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Implementation of the mandate on asset recovery of the Conference of the States Parties to the United Nations Convention against Corruption

Innovative solutions to asset recovery

Background paper prepared by the Secretariat

I. Introduction

1. In recent years, asset recovery has moved rapidly to the top of the agenda of Governments and international organizations, attracting the interest of policymakers and practitioners around the world. This move was precipitated as much by actual events as by a shift in political approaches and priorities. Specifically, a number of high-profile cases began to emerge in the late 1980s in which States, often after a change of political regime, sought to recover immense sums that had been diverted from their treasuries by officials of former administrations. The success of those efforts has varied, owing in part to political exigencies and the implications of the cases and in part to the degree of international cooperation received. One of the repercussions of these cases has been that development and anti-corruption experts have become more aware of a problem that previously had been underestimated. While accurate empirical data are still scarce, it is safe to assume that vast amounts of wealth are involved. It has even been reckoned that some of the poorest countries in the world could pay off their entire external debt if they had control of the assets looted from their public coffers. However, impoverished public budgets, unavailable funding for urgently needed infrastructure and curtailed economic autonomy for these Governments are only the immediate consequences of this phenomenon. The illicit diversion of public assets also hampers the establishment of transparent economic management and destroys trust in government institutions and financial systems — in both developed and developing countries. Enhancing cooperation for

* CAC/COSP/WG.2/2007/1.



the return of assets helps countries not only to recover wealth but also to develop and strengthen institutions and build much-needed trust in order to prevent such cases in the future.

2. The United Nations Convention against Corruption (General Assembly resolution 58/4, annex, of 31 October 2003) breaks new ground with a series of innovative provisions, especially in its chapter V. As at 8 June 2007, there was a total of 140 signatories and 93 parties to the Convention. The steady increase in the number of States parties since the swift entry into force only two years after being opened for signature demonstrates clearly that the Convention continues to enjoy strong political commitment among Member States. That is cause for optimism about universal adherence to and full implementation of the first truly global instrument against corruption. Asset recovery is considered a fundamental principle of the Convention, with parties agreeing to afford one another the widest measure of cooperation and assistance (article 51). The Convention places emphasis on effective mechanisms to prevent the laundering of the proceeds of corrupt practices (article 14) and on the recovery of assets diverted through corrupt practices (articles 51-59), and includes provisions specific to asset recovery (article 53, on measures for direct recovery of property). One of the most complex provisions during the negotiation process pertained to the return of assets (article 57), because it introduced the concept of return of assets in their entirety. Chapter V is also interlinked with other parts of the Convention. For example, the provisions on the prevention and detection of transfers of proceeds of crime (chapter V, article 52) complement the measures to prevent money-laundering (chapter IV, article 14), while the provisions on international cooperation for purposes of confiscation (chapter V, articles 54 and 55) tie in closely with the overall provisions on international cooperation, particularly mutual legal assistance (chapter IV, articles 43-50). Together, these provisions provide a unique and innovative framework for asset recovery, but much will depend on their effective implementation by States parties.

3. The United Nations first became engaged in this area in 2000, when the General Assembly adopted resolution 55/188, in which it called upon Member States to cooperate through the United Nations system to devise ways of preventing and addressing illegal transfers of funds and to support each other in returning illegally transferred funds. By virtue of that resolution, asset recovery became a key priority of the Ad Hoc Committee for the Negotiation of a Convention against Corruption established pursuant to General Assembly resolution 55/61 of 4 December 2000. In its resolutions 56/186 of 21 December 2001, 57/244 of 20 December 2002, 58/205 of 23 December 2003, 59/242 of 22 December 2004, 60/207 of 22 December 2005 and 61/209 of 20 December 2006, the Assembly reiterated its call for subregional, regional and international cooperation and requested the international community to support efforts to prevent and address the transfer of funds of illicit origin. Pursuant to Economic and Social Council resolution 2001/13 of 24 July 2001, the Secretary-General submitted a global study on the transfer of funds of illicit origin, especially funds derived from corruption (A/AC.261/12). The study focused on funds derived from acts of corruption and on the impact of corruption on economic, social and political progress. All this preliminary work provided important input for the negotiation of the United Nations Convention against Corruption.

