

Guide for Drafting Civil Society Parallel Reports for the UNCAC Review: General Information and Guidelines¹

Chapter V (Asset Recovery)

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This guide is intended to assist civil society organisations (CSOs) in preparing parallel reports on national implementation of the UN Convention against Corruption's (UNCAC) Chapter II on preventive measures. The UNCAC is the only universal binding anticorruption mechanism and has been ratified by 186 countries and the European Union.

The Implementation Review Mechanism (IRM) is a multi-stage peer review process involving the review of each State Party's implementation of the UNCAC by two peers – one from the same UN region and one from another one. The review process is divided into two five-year cycles, with the first cycle (2010 – 2015) covering Chapters III and IV and the second cycle (2015 – June 2024) covering Chapters II and V. The second cycle was launched in November 2015 and is currently ongoing. It is expected to continue until at least into 2024, based on Decision 8/1 of the 8th session of the UNCAC Conference of States Parties, which extended the second cycle for three years. To find out when a country is scheduled to be reviewed and which documents they have published so far, please consult the [country's profile on UNODC's website](#).²

This guide is divided into two sections: (1) general information on writing a parallel report; (2) guidelines for the review of the implementation of UNCAC provisions, covering all articles of Chapter V.

About the UNCAC Coalition:

The UNCAC Coalition is a global network of more than 350 civil society organisations in over 100 countries, committed to the monitoring and implementation of the UN Convention against Corruption (UNCAC).

Website: <https://uncaccoalition.org> – Sign up to our newsletter [here!](#)

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If you have any questions throughout the research and writing process, please do not hesitate to get in touch. The UNCAC Coalition's Vienna Hub Team is happy to assist you in any way possible.

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¹ This template was originally developed by Transparency International, based on a template that was to create more than 30 civil society parallel reports during the first review cycle, available at <https://uncaccoalition.org/uncac-review/cso-review-reports/>. The UNCAC Coalition has expanded and updated the guidelines and template.

² Country profiles: <https://www.unodc.org/unodc/en/corruption/country-profile/index.html>. For further information, also see: <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>.

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Abbreviations

AML	Anti-Money Laundering
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CoSP	Conference of the States Parties
CSO	Civil Society Organisation
CTR	Cash Transaction Report
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
ICAR	International Centre for Asset Recovery
IRG	Implementation Review Group of the UNCAC
IRM	Implementation Review Mechanism of the UNCAC
MLA	Mutual Legal Assistance
NCB	Non-Conviction Based
NFBP	Non-Financial Businesses and Professions
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
PEP	Politically Exposed Person
StAR Initiative	Stolen Asset Recovery Initiative (UNODC/World Bank)
STR	Suspicious Transactions Report
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

(1) General Information

1. Why Do a Civil Society Parallel Report?

Civil society parallel reports provide a key independent perspective on national UNCAC implementation. They can complement government reports by providing supplementary information, filling gaps and taking a more critical and comprehensive perspective on UNCAC implementation. At the same time, civil society parallel reports can supplement the recommendations in UNCAC review reports, thus providing additional impetus for reform efforts. These reports make an essential contribution to national and international dialogue and advocacy on UNCAC implementation and anti-corruption efforts more generally. They can provide input into the UNCAC review process, which checks country-level implementation of the Convention or they can be prepared independently of the review process.

The civil society parallel reports can be used by civil society organisations and other non-state stakeholders in several ways:

- for advocacy work at the national level to push governments to fully implement the UNCAC into domestic law and practice, to highlight shortcomings and provide recommendations for reforms;
- to exert pressure on national governments in the international forum of the UNCAC Conference of States Parties (CoSP), as well as in its subsidiary body, the UNCAC Implementation Review Group (IRG), which was created by the CoSP to oversee the review process. In this context, it is important to bear in mind the different audiences the reports will need to address.
- to influence the UNCAC peer reviewers and UNODC in areas of key importance that need to be addressed.
- The reports are also a powerful instrument that helps inform activities of donors/organisations/countries providing technical assistance.

Civil society reports are also important because the UNCAC review process is not as transparent and inclusive as it should be. Governments are not required to publish their self-assessment checklist, where they provide information to the reviewers on how the chapters of the Convention that are under review have been implemented. Similarly, governments are not required to publish the full country report that contains the detailed findings of the review. However, both documents can be published if the reviewed country agrees. Only an executive summary, which contains all the recommendations of the report but lacks the relevant context, has to be published at the end of the review process.³ Furthermore, there is no requirement that the government self-assessments or the official review reports reflect the views of non-state stakeholders.

On the other hand, if information about what a government has reported on is publicly available, it makes it easier for CSOs to play their role and avoid covering issues already well covered by the government. Likewise, if the full review report is published, as it should be, then civil society parallel reports can highlight and follow-up on those reports or point out weak areas in the official reports.

The UNCAC Coalition offers technical and limited financial support to civil society organisations that want to use the UNCAC implementation review or the UNCAC framework to advance their mission. In particular, the Coalition supports CSOs in producing a parallel civil society report, covering all or selected articles of the second UNCAC review cycle, which deals with Chapter II (preventive measures) and V (asset recovery); or in producing a follow-up report on the implementation of the first review cycle. In this regard, the Coalition can offer the following technical support to CSOs: guidance materials for researchers, helpdesk support for the researcher via email/phone, peer review, editing, assistance in the report's translation and graphic design for the report. The Coalition may also be able to provide some limited financial support for the production of a parallel report as agreed upon with the respective CSO.

³ For more information on the review process and additional resources, see: <https://uncaccoalition.org/uncac-review/uncac-review-mechanism/>.

