL\\_1.pdf](https://mantra-acorn.com/sites/default/files/MANTRA%20MODEL_1.pdf).

<sup>71</sup> See the UK’s Framework for transparent and accountable asset return: <https://www.gov.uk/government/publications/framework-for-transparent-and-accountable-asset-return/framework-for-transparent-and-accountable-asset-return>.

<sup>72</sup> See Spotlight on Corruption’s statement welcoming the UK’s framework but also stating the need for the UK to strengthen enforcement efforts to confiscate stolen assets.

<sup>73</sup> See the UK’s Asset Recovery Statistical Bulletin: <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2016-to2021>. Statistics published include the value and volume of proceeds of crime restrained, seized, and recovered through criminal confiscations, forfeitures and civil recovery, on the value of compensation paid to victims, and experimental statistics on international asset recovery. UK civil society has recommended disaggregating asset return data so that there can be annual reporting on assets returned that relate to corruption. The UK also publishes MOUs when assets are returned, see: <https://www.gov.uk/government/publications/return-of-funds-forfeited-by-the-national-crime-agency-lucafilat-agreement-between-uk-and-moldova/mou-between-uk-and-moldova-on-the-return-of-funds-forfeited-by-the-national-crime-agency-in-relation-to-luca-fila>.

<sup>74</sup> See StAR Initiative’s survey which provides a list of 9 asset recovery cases where press releases, MOUs and/or agreements are publicly available, see p. 26.

## **Recommendations to promote the fair and efficient recovery and return of illicit assets:**

The UNCAC Coalition proposes the following recommendations for inclusion in a set of practical guidelines for States to strengthen international efforts to recover illicit assets in a transparent and accountable manner.<sup>75</sup> These represent a combination of legally-based recommendations as well as other practical measures that countries can take and importantly includes **guidance for promoting the proactive engagement of civil society organizations and other stakeholders throughout the process**. States, including both origin and destination jurisdictions, should give the strongest and most effective possible interpretation to the UNGASS commitments and report on their progress.<sup>76</sup>

### **1. Combat financial crime and secrecy to deter and detect illicit funds**

- Ensure that **comprehensive anti-money laundering frameworks are in place to deter and detect illicit financial flows**. AML frameworks should be effectively implemented and enforced in all relevant sectors, both by financial institutions and designated non-financial businesses and professions.<sup>77</sup> Sanctions applied for violating AML requirements should be expanded to ensure they have a deterrent effect, particularly for large financial institutions and DNFBPs that facilitate illicit financial flows.
- States that are popular destinations of stolen assets should ensure that **adequate legal and policy frameworks and sufficient institutional capacity** are in place to restrict and prevent incoming illicit transfers.
- Require transparency of the beneficial ownership of legal structures<sup>78</sup> and **establish centralized, freely accessible and searchable public registries of beneficial ownership information that is timely and accurate**, ensuring that data is also accessible in a structured, standardized format (ideally in near real-time through an API). Put in place mechanisms for **verification of data and for effective, proportionate and dissuasive penalties** to deal with non-compliance.
- Ensure that the relevant national authorities and law enforcement bodies have **sufficient funding and authority to effectively investigate and enforce laws to combat financial crimes**.<sup>79</sup>

### **2. Strengthen mechanisms for the confiscation and return of assets**

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<sup>75</sup> See also Basel Institute on Governance (2017): Guidelines for the efficient recovery of stolen assets, <https://baselgovernance.org/publications/guidelines-efficient-recovery-stolen-assets>.

<sup>76</sup> The UNGASS Political Declaration had several commitments related to asset recovery, including effective AML oversight and enforcement, transparency of beneficial ownership information, non-conviction based confiscation, data transparency, and transparent and accountable return of assets. See Annex 1.

<sup>77</sup> Designated Non-Financial Businesses and Professions (DNFBPs), as defined by the Financial Action Task Force (FATF), include real estate agents, private equity and hedge fund managers, sellers of yachts, airplanes and other luxury goods, lawyers, accountants, company formation agents, and art dealers. These entities should be required to carry out adequate customer due diligence, keep records, and report suspicious transactions (UNCAC Article 52 and Financial Action Task Force (FATF) recommendations 22 and 23).

<sup>78</sup> Public registries should include beneficial owners of companies, foundations, trusts and all other legal entities and arrangements.

<sup>79</sup> There should be mechanisms in place to provide the necessary assistance and resources needed to address cases where there national authorities have insufficient capacity to carry out investigations that are often complex and cross borders for asset recovery.



- At the State level, **enact and implement a comprehensive legal framework for asset recovery and return**, in line with UNCAC and UNGASS commitments.<sup>80</sup> This should include providing for the confiscation of any asset obtained through or derived from the commission of an offense established by the Convention and allowing for quick freezing of assets suspected to be derived from the commission of such offenses. Assets recovered should be used for repairing the harm caused by grand corruption, and for implementing measures to accomplish Sustainable Development Goal 16.
- Where confiscation is only possible after a criminal conviction, states should introduce a **presumption of money laundering** where certain criteria are met, to facilitate conviction of the offenders and confiscation of the proceeds of crime.
- Develop **minimum standards for the use of settlements in proceeds of crime cases** that should include transparency, judicial oversight and the opportunity for community stakeholders to participate.
- Ensure the **establishment and effective implementation of legislation to enable the use of non-conviction based (NCB) confiscation or asset forfeiture** to address cases that cannot be prosecuted through the criminal courts.
- Ensure that **anti-corruption sanctions regimes are linked to asset recovery provisions** to enable the confiscation and repatriation of assets after they have been frozen, require authorities to engage in investigations and cooperation in order to recover and return stolen assets and ensure transparency and civil society engagement in the process.<sup>81</sup>
- Promote the **dedicated management of assets** to maintain the value of assets, prevent assets from being re-looted and mitigate the administrative costs of managing and returning the assets.<sup>82</sup>