4. The Conference of the States Parties to the United Nations Convention against Corruption held its inaugural session in Amman from 10 to 14 December 2006. In its resolution 1/4, entitled “Establishment of an intergovernmental working group on asset recovery”, the Conference established an open-ended intergovernmental working group to assist it in implementing its mandate on asset recovery, and decided that the group should fulfil the following functions: (a) assist the Conference in developing cumulative knowledge; (b) assist the Conference in encouraging cooperation among relevant existing initiatives and contribute to implementation of the related provisions of the Convention; (c) facilitate the exchange of information among States by identifying and disseminating good practices; (d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners and serving as a forum for them; (e) facilitate the exchange of ideas among States, including on plans for providing legal and technical expertise that requesting States need in order to follow international legal procedures for asset recovery; and (f) assist the Conference in identifying the capacity-building needs of States parties in the area of asset recovery. The Conference decided that the working group should meet during the sessions of the Conference and should hold at least one intersessional meeting, and requested the United Nations Office on Drugs and Crime (UNODC) to consider innovative solutions to help States to build their capacity to prepare and respond to requests for mutual legal assistance in the area of asset recovery.

5. The purpose of this background paper is to provide the Working Group with an account of action taken by the Secretariat to implement resolution 1/4 of the Conference and assist it in framing its discussions in a way that would be conducive to the implementation of its mandate.

II. Developing cumulative knowledge

6. Asset recovery is a relatively recent field of international law and cooperation. Although often linked to general issues of corruption prevention and international cooperation in criminal matters, especially mutual legal assistance, many problem aspects of asset recovery remain largely unexplored. Some provisions of the Convention open up entirely new opportunities for international cooperation. Little is known about the practical implementation of those provisions or the steps needed to make them fully operational. Also, practices that work well in everyday legal practice may require fine-tuning to yield the same results in large-scale corruption cases entailing massive volumes of complex data and evidence and far-reaching political implications. That being said, asset recovery cases do tend to share some common features: for the most part, they are handled through legally complex procedures that require simultaneous cooperation in various jurisdictions, they are lengthy and cumbersome, and they often have significant political dimensions. Despite these common elements, the practitioners who are called upon to handle asset recovery proceedings often lack experience in how best to proceed in order to ensure success. Government policymakers throughout the international community are faced with the same lack of reliable information on how to make operational the asset recovery provisions set forth in chapter V of the Convention.

7. Empirical and statistical data on assets looted and transferred abroad are scant. At present, no one can accurately estimate the true dimension of this global problem. Some calculate that between US\$ 20 billion and US\$ 40 billion acquired through grand corruption in developing countries have been laundered and transferred abroad over the years;¹ others believe that that amount is being transferred abroad each year.² A 2004 report by the African Union estimated that Africa lost US\$ 148 billion annually to corrupt practices, equivalent to 25 per cent of the gross domestic product of all Africa.³ Such estimates are often used to draw attention to the urgency of the problem, but they are contradictory and lack methodological consistency. At the country level however, some interesting work has been done on the amount of looted assets in specific cases.⁴

8. Furthermore, little knowledge is available on the money-laundering methods used in cases of grand corruption, given their specificities and key differences vis-à-vis the general features of global money-laundering. It would be helpful to know more about the impact, both quantitative and qualitative, of the diversion of assets on economies, particularly those of developing countries and countries with economies in transition, and on sustainable development. While it seems obvious that such relations exist, policymakers must rely heavily on estimates and common sense in the absence of concrete information.