2. Qualifications of the Person(s) Preparing the Report

The researcher(s) preparing a report on UNCAC Chapter II should have the following qualifications:

- Knowledge about administrative law and policies related to prevention of corruption in the country covered, as well as their application in practice. This could be as a practising lawyer, an academic or an experienced researcher working for a civil society organisation.
- Proven expertise in political-institutional analysis, with particularly strong knowledge of the country's system of public administration.
- Familiarity with transparency, accountability and the anti-corruption discourse, and knowledge of relevant domestic and international institutions and organisations that have conducted analysis on good governance and prevention of corruption that can be taken into account.
- Ability to write succinctly and for a non-academic audience in the language the report is being prepared in.
- Proven experience in practical policy reform and evidence-based advocacy in the field of anti-corruption and good governance.

3. General Approach to Preparing the Report

The report should provide an assessment of whether the national implementation of the UNCAC in a certain policy area (both legal and practical) can be considered satisfactory. On the articles covered, the report should be comprehensive enough to allow for sound conclusions, taking into account statistical data, relevant case studies, assessments and other relevant information. It should clearly explain the reasons for any conclusions and recommendations. All data and information should be presented in a concise and user-friendly way, including use of graphs and tables where appropriate. The information has to be properly referenced: written sources should be quoted either in the text itself or in footnotes.

To complement desk research, the researcher should conduct interviews with experts (this may include specialists within governmental institutions and oversight bodies, as well as in academia and civil society, research institutions and other relevant stakeholders). Such interviews can be very helpful to identify additional sources, confirm available information and validate initial findings.

It is also advisable to contact the government's focal point for the UNCAC review process to inquire about the timetable of the review process and to request the self-assessment checklist and full country report from the government (possibly by using access to information legislation if these documents are not available on the UNODC or a government website dedicated to the UNCAC review). Furthermore, it is advisable to inform the UNCAC focal point that a civil society parallel report will be produced. It may also be worth considering sharing a draft of the report with them for comment, depending on the country context.

The methodology described below provides a level of flexibility that allows the researcher to adapt it to the local context. For example, in the Guidelines presented in section 2, the researcher is often asked whether there is adequate funding/resources for a certain project/institution or whether a law/policy has been implemented adequately. The term "adequate" is not strictly defined in these cases. It is up to the researcher to evaluate this based on available sources and information and by taking the national context (economic development, institutional set-up etc.) into account.

4. Structure and Content of the Report

Executive Summary

The UNCAC Coalition will send you a proposed template for the full report separately. A key component of the report is the executive summary, which highlights the most significant findings and recommendations. It should enable readers to understand the main issues without having to read the entire report. Policy-makers and journalists will focus on this part of the report.

All conclusions should be based on the information provided in the main body of the report. Recommendations are likely to have more impact if they are limited to the most important ones rather than including an exhaustive list. The executive summary can and should be submitted to the UNCAC CoSP.⁴ This will increase its visibility and impact.

Length, Style and Approach

The recommended length for the parallel report using the proposed format in this guidance document is between 20 and 60 pages. Statistical tables and other data, including the presentation of relevant cases, should be included in the body of the report unless they take several pages, in which case the most important information should be included in the text and the rest in the annex.

When drafting the report, we recommend using a “scientific journalism style”, which presents valid analysis and arguments about technical matters in a language that is also accessible to non-experts.

The following guidelines to style and approach should be taken into account:

- Use clear and concise language;
- Avoid highly technical terms and language;
- Substantiate any assertion with references and/or using footnotes;
- Be balanced (highlight strengths as well as weaknesses in the performance);
- Use *topic sentences* to structure paragraphs. A topic sentence is a sentence whose main idea or claim controls the rest of the paragraph; the body of a paragraph then explains, develops or supports with evidence the topic sentence's main idea or claim.⁵

Analysing UN Language

The UNCAC provisions use language expressing that they either are **mandatory** (e.g. “*States Parties shall...*”), **carry an obligation to consider adopting** a provision (e.g. “*States Parties shall consider adopting/endeavour to/may...*”) or contain **optional provisions** (e.g. “*Measures may include...*”). In addition, many provisions of the Convention include clauses to prevent conflicts with national legislation, providing countries with room for interpretation on whether and how they implement provisions of the Convention.⁶

Libel⁷ Issues

Qualified libel lawyers should review the report in the final stage of the production. In order to reduce the risk of libel issues, the following standards should be kept in mind when drafting the report:

- The study should be balanced, written in neutral language. All statements should be substantiated.
- Statements containing allegations of misconduct by any individual or organisation should be supported by references to reliable sources. The referenced sources should be crosschecked as far as possible, and in case of any doubt, allegations should be omitted.
- Language about allegations should be toned down appropriately, qualifying statements with words such as “allegedly” and “reportedly”.
- When discussing specific corruption-related cases, mentioning the names of implicated persons should be avoided unless a reliable open-source reference can be provided. Authors should be careful to reflect the status of cases at the time of writing: whether there have been allegations only, or whether investigations or prosecution by authorities have begun or have

⁴ To submit a written statement to the CoSP, the CSO would need to register to attend the next CoSP and submit the written statement ahead of the Conference within a deadline specified by UNODC. From past experiences, it is not clear whether the statements will be accepted. Sometimes, UNODC has accepted executive summaries of CSO parallel reports as CoSP statements, on other occasions, submissions were rejected due to the fact that they referenced/included specific country information.

⁵ For more information see: <https://advice.writing.utoronto.ca/planning/topic-sentences/>.

⁶ For more information, you can find a countries' list of declarations and reservations on the UNCAC here: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18#EndDec.

⁷ Libel means to write or publish false statements that are likely to damage the reputation of a person or organisation. Depending on the country this can lead to civil or criminal liability.

resulted in a judgement and whether it is final or subject to appeal. This distinction is important in order to assess the reliability of the information and the libel risk posed by using the case.