### 3. Ensure transparency throughout the asset recovery process

- **Apply UNCAC Article 9 obligations for promoting transparency and accountability in the management of public finances to the entire asset recovery process** to ensure a transparent and accountable return of assets, in line with the GFAR principles, as well as other relevant guidance documents.
- Make **data on international asset recovery publicly available at all stages of the process** to assess progress and inform effective strategies; information should be disaggregated according to asset categories and end-use.
- **Share agreements for the return of assets** as well as challenges and good practices to help advance more efficient asset recovery, including with CSOs.

### 4. Promote active civil society engagement throughout the asset recovery process

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<sup>80</sup> See CIFAR, Civil Society Organizations & Asset Recovery, A Manual for Action, <https://cifar.eu/wp-content/uploads/2022/07/CSOs-and-asset-recovery-a-manual-for-action.pdf>, p. 17 outlines the sufficient laws and procedures needed for key aspects of asset recovery.

<sup>81</sup> See CIFAR's report for more detailed recommendations: [https://cifar.eu/wp-content/uploads/2021/05/CiFAR\\_Sanctions-as-a-Tool-for-Asset-Recovery\\_Global-Perspective.pdf](https://cifar.eu/wp-content/uploads/2021/05/CiFAR_Sanctions-as-a-Tool-for-Asset-Recovery_Global-Perspective.pdf).

<sup>82</sup> StAR Initiative's survey identified asset management as a challenge for low-income and middle income states, with challenges related to costs, mandate and capacity. The survey also identified a

- **Properly and formally recognize and engage civil society in asset recovery efforts and adopt frameworks to allow for the admission of public interest claims** in relation to the recovery of proceeds of corruption which were transferred abroad.
- **Legally require and effectively implement strong protection and reward mechanisms for whistleblowers** from the public and private sector who report corruption cases in line with international best practice and international standards. Ensure secure, anonymous and confidential reporting channels and measures to protect whistleblowers from attacks and retaliation.<sup>83</sup>
- **Promote the meaningful engagement of civil society throughout the asset recovery process**, including by providing opportunities for stakeholders to provide input on the negotiation of asset recovery agreements. Civil society should play a role in decisions around how returned assets are used and participate in monitoring and evaluation processes to ensure that returned assets benefit the people in the origin country.

#### **5. Strengthen international mechanisms to promote greater coordination and cooperation in the recovery of stolen assets:**

- States Parties should work together to **strengthen coordination and cooperation on asset recovery, and to promote the effective implementation of Chapter V of the UNCAC**. Consider creating a **global asset recovery framework** to ensure consistency in laws and address barriers that prevent the return of assets.<sup>84</sup> This could be done within the UNCAC or by establishing a stand alone international agreement.
- States with **major financial centers should collectively further strengthen mechanisms for cooperation and coordination** to track, seize and return illicit funds globally.
- Promote **information exchange, knowledge sharing, data collection, capacity building and the promotion of good practices** in asset recovery, including promoting good practices for investigation and prosecution standards for enforcement agencies.

## **Annex I: UNGASS Political Declaration commitments to advance asset recovery**

### **Beneficial ownership transparency**

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<sup>83</sup> For recommendations on protection of civil society and whistleblowers, see UN Special Rapporteur Mary Lawlor (2021): At the heart of the struggle: human rights defenders working against corruption, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/396/47/PDF/G2139647.pdf?OpenElement>.

<sup>84</sup> See Transparency International and UNCAC Coalition Submission to the UNGASS against Corruption: Proposal for a Multilateral Agreement on Asset Recovery: [https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI\\_UNCAC\\_Coalition\\_Proposal\\_for\\_Asset\\_Recovery\\_Agreement.12.6.2020.pdf](https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI_UNCAC_Coalition_Proposal_for_Asset_Recovery_Agreement.12.6.2020.pdf).

UNGASS political declaration para 16: "We commit to...taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries (...)"

### **AML oversight and enforcement**

OP 19: "We will institute comprehensive domestic regulatory and supervisory regimes for banks and non-bank financial institutions (...) in order to deter and detect all forms of money-laundering (...). We will strengthen the capacity of financial intelligence units (...)."

### **Data transparency**

Para 52: "We will consolidate and expand the global knowledge and data collection on asset recovery and return through gathering and sharing information on challenges and good practices, as well as on volumes of assets frozen, seized, confiscated and returned in relation to corruption offenses, and the number and types of cases (...)"

### **Non-conviction-based confiscation**

Para 40: "We will adequately address requests based on non-criminal proceedings, including civil, administrative non-conviction-based proceedings, as well as those related to information concerning unexplained assets held by public officials (...)"

"47. We commit to using the available tools for asset recovery and asset return, in accordance with domestic law, such as conviction-based and non-conviction-based confiscation (...)"

Para 50: "When employing alternative legal mechanisms and non-trial resolutions, including settlements, in corruption proceedings that have proceeds of crime for confiscation and return, we will strengthen our efforts to confiscate and return such assets in accordance with the Convention."

### **Transparent and accountable asset return**

Para 48: "[W]e...strive to ensure that [the return and disposal of confiscated property] is done in a transparent and accountable manner."