9. Legislation governing the numerous steps involved in asset recovery is neither systematically documented nor accessible. A “mapping exercise” of the normative framework for asset recovery would be extremely useful but would need to be planned carefully and should draw on existing databases and data collections. The outcome could be a much-needed tool for practitioners who are confronted with various laws and different legal systems but who are not necessarily experts in asset recovery. It would also provide a basis for comparative research on relevant legislation and help to identify useful models outside the limitations of national legal systems, thus offering valuable guidance towards full implementation of chapter V of the Convention.

10. Knowledge on successful practices is essential to the planning of future asset recovery cases and to the determination of policies and practices to assist requesting States. Although the most notable cases were resolved before the Convention entered into force, a thorough analysis of those cases is crucial as, for the time being, they are the only source of lessons learned. In order to begin accumulating the necessary knowledge, UNODC co-organized – with the International Centre for Asset Recovery of the Basel Institute on Governance – a workshop in Basel, Switzerland, on 15 and 16 May 2007 on the implementation of the asset recovery provisions of the Convention. The workshop focused on a group of recently settled,

¹ The Nyanga Declaration on the Recovery and Repatriation of Africa’s Wealth Illegally Appropriated and Banked or Invested Abroad was signed on 4 March 2001 by representatives of Transparency International in Zimbabwe (available at www.transparency.org).

² Raymond Baker and others, “Dirty money and its global effects”, *International Policy Report*, January 2003.

³ Jack Smith, Mark Pieth and Guillermo Jorge, “The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention against Corruption”, *U4 Anti-Corruption Resource Centre Brief*, vol. 2, February 2007.

⁴ Transparency International, *Global Corruption Report 2004*, R. Hoddes and others, eds. (London, Pluto, 2004), available at www.transparency.org/publications/gcr.

high-profile asset recovery cases, namely the case of Ferdinand Marcos (Philippines), that of Sani Abacha (Nigeria) and that of Alberto Fujimori and Vladimiro Montesinos (Peru). With input from practitioners who had first-hand experience with those cases in both requesting and requested States, the seminar analysed the outcome of the respective proceedings, the obstacles encountered and the lessons learned, and explored what could have been achieved differently had the Convention been in force and applied to those cases. The results of the seminar were very promising and fully confirmed the methodological approach used. Until data on new cases are available, the only way to improve knowledge on the many operational problems of asset recovery is through comparative analysis, drawing on cases in settings before and after the entry into force of the Convention. It should also be mentioned that asset recovery is not limited to cases of grand corruption. In some countries, hundreds of small cases may have the same combined economic impact as a single case of high-level corruption in another jurisdiction. However, the challenges faced may be different in such aspects as cost-benefit analyses and the financing of those proceedings. Attention should therefore be given to the question of whether the knowledge accumulated in grand corruption recoveries can be applied to cases of a smaller scale.

11. Another area in which a knowledge base needs to be built relates to the requirements for successful asset recovery by States. All relevant actors should undertake systematic assessments of specific needs as a matter of priority. These assessments should cover both short-term requirements (for example, for specific legal assistance) and long-term policy and capacity-building requirements, including those needed to improve cooperation between legal systems. The use of common needs assessment tools would be likely to ensure the consistency and coherence of these efforts, and compiling those assessments would provide a full picture of the needs of requesting and requested States. Current and upcoming initiatives of national and international actors could then be linked to these needs, forming a comprehensive matrix of needs and initiatives that would provide a sound basis for setting priorities and identifying shortcomings in global action for asset recovery. This would also create a point of convergence between this priority area of the Conference and the other priority, namely technical assistance. It should be recalled in this connection that the open-ended Intergovernmental Working Group on Technical Assistance, established by the Conference pursuant to resolution 1/5, will hold its first meeting on 1 and 2 October 2007.

III. Encouraging cooperation among relevant initiatives

12. In response to the growing global interest in asset recovery, a number of initiatives have been launched or prepared. Given the complexity of the problem and the lack of accumulated knowledge in this area, the success of those initiatives will hinge on effective cooperation and the swift exchange of experience and expertise. The matrix described above would serve as a tool for cooperation and complementarity. In this regard, it should be recalled that one of the mandates of the working group is to assist the Conference in encouraging cooperation among those initiatives and to serve as a forum for the exchange of information and the alignment of efforts. Accordingly, importance should be attached to pursuing innovative forms of cooperation.