Referencing Sources of Information

Please provide references for all sources used for this report. For referencing these sources of information, please use the following recommendations as a guidance:

- If data and information are available online, provide the full title, as well as link to the website (including the date accessed).
- Where data are available in both English and the national language(s), please provide the English source and its link to the website as well.
- When citing the researcher's own interviews, we suggest agreeing with the interviewee beforehand how and with which title the interviewee is referenced (e.g. District Court Judge or Senior Official, Department of Justice). Please also include information on how (via email, telephone, in-person), where and when the interview was conducted. You could consider drafting a consent form that clearly states how you will use the information obtained from an interviewee. This form should be signed by all persons you conduct interviews with.
- Where an interviewee wishes to remain anonymous, citations should give relevant information about the interviewee, the place and date of the interview – the absence of name should be explained. Example: Interview of a District Court Judge with the author, Colombo, 8 December 2019 (name withheld by request).
- Legal concepts and terms should be provided in the footnotes in the national language next to the English translation.

The first time you use a source in a footnote, please include all available information (name of author/organisation, year, title, subtitle, link, access date, page/article number). Any subsequent time you use this source in a footnote, you can use a short version of it that only includes the name of the author/organisation, main title and page/article number.

Exception: For laws and decrees, it is sufficient for you to include a link to the law and access date in the footnote.

Where available, please also use relevant statistical data or figures for the past three years for each Article covered⁸ – you can also include links to relevant platforms and mechanisms. Please also provide, if available, information on major or otherwise relevant cases for each Article covered. You could also consider including cases documenting that provisions were effectively implemented and/or cases that highlight gaps in the corruption prevention framework and its enforcement.

5. Timing

Ideally, the civil society parallel report should be written while the government is in the process of the official review. However, there are also benefits to drafting a civil society parallel report either ahead of the government review or at a later point of time, once the UNCAC review process has concluded. Drafting the report ahead of time would provide an opportunity to give more lead time to reviewers during the official review process. Writing the report once the UNCAC review has concluded, on the other hand, would allow you to see what has changed since the review process was conducted, and whether recommendations have been implemented. It would also provide a good opportunity to follow up with government officials.

6. Key Documents for the Civil Society Parallel Report

General

⁸ If you consider a longer time period to be relevant, then feel free to include additional data.

- ✓ UNODC (2004): United Nations Convention against Corruption, https://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html.
- ✓ UNCAC Coalition: on the following webpage, you can find examples of already published civil society parallel reports, <https://uncaccoalition.org/uncac-review/cso-review-reports/>.
- ✓ UNCAC Coalition: on the following webpage, you will find information about the UNCAC review mechanism, <https://uncaccoalition.org/uncac-review/uncac-review-mechanism/>.
- ✓ UNODC (2004): United Nations Convention against Corruption, https://www.unodc.org/unodc/en/corruption/tools_and_publications/UN-convention-against-corruption.html.
- ✓ UNODC: Country Profiles, <https://www.unodc.org/unodc/en/corruption/country-profile/index.html>.
- ✓ UNODC (2009): Resolutions and decisions adopted by the Conference of the States Parties to the United Nations Convention against Corruption – Resolution 3/1: Review mechanism, <https://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V1051985e.pdf>.
- ✓ UNODC (2009): Technical Guide to the UN Convention against Corruption, https://www.unodc.org/documents/corruption/Technical_Guide UNCAC.pdf.
- ✓ UNODC (2011): Mechanism for the Review of Implementation of the United Nations Convention against Corruption – Basic Documents, <https://www.unodc.org/documents/treaties/UNCAC/Publications/ReviewMechanism-BasicDocuments/Mechanism for the Review of Implementation - Basic Documents - E.pdf>.
- ✓ UNODC (2012): Legislative Guide for the Implementation of the United Nations Convention against Corruption, <https://www.unodc.org/unodc/en/treaties/CAC/legislative-guide.html>.
- ✓ UNODC (2016): Guidance to filling in the revised draft self-assessment checklist on the implementation of chapters II (Preventive measures) and V (Asset recovery) of the UNCAC, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603598e.pdf>.
- ✓ UNODC: More information about the Implementation Review Mechanism is available at <https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html>.

On UNCAC Chapter V on Asset Recovery

- ✓ ICAR (2013). Guide to the Role of Civil Society Organisations in Asset Recovery, https://cso.assetrecovery.org/sites/collective.localhost/files/documents/cso_guide_e.pdf.
- ✓ OECD, StAR (2012): Identification and Quantification of the Proceeds of Bribery, <https://star.worldbank.org/star/sites/star/files/Quantification.pdf>.
- ✓ OECD, StAR (2011): Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action, <http://documents.worldbank.org/curated/en/183431468330969818/pdf/680190WP0Box360C00Accra0Commitments.pdf>.
- ✓ StAR (2010): Towards a Global Architecture for Asset Recovery, <https://star.worldbank.org/star/sites/star/files/GlobalArchitectureFinalwithCover.pdf>.
- ✓ StAR (2011): Asset Recovery Handbook: A Guide for Practitioners, <https://star.worldbank.org/star/sites/star/files/Asset%20Recovery%20Handbook.pdf>.
- ✓ StAR (2011): Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action, <https://star.worldbank.org/star/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>.
- ✓ StAR (2012): On the Take – Criminalising Illicit Enrichment to Fight Corruption, <https://star.worldbank.org/publication/take-criminalizing-illicit-enrichment-fight-corruption>
- ✓ StAR (2012): Public Office, Private Interests – Accountability through Income and Asset Disclosure, <https://star.worldbank.org/star/sites/star/files/Public%20Office%20Private%20Interests.pdf>.
- ✓ StAR (2014): Few and Far – The Hard Facts on Stolen Asset Recovery, https://star.worldbank.org/star/sites/star/files/few_and_far_the_hard_facts_on_stolen_asset_recovery.pdf.
- ✓ StAR (2019): Going for Broke, <https://star.worldbank.org/publication/going-for-broke>

