

 **No. 5** Pacific Anti-Corruption Factsheet

UNCAC - Chapter V: Asset Recovery



Developing countries lose between US\$20 to US\$40 billion each year through bribery, misappropriation of funds, and other corrupt practices.¹ Much of the proceeds of corruption find “safe haven” in the world’s financial centers. These criminal flows are a drain on social services and inhibit economic development. This is why the recovery of these proceeds is particularly important for developing countries, including Pacific Island countries.

The United Nations Convention against Corruption (UNCAC) establishes asset recovery as a “fundamental principle” of the Convention. Chapter V establishes the importance of returning assets that have disappeared from the State through corrupt means. The provisions on asset recovery set forth a framework, in both civil and criminal law, for tracing, freezing, forfeiting and returning funds obtained through corrupt acts.

The Convention sees the State as a victim of corruption and as having an entitlement to any recovered assets, as long as it can prove ownership (in some cases, the funds may be returned directly to individual victims). It provides the basis for mutual legal assistance to enable States to work with one another to recover such assets, seeking to therefore eradicate existing safe havens for the proceeds of corruption.

Chapter V requires States parties **to prevent and detect the transfers of proceeds of crime**. Financial institutions are to: verify customers’ identity; know the identify of the beneficial owners of high-value accounts; and apply enhanced scrutiny of accounts connected to those entrusted with prominent public functions for the purpose of detecting and reporting suspicious transactions. States are further required to

The **Stolen Asset Recovery Initiative (StAR)** is a partnership between the World Bank Group and UNODC that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of proceeds of corruption and to facilitate more systematic and timely return of stolen assets through four key pillars:

- Empowerment;
- Partnerships;
- Innovation; and
- International Standards.

States can request StAR assistance.

For more information, visit:
<http://star.worldbank.org/star/>

issue advisories that provide guidance to these institutions to comply with these measures.

Measures are to be implemented to prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States are also required to consider mandating public officials with a connection to a financial account in a foreign country to report that relationship to the appropriate authorities and to maintain appropriate records relating to those accounts.

Chapter V further requires that States take **measures for the direct recovery of property**, including by: allowing other States to initiate

¹ World Bank and United Nations Office on Drugs and Crime, Asset Recovery Handbook: A Guide for Practitioners. Available from https://star.worldbank.org/sites/star/files/asset_recovery_handbook_0.pdf

civil actions to establish title or ownership of corruptly acquired property; allowing courts to order those who have committed offences to pay compensation or damages to another State; and recognizing another State's claim as a legitimate owner of property acquired through the commission of an UNCAC offence.

Mechanisms are to be created by States for the **recovery of property through international cooperation in confiscation**. This includes States permitting their competent authorities to act on a confiscation order by another State, and to order the confiscation of such property of foreign origin in accordance with procedures under its domestic law.

Authorities are also required to freeze or seize property upon request from a State that provides a reasonable basis for the requested State to believe that there are sufficient grounds for taking that action.

States that have received a request for the confiscation of the proceeds of crime must engage in **international cooperation for the purposes of confiscation** of those proceeds. This includes submitting the request for the order of confiscation, and giving effect to it, if such an order is granted. Measures are also required to be taken to identify, trace and freeze or seize those proceeds, with the purpose of eventual confiscation. If no other agreement or arrangement is in place that allows it to do so, a State party may use the Convention as a legal basis for such action.

Special cooperation is encouraged. Measures should be taken to allow countries to share information in relation to the proceeds of offences to another State when this might assist the receiving State in investigating or prosecuting a corruption offence or might lead to a request under Chapter V.

A country must further adopt measures that enable it to **return confiscated property** when acting on the request of another State. In the

The Asset Recovery Interagency Network – Asia Pacific (ARIN-AP) was launched in November 2013. ARIN-AP provides a platform for the jurisdictions of Asia and the Pacific to work together, at an informal level, to quickly share intelligence, and identify and seize criminal assets. It promotes 'informal' communication among contacts for efficient asset recovery prior to or during formal mutual legal assistance. It is also a center that seeks to promote the exchange of information and best practices.

For more information, see:
<http://www.apgml.org/members-and-observers/news/details.aspx?pcPage=1&n=28>

case of embezzlement or the laundering of public funds, the funds are to be returned to the requesting State. For the proceeds of any other offence covered by UNCAC, the property is to be returned to the requesting State when that State has reasonably established its prior ownership of the property or if the requested State recognizes damage to the requesting State as a basis for returning the confiscated property.

Lastly, Chapter V requires States to cooperate with one another for the purpose of preventing and combating the transfer of the proceeds of crimes, and asks States to consider establishing a **Financial Intelligence Unit (FIU)**. The FIU is responsible for receiving, analyzing and disseminating to authorities reports of suspicious financial transactions.

Chapter V of UNCAC is available at: https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf

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The UN Pacific Regional Anti-Corruption Project (UN-PRAC) is a joint initiative of the United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC), supported by the Australian Government and the New Zealand Aid Programme.

The views expressed in this publication do not necessarily reflect those of the Australian Government and the New Zealand Government.