13. UNODC and the World Bank have launched the joint Stolen Asset Recovery (StAR) Initiative, discussed at a side meeting during the annual spring meetings of the World Bank and the International Monetary Fund on 14 April 2007. Representatives of developed and developing countries and of multilateral development banks present at the meeting expressed full support for the Initiative. UNODC and the World Bank will forge partnerships with developing countries and with other bodies, such as the regional development banks, the Group of Eight, the International Monetary Fund, the Norwegian Agency for Development Cooperation, the Organization for Economic Cooperation and Development (OECD) and Switzerland, to ensure that the Initiative results in a truly global effort. At their meeting held in Potsdam, Germany, on 19 May 2007, the Finance Ministers of the Group of Eight welcomed the Initiative.

14. The joint initiative uses the Convention as the basis for its work programme, attaching special importance to ratification and implementation. Asset recovery is regarded as a challenge for both developed and developing countries, and a global partnership is considered necessary to combat the transfer of proceeds of corruption abroad and to facilitate the return of looted assets to the countries of origin. The StAR Initiative calls for action to dismantle barriers to asset recovery, strengthen the legal and financial systems of requesting States and include civil society and the media in the process. Future work programmes will contain activities to persuade all jurisdictions to ratify and implement the Convention, assist developing countries in building capacity for mutual legal assistance requests and develop partnerships to share information and experience.

15. The International Centre for Asset Recovery, which became operational in early 2007, cooperates closely with UNODC. On 21 March and 14 May, the Centre hosted two donor meetings on asset recovery to exchange views on ongoing and upcoming donor activities. The Centre and UNODC cooperated also in the organization of the aforementioned seminar on implementing the asset recovery provisions of the Convention, the outcome of which will be brought to the attention of the Working Group.

16. In October 2006, the International Association of Anti-Corruption Authorities (established in April 2006) held in Beijing its first annual conference and general meeting, attended by representatives of 137 States and 12 international organizations. In its declaration, the conference welcomed the heightened importance given to asset recovery around the world and commended initiatives by Governments, international organizations, academic institutions and civil society organizations to raise awareness and promote better understanding of this fundamental principle of the Convention. The conference invited the Conference of the States Parties to the Convention to assign high priority to streamlining the various initiatives on asset recovery with an eye to maximum efficiency and effectiveness, paying particular attention to the urgent need to build knowledge and strengthen capacity in this matter, especially among developing countries and countries with economies in transition.

17. The Commonwealth Working Group on Asset Repatriation was established in 2004 to maximize cooperation and assistance between Governments and to prepare a report with specific recommendations for the advancement of effective action in that area. The report was presented at the Meeting of Commonwealth Law Ministers and Senior Officials held in Accra from 17 to 20 October 2005, and contained

specific recommendations regarding domestic legislation and institutional reforms in Commonwealth countries. From 23 to 25 January 2007, the Commonwealth Secretariat conducted a training workshop in Abuja on asset recovery and international cooperation in anti-corruption investigations.

18. The U4 Anti-Corruption Resource Centre, established in 2003, assists donor practitioners in addressing the challenges associated with combating corruption and provides a platform for partner agencies in Canada, Germany, the Netherlands, Norway, Sweden and the United Kingdom of Great Britain and Northern Ireland to share lessons learned and facilitate cooperation. The Centre, which is operated by the Chr. Michelsen Institute of Bergen, Norway, devotes particular attention to asset recovery and has published in connection with the Convention a brief on the recovery of stolen assets.³

19. The Governments of the 27 members of the Asian Development Bank and OECD Anti-Corruption Initiative for Asia and the Pacific have been engaged since 2005 in strengthening their frameworks for mutual legal assistance, extradition and asset recovery and in implementing the Convention and other anti-corruption instruments. In 2006 and 2007, the Initiative reviewed the frameworks in place in the countries and supported the provision of adequate powers of investigation and prosecution and the building of suitable institutions in the region. It published two reports: one on denying safe haven to corrupt individuals and the proceeds of corruption; and one on mutual assistance, extradition and asset recovery.