- ✓ StAR (2019): International Partnership on Asset Recovery, <https://star.worldbank.org/sites/star/files/networks-16-reduced-maps.pdf>.
- ✓ StAR: on the following webpage, you can access a number of country-specific guides to asset recovery, <https://star.worldbank.org/ArabForum/asset-recovery-guides>
- ✓ UNODC (2012): Handbook on the International Transfer of Sentenced Persons, https://www.unodc.org/documents/organized-crime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf.
- ✓ UNODC (2012): Manual on Mutual Legal Assistance and Extradition, <http://www.unodc.org/unodc/en/corruption/publications.html>.
- ✓ UNODC (2019): Best practices for the identification and compensation of all different types of victims in accordance with the Convention, and third-party challenges and their impact on asset recovery under chapter V, <https://www.unodc.org/unodc/en/corruption/WG-AssetRecovery/session13.html>.
- ✓ World Bank (2011): Asset Recovery Process and Avenues for Recovering Assets (adopted from the Handbook for Practitioners on Asset Recovery under StAR Initiative), <http://pubdocs.worldbank.org/en/824561427730120107/AML-Module-5.pdf>.

(2) Guidelines for the Review of UNCAC Chapter V Implementation

The following guidelines cover all articles of Chapter V on asset recovery and groups relevant provisions by related topics or subject matter. **As similar topics are addressed by different articles within Chapter V, we recommend this approach rather than an article-by-article approach to avoid duplication.**

Under each topic, relevant provisions of the UNCAC are summarised in a grey text box – please also consult the full text of the UNCAC for the exact wording of all provisions. Further guidance on how to evaluate the exact wording of the UNCAC can be found in the section “General Information” of this guide. In a second text box underneath the first one, key take-aways provide further insight into the provisions and their meaning.

Below the summary of the UNCAC provision, several questions are listed under “What has been done to ensure compliance with these provisions”. These may go beyond the minimum standards required by the UNCAC and aim towards reflecting internationally recognised good practices.⁹ The questions are divided into two groups, namely legal and policy framework, and application of the framework, and are designed to guide the researcher towards relevant aspects that may be evaluated. It is not anticipated that all these questions will necessarily be answered and reflected in the report. The researcher may choose to focus on those aspects most relevant to the country-specific context and the organisation’s expertise and mission. The researcher can also decide to include aspects of a specific topic that are not covered by the questions in case these aspects appear relevant to identifying weaknesses or good practices.

At the end of each section, useful resources with further details on relevant assessments or standards are provided.

Anti-Money Laundering (UNCAC Art. 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 58 - see also Art. 14.1 and 14.4¹⁰)

Summary of relevant UNCAC requirements for each State Party:

- Shall take such measures as may be necessary to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer (Art. 52.1);
- Each State Party shall
 - a) issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts;

⁹ The questions are derived from the UNODC Guidance to fill in the revised draft self-assessment checklist on the implementation of Chapters II and V and the Technical Guide on the UNCAC, as well as from other relevant standards, some developed by CSOs, others by intergovernmental bodies. UNODC: Guidance note on how to fill in the revised draft self-assessment checklist on the implementation of chapters II (Preventive measures) and V (Asset recovery) of the United Nations Convention against Corruption, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/20-24June2016/V1603598e.pdf>.

¹⁰ Article 14 is part of Chapter II on preventive measures, but it might nonetheless be useful for this policy issue.

- b) where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify (Art. 52.2);
- Shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner (Art. 52.3);
- Shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group (Art. 52.4);
- Shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention (Art. 52.5);
- Shall consider taking such measures as may be necessary, in accordance with its domestic law, 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. Such measures shall also provide for appropriate sanctions for non-compliance (Art. 52.6);
- Shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions (Art. 58);
- Each State Party shall:
 - a) institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasise requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transaction;
 - b) ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering (Art. 14.1);
- In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organisations against money-laundering (Art. 14.4).

Key Take-Aways from the UNCAC Provisions mentioned above:

→ Art. 52.1 to 52.4: Additional requirements on banks and financial institutions

- ◆ Enhanced CDD measures should be imposed on financial institutions in relation to funds deposited into high-value accounts and where politically exposed persons (PEPs) are involved. Both domestic and foreign PEPs should be covered and they should be defined to include political figures, their family members and closed associates.
- ◆ Competent authorities should facilitate the implementation of enhanced CDD measures by providing designated entities with advisories/guidance on how to carry out AML obligations as well as notifications.
- ◆ The establishment of banks that have no physical presence and which are not affiliated with a regulated financial group should be prevented. States Parties should further consider barring financial institutions from having a correspondent banking relationship with such shell banks or with financial institutions that permit their accounts to be used by such banks.

→ Art. 52.5 & 6: Additional requirements on public officials

- ◆ Countries should require public officials to disclose their assets and financial interests and consider sharing this information with competent authorities in other countries. They shall also require public officials to report financial accounts they control abroad.

→ Art. 58: Financial intelligence unit

- ◆ Countries should establish a FIU. The FIU shall be mandated to receive, analyse and disseminate reports on suspicious financial transactions.

