

**Economic and Social Commission for Western Asia (ESCWA)****REPORT****EXPERT GROUP MEETING ON ASSET TRACING AND RECOVERY
BEIRUT, 2 JULY 2012****Summary**

The Expert Group Meeting on Asset Tracing and Recovery was held in Beirut on 2 July 2012. Selected senior officials from the Arab region participated in the meeting, which aimed to discuss with the latest up-to-date techniques and methodologies that can be used to trace and recover assets illegally held abroad. Such tools are part of wider government anti-corruption policies and programmes. This discussion is particularly relevant given the current and emerging challenges facing many Arab countries and the background of regime changes that have recently occurred in the region. The results of the discussion are expected to guide the future work of the United Nations and other regional and international institutions and programmes in line with the priority needs of member countries and the key issues on the regional agenda.

Participants made a number of recommendations pertinent to member countries of the Economic and Social Commission for Western Asia (ESCWA). In the light of current changes and reforms in the region, participants underscored the need to establish a team of meeting participants in order to facilitate the exchange of information and knowledge and good practice between countries and the establishment of a regional mechanism to enforce and monitor cooperation between countries. Participants identified two crucial needs: the provision of technical assistance to set up and empower national Asset Recovery Task Forces, a domestic coordination body; and the provision of capacity-building and training for ESCWA member countries in the field of asset tracing and recovery.

This report summarizes the main debates and concerns raised by the representatives of member countries and experts in the field.

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Introduction

1. Corruption is a major source of suffering and impediment to economic growth and social stability. It is estimated that each year, the international flow of proceeds from criminal activities, corruption and tax evasion is around US\$1 trillion-US\$1.6 trillion. Each year, US\$20 billion-US\$40 billion is lost from the economies of developing countries as a result of corrupt practices involving public officials. The impact in terms of the opportunity cost of foregone development is huge. In addition, the true cost of corruption far exceeds the value of the stolen assets and includes degradation of public administration, deterioration of the investment climate and the disruption of the delivery of such essential services as education and health. All of those factors entail a disproportionately adverse impact for the poor.

2. A harmonized international legal framework is therefore crucial in addressing that huge loss and a number of global initiatives aim to support international efforts to end safe havens for proceeds of corruption. Chapter V of the 2003 United Nations Convention against Corruption (UNCAC) regulates the recovery of stolen assets and in 2007 the United Nations Office on Drugs and Crime (UNODC) together with the World Bank launched the Stolen Assets Recovery Initiative (StAR). The United Nations and the World Bank have developed frameworks and conducted capacity-building programmes to help educate governments on the subject.

3. Several Arab countries are experiencing political changes and social unrest attributed mainly to the revolt of citizens who, among other things, demanded the transparency and accountability of public institutions. In some cases, those political changes resulted in the removal of executive cabinet members who were perceived to be corrupt, to have neglected their fiduciary duties or to have embarked on self-enrichment activities that drained the country of valuable assets needed for economic development. The immediate goal of any newly elected administration should be to gain the trust of the citizens. Although new governments could execute many different initiatives, the return of misappropriated assets has the benefit of building trust with citizens and the international community as a whole. However, lessons learned from the past ousting of dictators in other countries suggest that strong political will, international cooperation, a flexible legal framework, a clear strategy and access to sufficient capacity and skilled resources are crucial in order to act quickly and reduce the time and cost of recovery.

4. To facilitate policy dialogue, the Economic and Social Commission for Western Asia (ESCWA) organized an Expert Group Meeting (EGM) on Asset Tracing and Recovery during which specialists discussed its impact on the economic development of Arab countries in transition. The meeting focused on the efforts of governments in the region to recover assets that were lost owing to the corrupt practices of former officials. Participants were also invited to participate in a discussion on the recent trends in member countries and how the United Nations system and the international community could position themselves to further facilitate such a complex process.

I. RECOMMENDATIONS

5. The EGM concluded with a number of recommendations for governments, the United Nations and the international community. The principal recommendations adopted by the participants are as follows:

(a) Formulate a team of meeting participants with a task to facilitate the exchange of information and knowledge and good practice in assets tracing and recovery;

(b) Establish a mechanism that enforces and monitors cooperation between countries on the recovery of stolen assets. In 2015, the UNCAC review mechanism is scheduled to review the implementation of Chapter V, among other things;

(c) Provide training and further case studies relevant to recovery efforts within a regional-based platform so that officials from member countries can establish a network of practitioners and train-the-

trainers. There are ongoing discussions on the creation of such a network, and it would be good to bring different actors together to advance the dialogue in a coordinated fashion;

(d) Provide technical assistance to set up and empower national asset recovery task forces as domestic coordination bodies, that provide capacity-building and training in the field of asset tracing and recovery;

(e) Organize regular international meetings between representatives of Arab countries in transition and countries where the stolen assets flow, to reach an agreement on mechanisms and procedures of claiming and returning those assets to their originating countries;

(f) Conduct and issue a study of developments in asset tracing and recovery and lessons learned since this topic is still at the outset in the Arab region.