20. The Ministers of Justice and Home Affairs of the States forming the Group of Eight first raised the issue of asset recovery at their meeting on 11 May 2004, and the importance of the matter was reiterated by the Heads of State attending the Sea Island summit on 10 June 2004. It was agreed that accelerated response teams and case-specific coordination task forces should be established and that regional asset recovery workshops should be held in coordination with regional and international organizations. One such workshop was held in Nigeria in 2005 to discuss practical steps to help African countries repatriate stolen assets. Also in 2005, the Group of Eight finalized a set of best practices on the administration of seized assets. At the summit held in Heiligendamm, Germany, from 6 to 8 June 2007, the Group of Eight reiterated its commitment to combat corruption worldwide by, inter alia, supporting the ratification and implementation of the Convention, ensuring that developing countries had access to and could develop technical expertise for asset recovery, devising measures to prevent individuals from gaining access to the fruits of their criminal activities and urging financial centres to implement the highest standards of transparency and exchange of information in the fight against money-laundering. The Group of Eight committed itself to holding further regional workshops on asset recovery and providing developing countries with enhanced capacity-building assistance.

21. The Council of the European Union decided in 2007 that each member State should set up or designate a national asset recovery office for the purpose of tracing and identifying the proceeds of criminal activities and other crime-related property, and ensure that these offices cooperate with each other by exchanging information both upon request and spontaneously. Those offices complement the Camden Asset Recovery Inter-Agency Network, an informal network of judicial and law enforcement expert practitioners in the field of criminal asset tracing, freezing, seizure and confiscation. Established at The Hague in 2004 by Austria, Belgium,

Germany, Ireland, the Netherlands and the United Kingdom, the network currently has 45 members, comprising 39 countries, States and jurisdictions and 6 international organizations.

22. In preparation for the second session of the Conference of the States Parties to the Convention, the Corruption Eradication Commission (KPK) of Indonesia will host a regional seminar on the theme “Making international anti-bribery standards operational: asset recovery and mutual legal assistance”, on Bali from 5 to 7 September 2007. The seminar will address the legal and institutional challenges entailed in mutual legal assistance and asset recovery; the various paths for obtaining international legal assistance; challenges in the tracing, freezing, confiscation and repatriation of proceeds of corruption in requesting and requested States; lessons learned from case studies; and the needs and priorities of Asia and the Pacific.

23. The following are among the various analysis, training and capacity-building initiatives launched or in the planning stage at national and international agencies. Germany, with assistance from the Basel Institute on Governance, conducted a gap analysis on implementation of the Convention in Indonesia and will cooperate with UNODC, the International Centre for Asset Recovery and KPK in the aforementioned regional seminar. Switzerland has provided legal advisory services and financed legal fees on a case-by-case basis. The United Kingdom funds specific police units to combat bribery and money-laundering by politically exposed persons, and has also financed legal fees for asset recovery cases. The United States of America has plans to make an adviser available, on a pilot basis, to help States to identify legislative and regulatory needs and move forward with the accelerated response teams proposed by the Group of Eight.

IV. Facilitating the exchange of information among States by identifying and disseminating good practices

24. The next 5-10 years will be critical in gaining an in-depth understanding of the impact of the Convention and in identifying and thoroughly analysing good practices. The cases resolved during this period will provide a unique body of experience on how the Convention is evolving in practice. Practitioners and academics should join forces to ensure that this opportunity is not lost and that this compiled experience becomes a practical tool for the international community. Taking the comparative analysis of past cases as a starting point, an open and active channel needs to be put in place for the systematic collection of experience, and a collective analysis of successful actions should also be initiated. Although each case is framed by specific circumstances, good practices can give guidance for many problems typically encountered in asset recovery. The beneficiaries will include not only the community of practitioners, who will receive information for better management of cases, but also policymakers, who will be able to observe how new legislation works and how its impact can be enhanced.