→ Art. 14.1 & 4: Measures to prevent money laundering

The anti-money laundering regulatory and supervisory framework should be comprehensive to prevent and detect all forms of money laundering:

- ◆ It should cover both banks & non-banking financial institutions (i.e. natural or legal persons that provide formal or informal services for the transmission of money or value such as insurance companies & securities firm) and non-financial businesses & professions (NFBPs) that are particularly susceptible to money laundering (so-called designated entities).
- ◆ The rules should require designated entities to conduct customer due diligence (CDD) when establishing a business relationship and when carrying out transactions and should include, where appropriate, beneficial ownership identification and reporting of suspicious transactions. They should further involve record-keeping obligations.
- ◆ It should ensure that all relevant authorities (administrative, regulatory, law enforcement, other) have the ability to cooperate and exchange information at national and international levels.
- ◆ It should consider establishing a financial intelligence unit to serve as a centre for the collection, analysis and dissemination of information relating to potential money-laundering.
- ◆ States Parties should use as guidelines the relevant initiatives of regional, interregional and multilateral organisations against money laundering.

What has been done to ensure compliance with these provisions?

Legal and Policy Framework

- ✓ Does the domestic framework include both regulatory and supervisory provisions?
- ✓ What types of financial institutions or other entities are subject to due diligence requirements (e.g. banks, money service business, money transfer service providers, bureaux de change, mortgage providers etc.)?
- ✓ Are there any requirements on identification and verification of beneficial ownership of accounts or related funds, including those held under the name of legal entities?
- ✓ Are there any requirements for the designated entities to keep records for at least five years of these transactions and relationships?

- ✓ To what extent is the domestic anti-money laundering (AML) regime in line with the FATF Recommendations (see in particular recommendations n°1; 10-13; 20-23; 26-29 and 35)?
- ✓ Is the AML framework commensurate with the risks/vulnerabilities encountered/identified in your jurisdiction?
- ✓ Is the scope of the AML regime extended to other entities than banks and financial institutions, or other bodies particularly susceptible to money laundering?
- ✓ Do the customer due diligence (CDD) rules cover other aspects than the establishment of a business relationship?
- ✓ Does due diligence extend to foreign and domestic Politically Exposed Persons (PEPs)?
 - Is the definition of PEP in your country extended to family members and/or close associates or foreign persons?
- ✓ Are there any provisions/regulations on how designated entities are required to deal with the business relation/transaction once CDD are performed?
 - Are there any regulations in case the designated entities have to report suspicious transactions/activities or
 - In situations where they cannot commence business, carry out transactions or should terminate business?
- ✓ Are there any “safe harbour” provisions to protect reporting institutions and individuals from criminal and civil liability for breaching confidentiality for reports made in good faith?
- ✓ Was a FIU or other designated entity created for collecting and processing suspicious transactions reports (STR)?
- ✓ Are there any dissuasive sanctions for non-compliance with AML obligations?
- ✓ Are entities such as shell banks prohibited?
- ✓ Is there a legal framework to implement Art. 52.5 and 52.6 requiring public officials to disclose assets they control nationally and abroad?
 - Does the legal framework require that this information is publicly disclosed and that it is updated regularly (at least annually)?
 - Does it establish an independent mechanism overseeing the implementation of these provisions, including the verification of these declarations?
 - Does the legal framework foresee appropriate sanctions for non-compliance?
 - Are public officials required to report control over a financial account in a foreign country to appropriate authorities and to maintain appropriate records?
 - Are there sanctions for non-compliance?

Implementation / Application

- ✓ Does your country issue advisories to financial institutions on when and how to apply enhanced due diligence recordkeeping?
 - Are the advisories issued in accordance with domestic law?
 - Are there any existing training provided on how to exercise enhanced scrutiny?
- ✓ Does your country conduct money-laundering risk assessment on a regular basis to identify AML risks/vulnerabilities?
 - Does your country adequately address those risks/vulnerabilities?
- ✓ Were appropriate bodies/regulators created?
 - Does available evidence suggest that they are independent and equipped with adequate powers and resources?
- ✓ If dissuasive sanctions for non-compliance with AML obligations exist, are they implemented in practice?
- ✓ Does your jurisdiction issue notifications of the identity of particular natural or legal persons to whose accounts designated entities will be expected to apply enhanced scrutiny?
- ✓ Are regulated entities really complying with AML domestic provisions?
 - Are they really being sanctioned in case of failure?
- ✓ Are STRs being collated/analysed/processed?
 - Is there a follow-up procedure?
- ✓ Are allegations of laundering being investigated?
- ✓ Is there evidence that public officials disclose their assets?
 - Is there evidence of these declarations being independently verified?
 - Have sanctions been imposed for non-compliance?
 - Is adequate information on these declarations accessible to obliged entities?

- Is adequate information on these declarations accessible to the general public?
- Is there evidence of these measures (reference to rules regarding reporting of foreign accounts) being implemented and sanctions being imposed for non-compliance?

Useful resources:

- Basel Institute on Governance: The Role of FIUs in Asset Recovery, https://www.baselgovernance.org/sites/default/files/2019-12/191023-quickguides_prod-11_g07.pdf.
- FATF (2019): International standards for combating money laundering and the financing of terrorism and proliferation, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.
- FATF: documents related to mutual evaluation and implementation, [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)).
- StAR (2010): Politically Exposed Persons – Preventive Measures for the Banking Sector, https://star.worldbank.org/sites/star/files/Politically%20Exposed%20Persons_0.pdf.
- StAR (2011) Study: The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It, <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>.
- StAR (2018): Financial Intelligence Units Working With Law Enforcement Authorities and Prosecutors, <https://star.worldbank.org/sites/star/files/fius-report-04-sk1.pdf>.
- The Egmont Group: The Role of Financial Intelligence Units in Fighting Corruption and Asset Recovery, https://egmontgroup.org/en/filedepot_download/1661/55.

