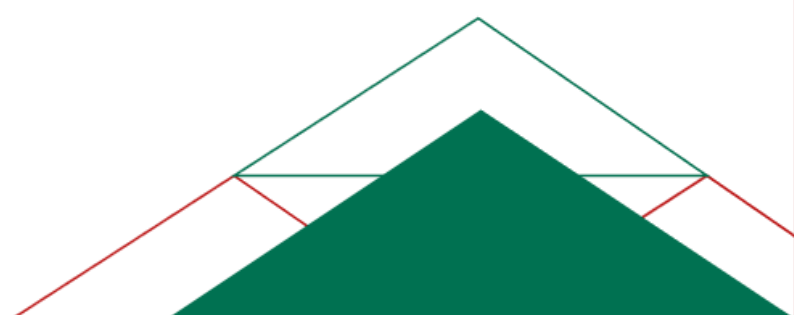




# G20 ANTI-CORRUPTION WORKING GROUP

2020 Accountability Report



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## I. EXECUTIVE SUMMARY

Accountability reporting is an immensely significant exercise for the G20 Anti-Corruption Working Group (ACWG), constituting the primary mechanism through which progress against past commitments is reviewed. The 2019-2021 Action Plan directs the ACWG to “strive to adapt its working methods and mechanisms to facilitate the implementation of past G20 commitments and increase the impact of the G20 anti-corruption agenda”. Based on this mandate, and in close collaboration with G20 countries, the United Nations Office on Drugs and Crime (UNODC), the Financial Action Task Force (FATF) and other relevant international organizations, the Saudi G20 Presidency developed a new approach to the 2020 Accountability Report. This approach provides a more detailed overview of progress made and challenges faced by G20 countries in selected areas addressed by the ACWG, rather than a broader overview of progress across all topics addressed by the group. This year, the Accountability Report focuses on the topic of international cooperation and asset recovery, and measures progress based on relevant High-Level Principles (HLPs) previously endorsed by G20 Leaders<sup>1</sup>.

### ASSET RECOVERY IN CORRUPTION CASES

An analysis based on the principles reveals several positive steps taken by G20 countries in the area of asset recovery. Measures that stand-out include the adoption of legal measures to enable greater flexibility in the execution of mutual legal assistance (MLA) requests, the development of tools which allow for the rapid locating and freezing of assets, the establishment of focal points for formal and informal cooperation, and the increased level of technical assistance provided to developing countries.

While progress has been made, G20 countries have enumerated a number of remaining challenges, the most salient of which include:

- Substantial delays in the provision of informal and formal assistance;
- Over-reliance on formal communication channels and underutilization of informal networks; and
- Difficulties in enforcement of non-conviction-based (NCB) confiscation requests in corruption cases.

### DENIAL OF SAFE HAVEN

With regard to denial of safe haven, G20 countries have taken several steps to implement relevant provisions of the United Nations Convention against Corruption (UNCAC), in particular on extradition, mutual legal assistance and

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<sup>1</sup> These include the Nine Key Principles on Asset Recovery (2011), G20 Common Principles for Action: Denial of Safe Haven (2012), G20 High-Level Principles on Mutual Legal Assistance (2013), G20 High-Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery (2016).

cooperation between national authorities. However, there remains much room to enhance the efforts of G20 countries in this area. Key challenges identified include:

- A lack of implementation of recommendations within denial of safe haven principles by most G20 countries, with only one G20 country having specified denial of safe haven policies and legal frameworks for corruption, and identified specific corruption offences to which such measures apply; and
- Difficulties in timely coordination and data sharing between States on denial of safe haven cases, as well as effective enforcement of related measures.

## **KEY RECOMMENDATIONS AND WAY FORWARD**

A further key function of the approach taken in the Accountability Report this year is to facilitate the identification of potential future work by the ACWG in the areas of asset recovery and denial of safe haven. Based on the analysis conducted, potential areas for future work include:

- Ensuring all G20 countries are effectively implementing their international anticorruption obligations, particularly those outlined in UNCAC;
- Supporting the implementation of the Riyadh Initiative towards the creation of a Global Operational Network of Anti-Corruption Law Enforcement Authorities and reinforcing use of existing law enforcement networks, as appropriate, such as those of the OECD, and INTERPOL, as well as regional anti-corruption networks. This includes encouraging G20 countries to make active use of these networks to facilitate communication necessary for mutual legal assistance (MLA), where appropriate;
- Ensuring availability of sufficient data to gauge effectiveness of asset recovery and denial of safe haven systems (domestically and internationally), but also in pursuit of individual cases;
- Ensuring further implementation of the relevant principles, particularly the “G20 Common Principles for Action: Denial of Safe Haven”.

These recommendations should be read alongside the “G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets” document. These two documents will help inform further detailed discussions under the Italian Presidency on how the G20 can best support initiatives to improve international cooperation and the recovery of stolen assets.

