



***Chapter V of the UNCAC on asset
recovery***

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Confiscation of Proceeds of Crime

**Obligation to Enable
Confiscation of
Proceeds of Crime**

Internationally Art.55

Domestically Art.31

**Domestically & Upon
Request from Another Party**





Domestic confiscation powers (Art. 31)

➤ **Production orders / search & seizure powers of:**

- ✓ Bank, commercial & financial records

➤ **Bank secrecy is not an excuse**

➤ **Powers to enable:**

- ✓ Identification
- ✓ Tracing
- ✓ Freezing
- ✓ Seizure and confiscation of proceeds or property

➤ **Shifting burden of proof:**

- Offender may have to prove lawful origin of suspicious proceeds



Confiscation: Which Proceeds?

- Proceeds of crime derived from convention offences
 - Proceeds converted into/ intermingled with legitimate proceeds
 - Income or benefits derived from proceeds

- Property of corresponding value

- Property, equipment, instrumentalities
 - Used in or destined for use in convention offences

- No prejudice to rights of bona fide third parties



The background features a blue-tinted world map. On the left side, there is a circular inset containing a more detailed, glowing blue globe. The text is overlaid on the map.

Chapter V, Asset Recovery - a major breakthrough

**“The return of assets is a fundamental principle of this Convention...
Parties shall afford one another the widest measure of cooperation and assistance in
this regard” (art. 51)**



Asset Recovery – Major Breakthrough

Measures to Prevent and Detect Transfer of Proceeds (Art.52)

Measures for Direct Recovery of Property (Art.53)

Return of Assets as Fundamental Principle (Art.51)

Measures for Recovery of Property through International Cooperation (Art.54 - 55)

Measures for Return and Disposal of Assets (Art.57)



Prevention of Money-laundering (Art.14 & 52)

- **Domestic capacity to identify, collect, interpret information**
 - Oversight of financial institutions
 - Financial intelligence units to collect, analyze & disseminate information (art.58 CAC)

- **Financial disclosure systems for public officials**
 - Asset declarations
 - Declaration of interest over foreign financial accounts

- **International cooperation**
 - Exchange information
 - Monitor cross-border movement of cash & other monetary instruments





Prevention of Money-laundering (Art.14 & 52)

Banks & other financial institutions

➤ Customer identification

- Know Your Customer, Know Your Business
- Enhanced scrutiny on accounts of individuals with prominent public functions
- Record keeping for later tracing
- Reporting suspicious transactions

➤ Prevention of establishment of banks

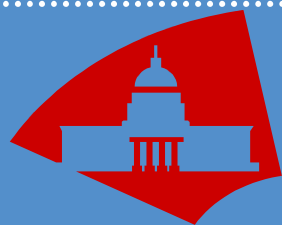
- With no physical presence
- Not affiliated with a regulated financial groups

Suspicious: complex, large transactions, unusual patterns, no apparent economic purpose, no obvious lawful purpose





Direct Recovery of Property (Art.53)



States parties
shall be allowed to

Initiate civil action in another party's courts to establish title to or ownership of property acquired through corruption



Courts
shall be allowed to

Order corruption offenders to pay compensation to another state party



Courts
shall be allowed to

Recognize, in confiscation decisions, another party's claim as legitimate owner of property



Direct Recovery of Property (Art. 53)

- States **MUST** provide other States access to civil courts
 - to establish title or ownership
 - Not dependent on mutual legal assistance request (victim State can take matters into its own hands)
- States **MUST** empower courts to recognize other States as possible victims for compensation
- States **MUST** empower courts to recognize other State's claim as legitimate owner prior to forfeiture
 - Other State intervenes in forfeiture proceeding
 - Other State establishes claim as would any third party





Recovery through International Cooperation (Art. 54)

In order to provide effective mutual assistance under Art 55

Permit authorities to give effect to foreign orders

Cooperation in Confiscation

Permit confiscation on basis of money laundering/related offence

Consider non conviction based asset confiscation





International Cooperation in Freezing/Seizure (Art. 54)

**Freeze/seize on
basis of foreign
order**

**Freeze/seize on
basis of foreign
request**

**Consider:
Preservation on
foreign
arrest/charge**





Art. 54 para 1: Confiscation Models

CONVICTION BASED

- To give effect to a foreign confiscation order, 54 (1a) (**mandatory**)
- To order confiscation of foreign property, 54 (1b) (**mandatory**)

The confiscation follows a criminal conviction against the person.