Measures for Direct Recovery of Property (UNCAC Art. 53 and 56)

Summary of relevant UNCAC requirements for each State Party:

- Each State Party shall
 - a) take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;
 - b) take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences;
 - c) take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognise another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention (Art. 53);
- Shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention (Art. 56).

Key Take-Aways from the UNCAC Provisions mentioned above:

→ Art. 53: Recovery of property

States Parties should ensure full implementation of UNCAC article 53 by making sure that nothing in their domestic framework prevents other States Parties from standing before their

jurisdictions to seek the recovery of property. This should apply to any and all court or out of court proceedings whenever proceeds of corruption are involved (including foreign bribery cases) - as required by the Convention.

♦ **53.1: Civil action - ownership claims**

Other States Parties should be entitled to initiate civil actions before the courts of your country with the aim of establishing title to or ownership of property acquired through the commission of an offence established in accordance with the Convention.

♦ **53.3: Confiscation procedure - ownership claims**

Other States Parties should be entitled to claim, as a third party in a confiscation procedure taking place in the courts of your country, ownership over assets acquired through the commission of an offence established in accordance with the Convention.

♦ **53.2: Compensation for damages¹¹**

Legislation should allow courts in your country to order those who have committed offences to pay compensation or damages to another State Party that has been harmed by such offences.

→ **Art. 56: Proactive information sharing**

States Parties should facilitate implementation of UNCAC article 53 by proactively sharing information with another State Party about proceeds of corruption or ongoing proceedings involving such assets.

What has been done to ensure compliance with these provisions?

Legal and Policy Framework

- ✓ Are States Parties and their legal representatives allowed to stand before the courts of your country and take legal actions?
 - Are there any legal or practical obstacles to such actions (such as excessive financial costs associated with legal proceedings)?
- ✓ Is there a procedure to notify the concerned State Party of its right to stand and prove its claim?
- ✓ What are the requirements on legal standing and access to courts such as requiring evidence of damage or loss and a close causal connection between the damage/loss in question and the conduct subject to complaints?
- ✓ Are foreign States Parties considered a “special category” of plaintiff?
 - If so, how does it impact their rights?
- ✓ Did your country create procedures to recognise the right of victim States Parties to seek or recover compensation or damages?
- ✓ What kind of damages can States Parties request? (e.g. material damages, loss of profits, non-pecuniary loss)

Implementation / Application

- ✓ Does your jurisdiction facilitate other States Parties’ actions by sharing spontaneously and proactively information about proceeds of corruption or legal proceedings?
- ✓ Have foreign States Parties ever been able to stand before the courts of your country in order to claim damages (in foreign bribery related cases for instance)?
- ✓ Does your country, or appropriate bodies, facilitate cooperation with other countries in practice (using bi- or multilateral agreements for instance)?
- ✓ Is there evidence of cases where your country shared information on specific asset recovery cases with other countries proactively and/or upon request?

¹¹ This innovative provision departs from the idea that proceeds of corruption should be recovered only on ownership grounds and aims to provide a concrete remedy to states harmed by corruption in situations - such as bribery or trading in influence - where the proceeds of corruption involve funds of private origin to which the state was never entitled. Under this scheme, no public money was ever involved; therefore, proceeds of corruption are not returned because they belong to the defrauded state but because it suffered damage as a result of the commission of the underlying corruption offence.

- ✓ Are statistics and information on asset recovery cases published online by the relevant authorities?

Useful resources:

- StAR (2013): Left out of the Bargain – Settlements in Foreign Bribery Cases and Implications for Asset Recovery, <https://star.worldbank.org/publication/left-out-bargain-settlements-foreign-bribery-cases-and-implications-asset-recovery>.
- StAR (2014): Public Wrongs, Private Actions, <https://star.worldbank.org/publication/public-wrongs-private-actions>.
- StAR: Asset Recovery Watch Database, <https://star.worldbank.org/corruption-cases/?db=All>.

Confiscation Tools (UNCAC Art. 54.1(b) and (c) - see also Art. 23.1 and 23.2¹²)

Summary of relevant UNCAC requirements for each State Party:

- Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall
 - b) take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorised under its domestic law (Art. 54.1(b));
 - c) consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (Art. 54.1(c));
- Shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
 - a)
 - i) the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
 - ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;
 - b) subject to the basic concepts of its legal system:
 - i) the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;
 - ii) participation in, and association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article (Art. 23.1);
- For purposes of implementing or applying paragraph 1 of this article:
 - a) each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;
 - b) each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention (Art. 23.2).

¹² Article 23 was already covered by the first cycle review, but it might nonetheless be useful for this policy issue.

Key Take-Aways from the UNCAC Provisions mentioned above:

- ➔ **Art. 54.1(b): Confiscation of assets of foreign origin (see also UNCAC Art. 23)**
Courts in your country should be able to confiscate property of foreign origin (i.e. predicate offences were committed abroad) through legal proceedings involving money laundering (or any other offences of equivalent effect).
- ➔ **Art. 54.1(c): Confiscation without conviction**
States should consider taking measures to allow the confiscation of proceeds of corruption without a criminal conviction. While the introduction of a non-conviction based (NCB) confiscation system is not a positive obligation for States Parties, they nevertheless have to consider the adoption of measures to be able to confiscate assets in such situations where the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases (meaning that a criminal conviction cannot be obtained).

What has been done to ensure compliance with these provisions?