25. Asset recovery practitioners must often manage cases under immense time pressures and deal with complex factual investigations, divergences between legal systems and hard-to-bridge differences between areas in their own legal systems, such as civil, criminal and tax law. The current debate has already identified some

issues for discussion on good practices: proactive investigations; reporting of suspicious activity; spontaneous disclosure of information; identification of politically exposed persons; rules for in rem confiscation; possibilities for and risks of procedural solutions to problems relating to the burden of proof, civil litigation and the use of information stemming from criminal proceedings in such litigation and vice versa; timing of restraint orders; handling of delays and lack of communication; case conferences and case coordination teams; competing claims; and the political dimensions of cases. These are only some examples of the many practical issues involved; the list will grow as more cases come up under the Convention.

26. The Conference of the States Parties can launch a collective learning process by building upon existing instruments. Pursuant to resolution 1/2 of the Conference, the Secretariat has finalized a self-assessment checklist as a tool to facilitate the gathering of information on implementation of the Convention (available online at http://www.unodc.org/unodc/en/crime_convention_corruption.html). The checklist focuses on asset recovery as covered in articles 52-55 and 57 of the Convention. Completed checklists returned by States parties will provide information on implementation gaps and technical assistance needs, among other things. This information will be presented to the Conference at its second session and could serve as a starting point for discussions. Another tool for the exchange of knowledge would be to set up a network of the central authorities established or designated under article 46 of the Convention (paragraph 13). Inasmuch as mutual legal assistance is an important feature of many asset recovery cases, those authorities could play a role in collecting information on cases and experience. As of June 2007, 30 States parties and one signatory had notified the Secretary-General of the details of their central authorities established or designated for this purpose.

27. The Working Group furthermore offers a forum for the exchange of information on cases and the collective analysis of good practices. Allotting time for presentations on cases and specific legal or practical questions would contribute significantly to achievement of the results expected by the Conference. Such presentations would provide legal and technical background to launch the discussion on best practices, and would ensure that knowledge on present cases is disseminated and that over time a collective basis for discussion is created. In this connection, the value of workshops and expert seminars on asset recovery – building on resolved cases and striving towards the establishment of best practices – cannot be overemphasized.

V. Building confidence and encouraging cooperation between requesting and requested States

28. Effective, rapid and professional cooperation between authorities in different jurisdictions is the cornerstone of any successful asset recovery case. The readiness to cooperate with counterparts in other jurisdictions increases with the confidence that partners have in each other's professionalism. This is particularly important when authorities go beyond minimum legal standards to seek innovative approaches to cooperation. Informal consultations prior to the submission of a formal request have been shown to have a positive effect as they ensure not only correctness and comprehensiveness but also compliance with required standards and they prevent

delays in situations where time pressures are considerable. Impact has similarly been heightened when requested States become active and voluntarily disclose information on suspicious movements of assets to the authorities of the States from which the funds allegedly were diverted. Such practices rely on high levels of mutual trust between the respective systems.

29. Establishing trust between the authorities of requesting and requested States is essential to asset recovery. The established or designated authorities referred to under article 46 of the Convention can contribute to mutual legal assistance. The organization of regional or interregional meetings of central authorities may be a useful first step, leading possibly to regular gatherings of this nature. The roster of experts foreseen in a project proposal by UNODC (described below in paragraph 34) could comprise an initial network of asset recovery specialists to facilitate dialogue with the private sector. The sessions of the Conference and the Working Group are themselves especially suited forums for partnership-building. States parties should take advantage of sessions to build an atmosphere of trust and encourage contributions by experts who can later incorporate this experience into their operational work. As States often lack a forum to directly and informally discuss present recovery cases, the Secretariat could provide a neutral platform. The Secretariat is prepared to host and, if requested, participate in ad hoc bilateral or multi-jurisdictional meetings aimed at finding common solutions.

