



Practices of States
In the recovery of stolen asset
The Star initiative experience
STAR Stolen Asset Recovery Initiative
The World Bank UNODC

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Star assists in pushing cases forward

- ✓ Help countries define strategies and make informed decisions in their asset recovery programs
- ✓ Deliver gap analysis, capacity building and training
- ✓ Facilitate coordination/dialogue between states parties through all forms of international cooperation, inc Mutual Legal Assistance
- ✓ Support the preparation and analysis of information on asset recovery aspects of specific cases
- ✗ Be involved in litigation or criminal proceedings
- ✗ Finance legal representation
- ✗ Manage cases or make decisions on the conduct of cases

- Jordan
- Lebanon
- Libya
- Sudan
- Tunisia

Asset Recovery as a fundamental principle of international law

- UNCAC: Chapter V- The return of assets is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.
- Establishes a principle, but leaves a lot open for implementation.

Recovery

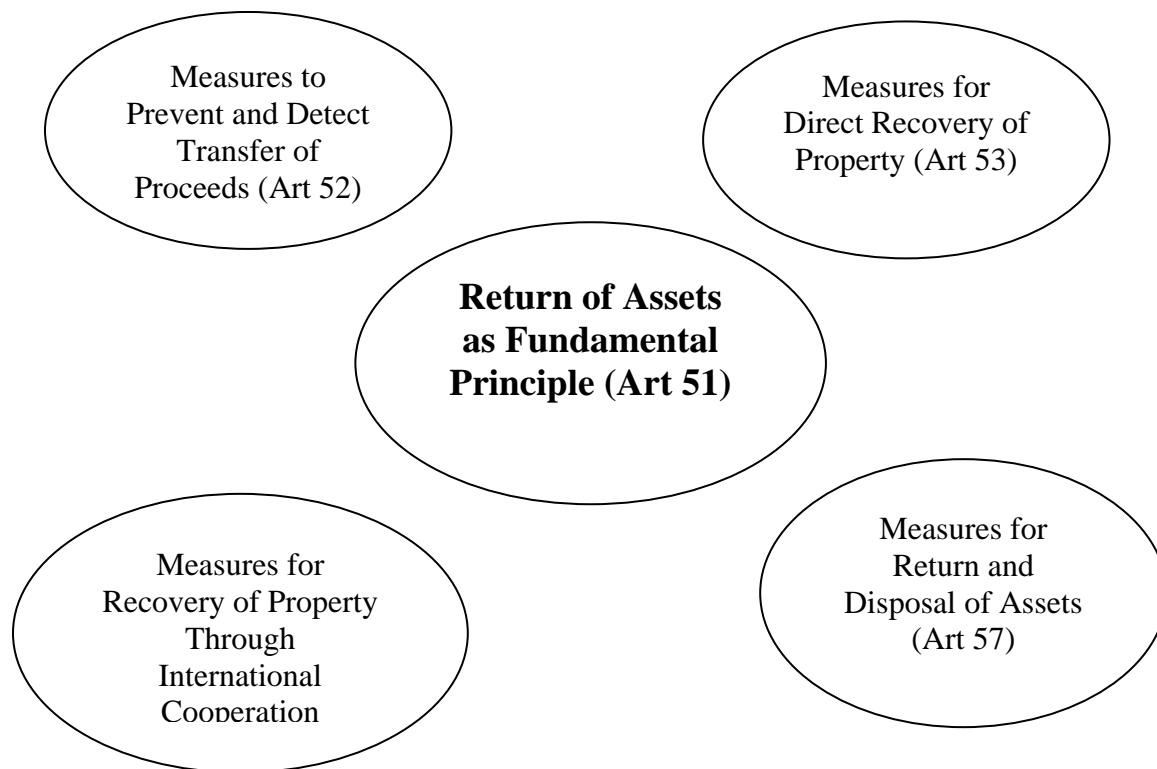
MENA country engagements – varying intensity (past and ongoing)

- Egypt
- Iraq

- Various legal resource/procedures are available to recover victim's assets and funds from perpetrators, both through criminal and civil procedures.
- Biggest challenge – to make informed and correct decision in selecting

procedure most suitable to current needs and circumstances.

Asset Recovery under Chapter V UNCAC



Barriers to Asset Recovery: General/Institutional barriers

★ **Lack of trust**

- ✦ Promote personal contacts between relevant officials (liaison magistrates, police attachés...), attend international events, participate in international networks.

★ **Lack of comprehensive AR policy**

- ✦ Make Asset Recovery of policy priority
- ✦ Ensure legislation supports asset recovery

- ✦ Create specialized investigative units to focus on stolen assets

★ **Deficient resources**

- ✦ Commit resources, develop capacity and expertise, communicate about sharing of costs and recovered assets

Barriers to Asset Recovery: Legal barriers

★ **No quick freeze or restraint**

- ✦ Introduce mechanism allowing for prompt tracing and temporary freezing of assets before formal MLA is filed

- ★ **Unbalanced notice requirements**
 - ✦ Permit MLA without notifying asset holders where investigative and preservation measures are involved
- ★ **Lack of “equivalent Value” confiscation**
- ★ **Lack of Non-Conviction Based forfeiture mechanism**
 - ✦ Introduce NCB forfeiture, at a minimum enforcement of foreign NCB orders

Barriers to Asset Recovery: Operational barriers

- ★ **Absent or ambiguous focal points**
 - ✦ Identify primary and secondary focal points-provide clear and updated information on governmental websites.
- ★ **Formalistic approach to dual criminality**
 - ✦ Use a conduct-based test to dual criminality, be clear and limitative in ground for refusal
- ★ **Inability/unwillingness to deal with deficient requests**
 - ✦ Lend a helping hand to requesting countries (translation, technical assistance, MLA writer tool)
- ★ **Inability to identify foreign bank accounts**
 - ✦ Establish a national registry of bank accounts, and enable submission of such information upon MLA request

Recommendations to overcome the barriers to asset recovery

- Adopt and Implement comprehensive Strategic Plans Targeting Stolen Asset Recovery and Provide Sufficient Resources and Training (Provide Practitioners the Framework and the Tools).
- Adopt Policies and Operational Procedures to Cultivate Mutual Trust and Improve Communication (Build Trusting Relationships).
- Introduce Legislative Reforms that support Authorities’ Capacity to restrain and Confiscate Stolen Assets.
- Effectively Apply Anti-Money Laundering Measures.
- Provide a Sound Legal Basis for a Wide Range of Types of Mutual Legal Assistance (Where There is Political Will. There is a Legal Way).
- Allow for the rapid Tracing and Temporary of Seizing of Assets before Receiving a Formal MLA Request (Freeze, before Assets Disperse).
- Encourage, Pursue, and Maintain all Methods of Informal Assistance before initiation of a Formal MLA Request (First Step, Talk to Colleagues).
- Experienced Asset Recovery Jurisdictions Should Mentor and Train Practitioners in Less Experienced Jurisdictions (Lend a Helping Hand).