Legal and Policy Framework

- ✓ Has the introduction of non-conviction based (NCB) confiscation of assets been considered or already introduced by your jurisdiction?
 - If not, are there any remedial tools for cases in which a criminal conviction cannot be obtained by reason of death, flight or absence?
- ✓ Does your domestic legislation provide for the confiscation of assets of foreign origin through the offence of money laundering or any other offence of equivalent effect (e.g. the offence of money laundering requires the predicate offences to have been committed domestically; it is not an offence irrespective of the place where the predicate offence was committed)?
- ✓ Are there tools to face situations where a criminal conviction cannot be obtained (in the absence of NCB confiscation)?
- ✓ In the case of predicate offences committed abroad (e.g. dual criminality, conviction in the country of origin etc.), what are the conditions attached to the adjudication of the offence of money laundering?

Implementation / Application

- ✓ Is it possible for your authorities to order the confiscation of assets of foreign origin through the adjudication of offence of money laundering (or related offences)?
- ✓ Are there any cases of confiscation based on foreign corruption-related money laundering offences?
 - If yes, is there accessible information related to the amount confiscated?
- ✓ Is there accessible information related to non-conviction-based forfeiture and mutual legal assistance provided in non-conviction based forfeiture cases?
- ✓ Does available data and evidence on the number of investigations, judicial proceedings and sentences suggest an effective enforcement of Article 23?

Useful resources:

- European Commission (2012): Confiscation and asset recovery: Better tools to fight crime, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_12_179.
- FATF (2012): Best practices on confiscation (recommendations 4 and 38) and a framework for ongoing work on asset recovery, <https://www.fatf-gafi.org/media/fatf/documents/reports/Best%20Practices%20on%20%20Confiscation%20and%20a%20Framework%20for%20Ongoing%20Work%20on%20Asset%20Recovery.pdf>.
- G8 (2005): G8 Practice Principles on Tracing, Freezing and Confiscation of Assets, https://www.justice.gov/sites/default/files/ag/legacy/2004/06/03/G8_Best_Practices_on_Tracing.pdf.
- StAR (2009): Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture,

International Cooperation for the Purpose of Confiscation (UNCAC Art. 51, 54.1(a) and (b), 54.2, 55.1, 55.2, 55.6, 56, 59)

Summary of relevant UNCAC requirements for each State Party:

- The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard (Art. 51);
- Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall
 - a) take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party (Art. 54.1(a));
 - b) takes such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorised under its domestic laws (Art. 54.1(b));
- Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall:
 - a) take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;
 - b) take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;
 - c) consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property (Art. 54.2);
- A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:
 - a) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or
 - b) submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party (Art. 55.1);
- Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or,

pursuant to a request under paragraph 1 of this article, by the requested State Party (Art. 55.2);

- If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article condition on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis (Art. 55.6);
- Shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention (Art. 56);
- Shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention (Art. 59).

Key Take-Aways from the UNCAC Provisions mentioned above:

→ Art. 51: General provisions

- ◆ Governments are obliged to cooperate in the widest possible manner with other States Parties on the implementation of asset recovery.

→ Art. 54.2 (a-c): Enforceability of foreign seizure orders, seizure upon foreign request and provisional measures

- ◆ Competent authorities should have the power to enforce domestically foreign seizure orders.
- ◆ Competent authorities should have the power to freeze or seize property upon the request of another foreign competent authority that provides reasonable basis that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation.
- ◆ States Parties should further consider taking such provisional measures as injunctions, monitoring, sequestering, restriction orders and making these available at an early stage, such as upon receiving information of an arrest or change related to those assets. While the introduction of such measures is not a positive obligation under the UNCAC, States Parties nevertheless have to consider the adoption of additional provisional measures to be able to secure the assets.

→ Art. 54.1(a) and (b), 55.1, 55.2 and 55.6: Enforceability of foreign confiscation orders

- ◆ Competent authorities should be able to enforce domestically foreign confiscation orders (including those that are non-conviction based). In line with Article 55(1), two enforcement options are available: competent authorities may either recognise and enforce the foreign confiscation order (direct enforcement) or institute new proceedings according to domestic law and issue a confiscation order in accordance with domestic law (indirect enforcement).
- ◆ Countries shall, upon request of another country, take measures to identify, trace, freeze, seize and confiscate assets originating from corruption offences.
- ◆ If in your jurisdiction, the enforcement of foreign confiscation order is made conditional on the existence of a relevant treaty, the UNCAC should be considered as the necessary and sufficient treaty basis.

→ Art. 56: Special cooperation

States Parties are encouraged to proactively inform other states when they have information they believe may be useful in investigating or prosecuting corruption or for the purpose of joining ongoing judicial proceedings. In particular, this may include information on suspicious transactions, activities of PEPs or where a public official has a power of attorney, authorised signature, or any other authority to represent the State over its financial interests in another State Party and unusual payments by legal entities. It may also include the State Party joining an information-sharing international forum (such as Egmont Group etc.).

→ **Art. 59: Bilateral and multilateral agreements and arrangements**

- ◆ Countries should enter into bilateral or multilateral agreements or arrangements to improve effective international cooperation.

What has been done to ensure compliance with these provisions?

Legal and Policy Framework

- ✓ Is there a dedicated single department, body or agency mandated to coordinate international asset recovery cases in your country?
- ✓ Is there a law on MLA which provides for the seizure of property upon foreign requests, and the enforcement of foreign seizure and confiscation orders?
- ✓ Has your jurisdiction ever considered the possibility of introducing additional provisional measures to secure the assets (if not already introduced)?
- ✓ Is there a centralised system for providing MLA?
- ✓ Are there sufficient tools (cf. additional provisional measures) to secure the assets at an early stage (including in a proactive manner)?
- ✓ What kind of conditions are attached to the enforcement of foreign requests and orders in your country (e.g. dual criminality requirements, evidence etc.)?
- ✓ What kind of rules are in place regarding the recognition of orders from different legal traditions?
- ✓ Can foreign non-conviction-based confiscation orders be enforced domestically?