II. TOPICS OF DISCUSSION

Asset recovery, development and the wider governance agenda

6. The EGM was moderated by Mr. Vito Intini of ESCWA. In his presentation on “Asset Recovery, Governance, and Development in the Arab Region”, he highlighted that the volume of illicit money transferred from developing to developed countries is almost four times more than the funds needed to achieve MDGs. The Arab countries rank high among countries that suffer from illicit outflows.

7. The opportunity cost of asset outflows is high and has devastating effects on the economies of countries concerned. Repatriation of stolen assets would rebuild trust and revive the economies of victim countries.

8. The lack of cooperation and political will and the lengthiness of the processes constitute the major obstacles in asset tracing and recovery.

9. Capital flight and governance are negatively related, governance is the first line of defense against asset outflows.

10. The international community has a major role to play in supporting countries in their efforts to trace and recover assets, by creating regional platforms for networking, exchanging experience and coordinating policy, in addition to encouraging member countries to ratify and implement UNCAC.

11. All Arab countries should prioritize the following: empowering national asset recovery task forces that include both law enforcement and regulatory authorities; drafting appropriate legislation and/or institutional reforms; creating parliamentary oversight on budget processes and strong anti-corruption agencies and financial investigation units; strengthening investigative journalism and the independence of the media; establishing a regional platform to exchange experience; and strengthening policy dialogue/coordination. Resource-rich countries should adopt the ethical trading initiative.

Review of the legal challenges in the Middle East and North Africa

12. Mr. Hussein Hassan of UNODC gave a presentation entitled “Overview of the Recovery of Assets”, in which he described challenges at the regional and international levels and discussed the conceptual framework of asset recovery. He emphasized the following: defining the term “asset recovery”; the importance of international cooperation; the legal basis to recover assets; the legal nature of asset recovery; and the relationship between asset recovery and other issues and other systems of international cooperation.

13. He explained the general procedural framework for asset recovery and then elaborated on key challenges that the countries that witnessed the Arab Spring must overcome to recover assets. The following challenges affect countries that must recover lost assets (recovering countries) and countries where lost assets are held (hosting countries).

- Political: transitional periods are the opportune moment for recovering countries to look for the lost assets and to prioritize the issue. Lack of political will, international cooperation and public pressure are limiting factors. Economic considerations may limit the cooperation of hosting countries.
- Technical: recovering countries may encounter such technical obstacles as time-consuming processes, weak political administration, lack of expertise in asset recovery, no centralized management of the process and the lack of coordination at the national level. Technical challenges that may arise from the host countries include delayed or no response to asset recovery requests, strong militancy and lobbying required for the process and weak cooperation in locating assets in their territory.
- Legislative: incompatible legislative systems may create obstacles for recovering countries. Host countries often lack legislative frameworks that regulate asset recovery. They may also lack optional provisions regarding asset recovery under UNCAC and national legislation.
- Financial: such challenges include translation costs and costs associated with the establishment of delegations, private legal offices and so on.

14. Mr. Hassan highlighted the need for coordination between major players in the Arab region and the need for an integrated international system for the recovery of assets.

15. The following solutions were proposed to enhance judicial and administrative coordination at the regional level:

- (a) Establish intensive training programmes dealing with asset recovery;
- (b) Provide training in asset recovery to a few experts from the region abroad who then train others;
- (c) Publish reports in Arabic on the state of corruption in the Arab region.

16. He also gave a brief presentation on illicit gain and Islamic law and provided a legal analysis of prosecuting individuals for illicit gain when other charges against the individual cannot be proved. Illicit gain pertains to the increase of one's funds in a manner inconsistent with legal income. To defend against such charges, the accused should prove the legality of his or her funds. Islamic law is similar to French law in that the legal context provided by law or by the Judge's conclusions is the simple legal evidence. The legal context may be conclusive or absolute. The basic principle is human innocence; it is a procedural rule to protect individual freedoms in the face of power, as it represents a guarantee of respect for human rights and liberty.