NON CONVICTION BASED (= IN REM, = CIVIL FORFEITURE)

- Consider: Confiscation without criminal conviction (1c) (**non mandatory**).
- Advantages:
 - When no conviction is possible (perpetrator absconded, political opposition, weakened judicial system in the requested country)
 - Civil standard of proof is applied from the beginning (confiscation may be possible although the perpetrator has to be acquitted by criminal standards)
 - No need for dual criminality.

The action is against the property, not against the person.



Confiscation: International Cooperation (Art. 55)

In addition to MLA provisions, Art.54-55:

When a party receives a confiscation request from another party:

➤ **Either:** direct enforcement of foreign confiscation order

➤ **Or:** obtain domestic order of confiscation & enforce it

➤ **Requests to**

- identify
- ✓ trace
- ✓ Freeze
- ✓ Seize proceeds for confiscation
- **Same powers available for foreign requests as for domestic confiscation**



Confiscation: International Cooperation (Art. 55)

- Provisions of art. 46 on mutual legal assistance applicable *mutatis mutandis*
- Cooperation may also be refused where:
 - Requested State does not receive sufficient and timely evidence
 - If property of a *de minimis* value





Return of Assets (Art.57)

Return Depending on **How Closely the Assets were Linked** to the Requesting State Party

Embezzled Public Funds from the State

Return to the State

Return to the State if it Establishes Ownership or Damage Recognized by the Requested State Party as a Basis for Return

Proceeds of Other Offences Covered by UNCAC

Other Cases

May be Returned to the Requesting State Party, a Prior Legitimate Owner or Used for Compensating Victims



General Principles regarding return

Obligation on States Parties to have measures to allow for return of assets in accordance with provisions of the Convention

Reasonable expenses may be deducted unless otherwise agreed

Where appropriate State Parties may give special consideration to agreements and arrangements for final disposition of assets on a case-by-case basis



Miscellaneous provisions

- Endeavour to transmit information to other states without request (Art.56);
- Consider establishing a Financial Intelligence Unit responsible for receiving, analyzing and disseminating reports of suspicious financial transactions (Art. 58)
- Consider concluding bilateral/multilateral agreements to enhance cooperation in recovery (Art. 59)





Resolution 1/4 of the Conference of States Parties to the UNCAC on the establishment of an intergovernmental working group on asset recovery

Establishment of an interim open-ended intergovernmental working group to advise and assist the COSP on the return of proceeds of corruption

Specific functions:

- Assisting in developing knowledge in the area of asset recovery
- Encouraging cooperation among relevant existing bilateral and multilateral initiatives
- Facilitating exchange of information
- Bringing together relevant anti-corruption authorities and practitioners involved in asset recovery
- Facilitating exchange of ideas on plans for providing legal and technical expertise
- Identifying capacity-building needs

The meeting of the working group to be held in Vienna on 27-28 August 2007.
Discussions to be reported to the COSP at its second session.

Stolen Asset Recovery (StAR) Initiative

Launched in Washington by the World Bank and UNODC on 17 September 2007 to:

- Help countries recover assets
- Promote legal and institutional reform
- Help countries to build capacity to deter new flows
- Engage in global advocacy to lower barriers to asset recovery





StAR (1): Helps countries recover assets



- Assistance to countries with necessary forensic and investigative advice required to trace stolen assets
- Assistance to countries to develop capacity to manage their asset recovery cases
- Assistance to countries with the drafting of MLA requests / the response to MLA requests
- Sponsoring of case meetings which bring together all parties involved in a case on a national level





StAR (2): Promotes Legal and Institutional Reform



- Assistance to countries to develop and put in place regulatory framework for asset recovery and implementation of the UNCAC
- Assessment of vulnerabilities within the country
- Single points of contact in each country
- Legal analysis of successful and unsuccessful asset recovery cases





StAR (3): Helps countries to build capacity to deter new flows

- **Assessment of vulnerabilities within the country**
- **Generic training on asset recovery**
- **Designing best-fit models to integrate asset recovery into overall governance structure**
- **Provide model guides on asset recovery**





StAR (4): Helps to reduce barriers to asset recovery



- Help countries identify obstacles to their response to MLA requests
- Expert groups to produce technical guidance necessary to advance asset recovery efforts
- Research in asset recovery experiences to develop cumulative knowledge
- Promotion of effective structural approaches for the requested country



For further information:

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***THANK YOU FOR YOUR
ATTENTION***