VI. International cooperation: the two-pronged approach

30. Considering the practical challenges involved in asset recovery and the need to prioritize efforts to assist in asset recovery, the Conference of the States Parties agreed on a two-pronged approach.

31. The long-term success of asset recovery efforts will hinge on the capacity of justice systems and their ability to cooperate effectively. The criminal justice systems of requesting States are of pivotal importance, as are transparent and effective preventive policies in both requesting States and financial centres. In addition, it will be essential to build up expertise with the support of a broad alliance of practitioners, academia and judiciaries. Governance and justice systems are issues that have attracted considerable interest in the development community over the past decade. Some of these efforts will need to be concentrated and prioritized in the area of asset recovery.

32. While working on the long-term requirements, the urgent need for short-term assistance must not be neglected. Expertise will be the key issue in the short run. The provision of short-term legal assistance for cases that are ongoing or in the planning stage will be essential. It will also be necessary to build on existing tools and to develop innovative proposals on how to assist States in meeting their short-term requirements.

A. Facilitating the exchange of ideas among States on the expeditious return of assets

33. The lack of expertise and resources is one of the main factors that impede successful asset recovery (A/AC.261/12). Governments seeking to recover assets

are often not prepared for the large-scale proceedings that face them. Since public officials often have no experience with such cases, Governments require highly specialized expertise. Specialized lawyers are the most valuable resource, although forensic accountants, investigation experts and translators may also be necessary. This kind of expertise is typically found in the private sector and is very costly. While corrupt individuals are willing to pay very high sums using the very funds they looted from national treasuries, Governments may not be able to afford the best expertise possible or may even hesitate to pursue asset recovery because of the high costs. Engaging an expert may nevertheless be a worthwhile investment in view of the benefit to be derived from successful recovery, especially where the looted assets amount to billions of dollars. When based on a sound risk-benefit analysis, asset recovery can be a very profitable undertaking.

34. To address this problem, UNODC has developed a project proposal for short-term legal assistance in asset recovery cases. At the core of the project is a roster of experts possessing demonstrated experience in areas relevant to asset recovery from various legal systems. The pool of expertise represented by the roster will be made available to requesting States, which would, as a first step, be able to retain those individuals on their own account. On a second level, the project aims to establish a structure that allows regular access to asset recovery expertise with the objective of providing Governments, after an in-depth review of the requirements of the case in question, with necessary expertise on a case-by-case basis in close cooperation with the experts on the roster. A steering committee will review cases for eligibility, advise the Secretariat on the selection of experts and oversee project execution. The Secretariat will be responsible for preparing documentation for submission to the steering committee, such as documentation on submitted cases and their evaluations. Interim financial and substantive reports will be prepared and submitted to the steering committee and to the Working Group. A final evaluation will be submitted for review by the Conference of the States Parties. By providing short-term legal assistance, setting positive examples and building leadership in requesting States, the project will tie into long-term capacity-building activities.

35. The aforementioned matrix of needs and initiatives will likely identify other short-term needs as well. Effective solutions to these problems will need to build on existing tools, such as the UNODC Mutual Legal Assistance Request Writer Tool and goAML, the anti-money-laundering software developed by UNODC for financial intelligence units. Considering the success of mentoring in other areas, prosecution and law enforcement specialists could serve as mentors to respond to the most urgent short-term needs in certain phases of asset recovery proceedings.

B. Assisting the Conference in identifying capacity-building needs, including for the long term

36. Although long-term needs differ greatly between requested States and States typically requesting the recovery of assets, it is important to keep in mind that a requested State can easily become a requesting State and that a State can be both at the same time. It is therefore wise that every State be prepared for both situations.