The historic progression of asset tracing and recovery: an international perspective

17. Mr. John Gilkes of Deloitte Financial Advisory Services presented the historic progression of asset tracing and recovery. He indicated that the benefits of asset recovery plays a major role in the social and political reconciliation and rebuilding efforts of transitioning countries and helps new administrations gain the trust of their citizens.

18. During the last 20 years, attempts to recover assets have identified many key steps that should be pursued to varying degrees. Recovering countries need to formulate new domestic legislation against perpetrators and secure domestic support against corruption. That long process begins by formulating an

asset recovery strategy followed by investigations to locate and freeze those assets and begin the recovery and the management process.

19. He also highlighted the steps that countries in transition should take to ensure the accountability and transparency of their systems to meet the expectations of the State returning assets. Special purpose funds that have been set up bilaterally or through multilateral and civil society organizations will facilitate the return of assets to the recovering country. Establishing programmes and controls to prevent renewed acts of public sector corruption have a positive impact on economic development and may encourage the return of assets and be of benefit to the recovering country in the future. He also indicated that private service firms have significant experience in assisting commercial and public sector clients in anti-corruption investigations and prevention programmes.

20. The absence of clear roles and responsibilities of government agencies and the presence of confused reporting lines and communication may reduce efficiency in the asset recovery process. He also stressed that asset recovery is a key element of an anti-corruption investigation. Appropriate transparency and accountability reduces the risk that stakeholders will see the asset recovery process as a tool for political retaliation or arbitrary confiscation.

Current challenges in asset recovery for Arab countries in transition

21. The experiences of representatives of member countries (Egypt, Iraq, Lebanon, Libya, Tunisia and Yemen,) in their pursuit of the repatriation of stolen assets converged in terms of the major obstacles they faced.

22. Member country representatives unanimously agreed that the majority of countries requested to provide legal assistance in tracing and recovering stolen money did not fully cooperate and did not comply with UNCAC. The representatives requested firmer implementation of the Convention and the consideration of sanctions for non-compliance. It was also noted that United Nations Security Council resolutions and agreements are not effective in aiding the recovery of assets.

23. In addition, the participants admitted that major difficulties resulted from their inability to locate smuggled money in foreign countries and reciprocation of the burden of proof between the recovering countries and the hosting countries.

24. International cooperation is a fundamental axis in the transboundary war against corruption.

25. Some countries have cooperated with specialized international organizations in order to generate cooperation mechanisms aiming to exchange information between concerned countries through the creation of a database of information. In addition, some countries have appointed specialized law firms to conduct asset recovery procedures.

26. The following list comprises the lessons learned during the session:

(a) Bilateral legal cooperation agreements do not respond sufficiently to the requirement of international cooperation in the fields of asset recovery and fighting corruption;

(b) UNCAC constitutes an acceptable foundation for international cooperation in the field of fighting corruption and assets recovery. However, using it as a basis for cooperation did not lead to satisfactory results for the following reasons:

(i) Cooperation conditions of the Convention are unfair, especially when compared to those of the United Nations Convention against Organized Crime;

- (ii) Countries that received cooperation requests based on UNCAC preferred to use legal bilateral agreements which compromised those requests and narrowed the scope and responsiveness of UNCAC;
- (iii) Most of the countries that received requests preferred to proceed according to their national laws in spite of being parties to UNCAC which also led to narrowing their responsiveness;
- (iv) The actions of some countries raised concerns due to the lack of harmonization between national laws and the provisions of UNCAC in addition to the lack of awareness of the importance of international cooperation in fighting corruption;

(c) The effective application of the provisions of UNCAC related to international cooperation and asset recovery took place, for the first time, during the Arab Spring. However the results so far have failed to meet the expectations of recovering countries. Probably this was due to the novelty of UNCAC and the lack of initiative of concerned countries in applying its provisions;

(d) Greater accountability is needed to prevent the exacerbation of corruption and sufficiently deter the looting of public assets. Furthermore, and most importantly, international cooperation mechanisms have been ineffective in the implementation of UNCAC inasmuch as they allow continued use of safe havens for stolen assets that compromise the repatriation of assets to affected countries;

(e) Difficulties encountered in the process of tracing and recovering stolen assets could be divided into two major categories: substantive and procedural. Substantive difficulties result from a lack of reciprocity with respect to locating stolen assets. When replying to the request for assistance, several hosting countries requested that the legal authorities of the recovering country locate the stolen assets. Individual countries may not have a sufficiently strong legal relationship with each other and there may also be a lack of mutual trust to overcome;

(f) Other hosting countries asked recovering countries to prove conclusively the relationship between the crime that occurred in the recovering country and the money traced to the hosting country regardless of the criminal jurisdiction of the traced money;