Implementation / Application

- ✓ Are there weaknesses in money laundering and financial institution reporting laws and policies impacting the taking of proactive measures to secure the assets (should such provisional measures be available in your jurisdiction)?
- ✓ Has your country confronted any obstacles in providing or obtaining MLA? If possible, please indicate the countries with which the MLA problems have occurred and why.
- ✓ Is your jurisdiction a member of an information-sharing forum (such as the Egmont Group)?
- ✓ May your jurisdiction be regarded as affording other States Parties the widest measure of cooperation and assistance in asset recovery (cf. UNCAC Art. 51)?
- ✓ Is there evidence of foreign non-conviction-based confiscation orders being enforced domestically?
- ✓ Have there been international asset recovery cases involving your country where the provisions of the UNCAC have proven to be inadequate to enable effective international cooperation?
 - If so, what were the problems?
- ✓ If there is a body mandated to coordinate international asset recovery cases, is the body equipped with adequate staff and other resources to fulfill its mandate effectively?
- ✓ Has the country entered into bilateral and/or multilateral agreements and arrangements to enhance the effectiveness of international cooperation on asset recovery?

Useful resources:

- Egmont Group: <https://egmontgroup.org/en>.
- Egmont Group (2013): Egmont Group of Financial Intelligence Units Principles for Information Exchange Between Financial Intelligence Units, <https://egmontgroup.org/en/document-library/8>.
- UNODC (2012): Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime, <http://www.unodc.org/unodc/en/corruption/publications.html>.
- UNODC (2019): Mutual recognition of non-conviction-based freezing orders and confiscation judgments, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2019-May-29-30/V1903719e.pdf>.

The Return and Disposal of Confiscated Property (UNCAC Art. 57.3, 57.4, 57.5)

Summary of relevant UNCAC requirements for each State Party:

- In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:
 - a) in the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;
 - b) in the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognises damage to the requesting State Party as a basis for returning the confiscated property;
 - c) in all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime (Art. 57.3);
- Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article (Art. 57.4);
- Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property (Art. 57.5).

Key Take-Aways from the UNCAC Provisions mentioned above:

→ Art. 57: Return and disposal of confiscated property

Domestic legislation should provide for the disposal and return of confiscated property as follows:

- ◆ **Art. 57.3 (a) and (b):** Where the confiscation is ordered in the requesting country and enforced in the requested country¹³ as follows:
 - In cases of embezzlement of public funds or of laundering of embezzled public funds, confiscated property should be returned to the requesting country without further review;
 - In cases of other offences, confiscated property should be returned to the requesting State Party where it reasonably establishes its prior ownership of the confiscated property or when the requested State Party (i.e. your jurisdiction) recognises damage to the requesting State Party as a basis for returning the confiscated property.
- ◆ **Art. 57.3 (c):** In all other cases (e.g. where the confiscation was ordered by your courts in an autonomous manner), priority consideration should be given to returning confiscated property to the requesting State, returning such property to its prior legitimate owners or compensating the victims of the crime.¹⁴

¹³ The return may be made conditional upon a final judgement in the requesting State.

¹⁴ Usually, assets confiscated in an autonomous manner are transferred to the Public Treasury of the State that ordered the confiscation.

→ **Art. 57.4 and 57.5: Reasonable costs and agreements on final disposal**

- ◆ Reasonable costs can be deducted by the country returning the assets (i.e. your jurisdiction) but finders fees are not eligible.
- ◆ States may give special consideration to concluding agreements or mutually acceptable arrangements for the final disposal of confiscated property.

What has been done to ensure compliance with these provisions?

Legal and Policy Framework

- ✓ Are there provisions in your domestic legislation providing for the disposal and return of confiscated assets of foreign origin including for cases of autonomous confiscation (i.e. the confiscation was ordered by your jurisdiction without assistance from the concerned foreign country)?
- ✓ Does your domestic legal framework clarify and define all situations where assets must be returned?
 - Does the domestic legal framework also address the costs for returning assets?
- ✓ Does the legal framework specifically address if and how victims of corruption may be compensated in cases where assets are returned?

Implementation / Application

- ✓ Have confiscated assets (of foreign origin) ever been disposed of in line with UNCAC Art. 57?
 - If so, have there been any pitfalls (e.g. returned funds were recycled into corruption schemes)?
- ✓ How good/bad were the agreements that have been concluded so far (if any)? You may wish to consider the following points: transparency, involvement of civil society, accountability etc.
- ✓ Are unreasonable obstacles placed on the return of funds (i.e. the inclusion of costs other than charges and expenses for investigations, prosecutions or judicial proceedings)?
- ✓ Is there evidence of victims of corruption receiving compensation after assets were returned to the country of origin?

Useful resources:

- G8 (2005): Best Practices for the Administration of Seized Assets, <http://docplayer.net/16960901-G8-best-practices-for-the-administration-of-seized-assets.html>.
- ICAR: Returning Stolen Assets - Learning from past practice: Selected case studies, https://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Angolagate_Swiss_ICAR_Case_Study_2013.pdf.
- StAR (2009): Stolen Asset Recovery: Management of Returned Assets – Policy Considerations, <https://star.worldbank.org/star/sites/star/files/ManagementReturnedAssets.pdf>.
- StAR: Asset Recovery Watch Database, <https://star.worldbank.org/corruption-cases/?db=All>.
- UNODC (2017): Effective management and disposal of seized and confiscated assets, https://www.portalbcft.pt/sites/default/files/anexos/unocd_administracao_e_disponibilizacao_bens apreendidos e declarados perdidos.pdf.