37. Ultimately, the key to prevention of the looting of assets and successful asset recovery is an effective and transparent criminal justice system. Establishing such

systems – including judicial reforms, as necessary – is a complex, long-term endeavour, requiring broad and sustained investment in human and financial resources. Furthermore, asset recovery measures cannot be viewed in isolation from comprehensive regimes to prevent corruption and related forms of crime. On the legislative side, legal and procedural frameworks will need to be assessed in order to fully implement the Convention. The need to establish or strengthen institutions (e.g. professionally competent and effective investigating agencies) will also inevitably arise. To implement laws properly and make institutions fully operational, the ongoing development and upgrading of skills through training and education programmes is essential and should be provided for the police, prosecutors, judges and magistrates.

38. The success of an asset recovery case depends to a great extent on the effectiveness of mutual legal assistance. Among the many operational steps involved in asset recovery, mutual legal assistance requests are the most sensitive to differences between legal systems, time pressures and communication gaps. Enhancing institutional capacity to prepare and respond to such requests promptly and satisfactorily is a complex endeavour that entails not only reviewing the relevant treaties and domestic legislation but also strengthening the responsible institutions and training their personnel.

39. The challenge for requested States is to trace and find assets of illicit origin and establish transparent structures for their return to the countries of origin. To this end, requested States may need to adjust their banking legislation, evidentiary and procedural requirements or legislation on the tracing and freezing of assets. While laws and procedures need, as a minimum, to fulfil the provisions of the Convention, innovative procedures and solutions that go beyond those standards can enable States to assist their partners and to streamline procedures. A shared culture of targeting assets should be fostered. Requested States should establish procedures to report suspicious assets spontaneously upon detection. Requested States may also need training and capacity-building for the investigation and tracing of assets, the issuing of restraint, freezing or confiscation orders and the facilitation of direct recovery of property.

40. Taking the aforementioned matrix of needs and initiatives as a starting point, the donor community must prioritize its activities. Long- and short-term needs should be integrated into a balanced strategy, and the alignment of efforts should be achieved by building on existing structures and partnerships.

VII. Issues for further consideration and action

41. The Working Group may wish to recommend to the Conference of the States Parties the establishment of a matrix of specific needs and initiatives of requesting and requested States. The Working Group should also determine how to build cumulative knowledge on the basis of empirical information; legislation, treaties and international instruments; and the analysis of successful practices from past experience. Since resources will be limited, the Working Group may wish to consider establishing priorities, identifying potential partner organizations and offering guidance to the Secretariat.

42. Given the challenges and complexities inherent in asset recovery, the Working Group may wish to discuss how existing initiatives can best be coordinated, including for the purpose of their integration into the Conference of the States Parties. Active participation by representatives of these initiatives should be encouraged. The Working Group may wish to discuss this in connection with the mandate of the Secretariat to ensure coordination.

43. The Working Group may wish to identify methodologies and practical means for the exchange of experience and the dissemination of best practices in asset recovery. It may wish to discuss, inter alia, how to make use of information from the self-assessment checklist and from the prospective network of central authorities for mutual legal assistance, and how to initiate a substantive discussion on asset recovery cases in the context of the decisions of the Conference.

44. Taking into account the importance of trust and confidence between counterpart authorities in different jurisdictions, the Working Group may wish to discuss how to establish forums and networks among such authorities. Furthermore, it may wish to discuss the role of the Secretariat as a facilitator of bilateral or multilateral meetings on request. The Working Group may wish to place specific emphasis on measures for improving the efficiency and effectiveness of mutual legal assistance.

45. The Working Group should continue to build on the two-pronged approach to meet technical assistance needs. It may wish to discuss the role of the Secretariat in the coordination and alignment of efforts. The Working Group may wish to take note of the project proposal developed by UNODC to provide short-term legal assistance and encourage voluntary contributions by States parties to the project. The Working Group may also wish to discuss and identify possible further means of short-term assistance.

46. The Working Group may wish to suggest how the Conference of the States Parties may assess and prioritize the requirements for long-term assistance.