(g) Some hosting countries did not cooperate with respect to investigations related to money-laundering crimes and refused to share information with the authorities of the recovering countries on tracing funds;

(h) In addition, central authorities and investigating agencies within each country are not harmonized and procedures to declare stolen money in recovering countries are slow. However, progress has been made in all concerned countries. For instance, Yemen witnessed the establishment of the People's National Commission to recover looted funds (Al Shaabiia) and Egypt also established a formal institution to recover assets;

(i) At a practical level, many former regimes did not follow standard accounting procedures and controls, meaning that there are insufficient records for recovering countries to use in their efforts to trace assets;

(j) Procedural difficulties are numerous and negatively affect the effectiveness and quality of international legal exchange. Such difficulties include the difference in the language required to prepare requests and the rejection of requests based on minor technicalities without first referring back to the requesting country for clarification.

Process for the recovery of stolen assets

27. Mr. Yves Aeschlimann of the Stolen Asset Recovery Initiative (StAR) stated in his presentation that the process for the recovery of stolen assets goes through sequenced stages. The stages are to collect intelligence and evidence from formal and informal sources, to secure the assets by claiming them through the court process, to enforce court orders and finally to return the assets.

28. The process requires that recovering countries build their institutional and operational capacity and assemble a strong team to pursue cases and secure political and legal support. Recovering countries must provide the team with adequate resources. They must also address legal issues and obstacles and implement a case management system.

29. He also presented the value chain that guides StAR and described how a case is developed. First, the case strategy must be set, followed by investigation (including asset tracing), assets must be frozen, prosecution trial, confiscation or other court process must take place, court orders must be obtained, orders must be enforced and the asset returned.

30. He indicated that authorities seeking to recover the proceeds of corruption have the option to initiate civil proceedings in domestic or foreign courts in addition to (or instead of) pursuing a criminal conviction. Initiatives to recover assets often begin with an imprecise understanding of the amount and nature of assets in question. Developing a clearer picture of the assets may require analysis of multiple elements, including data collection from a range of different institutions or countries, and aggregating and homogenizing it into a consolidated, searchable data set for interrogation and analysis followed by detailed review and assessment of investigation and legal actions.

A practitioner's approach to asset tracing and recovery

31. Mr. Simon Charlton of Deloitte Corporate Finance presented an overview of the approach to asset tracing and recovery used in the private sector. He stated that once an asset has been identified as misappropriated, the process of asset tracing begins. The initial objective will be to assemble a registry of known assets, their last known locations, and key identifying information such as account numbers. This typically requires a combination of interviewing key parties and reviewing documents to gather a preliminary understanding of the methodologies and processes used to extract or move the assets and the destinations and jurisdictions in which to focus tracing efforts. Forensic accounting techniques can be used to reconstruct the flow of funds through various accounting systems and financial institutions. Business intelligence services are used to search information sources such as publically available databases, tax records and asset registries to gain an understanding of potential targets.

32. As assets are identified for recovery, it is important to preserve the “chain of custody” of the evidence upon which the asset recovery action will be based. Without untainted evidence to support the claim, it may be difficult or impossible to recover the assets. It is of paramount importance to prioritize assets by ease and likelihood of recovery. Where possible, focus first on the easiest assets and build momentum to the more challenging assets/jurisdictions. In an effort to prevent the recovery of assets, perpetrators will often distribute assets across multiple countries, hidden within fraudulent companies. It can be counterproductive to first pursue assets in jurisdictions whose legal structures make it challenging to investigate. Factors to consider in developing a shortlist of priority assets should include a cost/benefit analysis for pursuing them. This requires assembling teams of both forensic investigators and legal counsel for targeted jurisdictions and simultaneous development of asset recovery strategies.

33. Once assets are located and their ownership is understood, it is critical to prevent the perpetrator from disbursing assets before a judgment is reached. The process requires the development of evidence to support a claim to the targeted assets and the initiation of a local legal action to obtain freezing orders to prevent further movement. There may be a need for tactical, coordinated action in multiple jurisdictions at once, to avoid giving the perpetrator an opportunity to shift or restructure assets held in other jurisdictions. Following successful freezing of assets, legal action to exercise the claim and recover the assets begins.

34. The asset tracing and recovery process may face serious challenges because of bank secrecy laws and the lack of developed treaties and legislation in some jurisdictions. Such gaps give ample scope for criminals to conceal the proceeds of criminal activities. Criminals may have substantial resources with which to hide their assets and protect themselves against legal action. In addition, assets may be concealed behind the names of fictional individuals or companies (nominees).