## II. INTRODUCTION

Corruption is a prevalent and multifaceted phenomenon that undermines the rule of law, distorts market competition and investment, and weakens trust in public institutions. Most recently, the detrimental effects of corruption have been seen in its hindrance of the global response to the COVID-19 pandemic, where instances of corruption in health care systems and deployment of economic relief, rescue and stimulus packages have deterred reception of relief where it is needed the most. As such, the fight against corruption remains a top priority for the G20.

Since the establishment of the Anti-Corruption Working Group (ACWG) at the G20 Toronto Summit in 2010, the working group has guided its anti-corruption efforts through the implementation of multi-year action plans, aimed at identifying key topics to inform concrete actions by the group. The current Action Plan being implemented is the 2019-2021 Action Plan, as endorsed by G20 Leaders at the 2018 Buenos Aires Summit. In 2020, progress has been made against several items outlined in the Action Plan, including “Development and implementation of national anti-corruption strategies”, “Promoting public sector integrity through the use of information and communications technologies (ICT)”, and “Promoting integrity in privatization and public-private partnerships (PPPs)”. Building upon the commitment to “deepen anti-corruption measures in [...] other corruption vulnerable sectors”<sup>2</sup>, and based on emerging anti-corruption risks due to the COVID-19 pandemic, the ACWG has also engaged in the production of deliverables to outline G20 countries’ anti-corruption responses to the pandemic, and in taking stock of current anti-corruption measures being implemented.

Additionally, in the spirit of the 2019-2021 Action Plan, an “exploration of ways to better assess [G20 countries’] implementation efforts”<sup>3</sup> has taken place through a refinement of the scope of the 2020 accountability reporting mechanism – the primary means of ensuring implementation of prior commitments. The main aims of this new approach include: (i) providing a targeted overview of progress related to a specific policy area, as addressed in a set of High-Level Principles endorsed by G20 Leaders, rather than a general overview across key themes, and (ii) identifying potential areas for future work by the ACWG based on responses received from G20 countries. While the G20 High-Level Principles do not comprise legally binding commitments for G20 countries, they nevertheless outline useful measures G20 countries can take to ensure progress, and help promote the effective implementation of the United Nations Convention against Corruption (UNCAC) and obligations under other relevant legal instruments and international standards. This year, principles related to the themes of international cooperation and asset recovery have been covered. The contents of this report present the results of this new endeavor.

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<sup>2</sup> 2019-2021 Action Plan

<sup>3</sup> 2019-2021 Action Plan

In developing this accountability report, G20 ACWG members' responses to the 2020 self-assessment questionnaire, which focuses on asset recovery and denial of safe haven measures taken over recent years, have been taken into account. Additionally, key developments during the 2019-2020 cycle have been taken into account when outlining progress against the 2019-2021 Action Plan. Ensuring implementation of prior commitments remains a key priority for the ACWG, and the results stemming from the new methodology for the Accountability Report this year will be used as a tool to enhance G20 countries' future efforts in the realm of international cooperation and asset recovery, and ensure progress against agreed commitments within the 2019-2021 Action Plan.

### III. KEY ACHIEVEMENTS IN 2020

In this section, an overview of key achievements of the ACWG in 2020 is provided based on the 2019-2021 Action Plan, and otherwise.

- A. **2020 Anti-Corruption Ministerial Communiqué:** The first ever Anti-Corruption Ministers' Meeting was held on 22 October 2020. During this meeting, G20 Anti-Corruption Ministers endorsed the Anti-Corruption Ministerial Communiqué, in which the commitment to tackle corruption amongst the group was affirmed, key deliverables for 2020 were endorsed, and a set of commitments was outlined to ensure the group continues to lead by example in the global fight against corruption.
- B. **COVID-19 Call to Action Statement:** The COVID-19 pandemic has affected communities and societies all over the world. Given the global nature of the pandemic and the associated corruption risks, an international response is necessary. The COVID-19 Call to Action Statement outlines the key aims and priorities of G20 countries in their anti-corruption response to the crisis. The statement sets out three core areas of action: i) promoting transparency in the COVID-19 response, ii) strengthening audit processes and multi-stakeholder oversight, and iii) embedding integrity in the longer-term recovery.
- C. **Riyadh Initiative towards the creation of a Global Operational Network of Anti-Corruption Law Enforcement Authorities:** The Riyadh Initiative seeks to enhance informal cooperation between law enforcement anti-corruption authorities for cross-border corruption cases through the creation of a global network, with the aim of facilitating international cooperation, including mutual legal assistance (MLA). The initiative has three main components; a Vienna-based network of anti-corruption law enforcement authorities; an online one-stop hub for the global operational network of anti-corruption law enforcement authorities; and knowledge and capacity-building for the global operational network.
- D. **Accountability Report Reform:** The 2019-2021 G20 Anti-Corruption Action Plan mandated further exploration of ways to best assess G20 countries' implementation efforts. To that end, a new methodology was followed for the 2020 Accountability Report, allowing for an in-depth overview of progress and key challenges in international cooperation and asset recovery based on the contents of relevant High-Level Principles. The report provides an overview of key potential areas for future work by the G20 ACWG based on challenges identified.
- E. **G20 High-Level Principles for the Development and Implementation of National Anti-Corruption Strategies:** While many States have sought to address corruption, and promote the principles of integrity, transparency and accountability through the development of national anti-corruption strategies,