Case Study: Bank of Credit and Commerce International

35. Mr. John Gilkes presented an asset recovery case study highlighting practical considerations encountered during the Bank of Credit and Commerce International (BCCI) liquidation and subsequent investigation. In October 1988, Syed Ziauddin Ali Akbar, the former head of BCCI central treasury (1982-86), was charged and ultimately convicted of laundering drug money through a United Kingdom trading house that he owned and controlled. In October 1991, shortly after his release from his first prison sentence, he was charged and convicted of false accounting during his employment at the bank. Because the law enforcement agencies were unable to locate Akbar's assets, the tracing and recovery of assets to compensate the depositors and creditors of BCCI was left to civil (private sector) process.

36. He explained the strategies employed to recover a United Kingdom commercial property believed to be owned by Akbar through various nominees. The initial planning phase included forensic accounting and legal analysis of BCCI records through which intermediaries and shell corporations were identified and researched. In addition, it was determined that certain loans from BCCI to companies related to Akbar had been inappropriately credited with misappropriated funds and had not, as first believed, been repaid by the target. The analysis and strategy phase also involved seeking cooperation from friendly parties, such as the prosecuting authorities in Akbar's criminal convictions, and issuing subpoenas for documents.

37. The next phase involved gathering evidence and testimonies from parties, including intermediaries used by Akbar, judged to be potentially hostile to the recovery effort due to their links with the perpetrator. Using the courts to enforce powers under the United Kingdom Insolvency Act, further documents and testimony was obtained by the BCCI liquidators showing the movement of funds through multiple jurisdictions. The evidence indicated that the beneficial ownership of the commercial property had been concealed by transferring ownership of the asset to a Vanuatu registered bearer share company nominally owned by Akbar's brother.

38. The key steps in executing the final recovery phase in the case study were summarized as follows:

- (a) Appointment of receivers froze the commercial property asset in place and prevented its sale;
- (b) Suit filed in London against the Vanuatu shell company, Akbar and his brother alleging that Akbar was the true owner of the commercial property and that his brother was merely his nominee;
- (c) Faced with the strength of evidence, Akbar's legal advisers made arrangements for the property to be transferred to the trustee;
- (d) Property sold for several million dollars and the net proceeds were shared between the depositors and creditors of BCCI.

III. OBJECTIVES

39. The main objective of the meeting was to involve selected senior officials from Arab region in a discussion of the latest techniques and methodologies that can be used to trace and recover assets illegally held abroad as part of wider anti-corruption policies and programmes.

IV. ORGANIZATION OF WORK

A. VENUE AND DATE

40. The Expert Group Meeting on Asset Tracing and Recovery was held at the United Nations House in Beirut on 2 July 2012.

B. ATTENDANCE

41. The EGM was attended by experts and senior officials from relevant institutions (central banks, financial investigation units, ministry of justice, treasury, prosecutor's offices) from Egypt, Iraq, Lebanon, Libya, Tunisia and Yemen; representative of StAR Initiative; relevant United Nations agencies and experts from Deloitte Financial Advisory Services (see annex for full list of participants).

C. OPENING

42. The meeting opened with a speech by Mr. Nadim Khoury, Deputy Executive Secretary who welcomed the participants to the meeting. He stressed that the meeting would focus on efforts pursued by governments in the region in the recovery of assets that were lost through the corrupt practices of former officials and how the United Nations system and the international community could position themselves to further facilitate such a complex process.

D. AGENDA

43. The meeting was organized along four sessions moderated by Mr. Vito Intini of ESCWA. The session covered the following thematic areas:

- (a) Asset misappropriation and its impact on Arab countries;
- (b) The political need for asset tracing and recovery and its impact on economic development;
- (c) Review of the legal challenges in the MENA region;
- (d) The implications of Sharia law;
- (e) How can the United Nations help in capacity-building?;
- (f) The historic progression of asset tracing and recovery - an international perspective;
- (g) Current challenges in asset recovery for Arab countries in transition;
- (h) Critical preparatory steps (Strategy, Coordination, Cooperation in criminal matters, Prioritization, etc.);
- (i) Regional and international networks and channels of communication and cooperation;
- (j) A practitioner's approach to asset tracing and recovery;
- (k) The regional perspective of asset recovery: stakeholders' role in ensuring that member countries are well informed on this subject.

E. DOCUMENTS

44. Presentation on assets tracing and recovery that were made by experts from Deloitte, the StAR Initiative and UNODC were circulated to all participants. No official United Nations documents were circulated during the meeting.

Annex*

LIST OF PARTICIPANTS

A. MEMBER COUNTRIES

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