many challenges during both the development and implementation stages often undermine the effectiveness of the activities undertaken. As such, this document identifies a set of key principles that governments may consider during the development and implementation of national anti-corruption strategies to mitigate such risks.

- F. **G20 High-Level Principles for Promoting Public Sector Integrity Through the Use of Information and Communication Technologies (ICT):** The use of ICT in public administration and in the delivery of public services can reduce opportunities for corruption and increase transparency and accountability across the public sector. At the same time, opportunities to use ICT have associated risks, including criminal misuse, potential misuse by public entities and security and accessibility concerns. These G20 principles seek to provide guidance on the use of ICT to promote public sector integrity to ensure advantages are realized while risks are considered and mitigated.
- G. **G20 High-Level Principles for Promoting Integrity in Privatization and Public-Private Partnerships:** Private sector engagement, either through privatization or through a public-private partnership (PPP) can be an effective means of delivering national policy objectives. However, both approaches pose inherent corruption risks, which must be considered and appropriately mitigated. These principles are designed to guide the engagement process for privatization and PPPs from an anti-corruption perspective, while allowing for appropriate flexibility due to differing national frameworks and legal systems in place.
- H. **Good Practices Compendium on Combating Corruption in the Response to COVID-19:** To contribute towards mitigating the effects of the COVID-19 pandemic crisis from an anti-corruption perspective and to inform future anti-corruption efforts during public health and economic crises, the G20 ACWG has developed a “Good Practices Compendium on Combating Corruption in the Response to COVID-19”. The Compendium seeks to provide an initial overview of corruption risks being observed during the pandemic, as well as relevant anti-corruption measures G20 countries have in place. While the true extent of corruption risks and good practice examples will emerge over time, this exercise provides an important starting point upon which to build.
- I. **Scoping Paper and G20 Action on Economic Crimes, Offenders and Stolen Assets:** The scoping paper prepared by the Organisation for Economic Co-operation and Development(OECD) in collaboration with the United Nations Office on Drugs and Crime (UNODC), the World Bank Group and the Financial Action Task Force (FATF) Secretariat, provides an overview of the international policy frameworks and standards that are relevant to combating corruption and other economic crimes, highlighting initial insights into the linkages between different crimes and possible gaps in the effectiveness of international cooperation. Building upon these insights, the “G20 Action on Economic



Crimes, Offenders and Stolen Assets” document outlines concrete steps G20 countries can take to work towards closing some of these gaps.

- J. **Cooperation with the B20, C20 and W20:** Business and civil society play a key part in preventing and uncovering corruption, and inclusion of engagement groups such as the B20 and C20 in the policy setting dialogue enriches outcomes obtained. Both the B20 and C20 were active participants during all three ACWG meetings in 2020. Additionally, for the first time, W20 representatives attended the ACWG meetings to present on the subject of corruption and gender and opine on formation of outcomes by the group from a gender-driven perspective.

## **IV. OVERVIEW OF PROGRESS IN THE AREAS OF ASSET RECOVERY AND DENIAL OF SAFE HAVEN IN CORRUPTION CASES**

Asset recovery and the denial of safe haven have been prominent issues on the ACWG's agenda since the establishment of the group in 2010. Tracing, freezing, confiscating and returning stolen assets or the extradition of persons sought for corruption usually are difficult and lengthy processes, involving multiple jurisdictions and often hindered by technical, legal or political barriers. Recognizing the need to facilitate the extradition of persons sought for corrupt acts and the recovery and return of corrupt proceeds consistent with domestic law and international obligations, asset recovery and denial of safe haven efforts have been guided by legal and institutional frameworks. These frameworks are outlined in multiple international instruments, the foremost of which is the United Nations Convention against Corruption (UNCAC). Building upon such frameworks, G20 High-Level Principles have sought to further guide and align G20 countries' efforts to enhance asset recovery and denial of safe haven based on emerging issues.

The G20 High-Level Principles are not legally binding commitments, but they promote the effective implementation of UNCAC obligations and outline important measures which can be taken by G20 countries to promote asset recovery and denial of safe haven. Adherence to commitments made by G20 countries relevant to the areas of asset recovery and denial of safe haven within UNCAC is assessed through the Mechanism for the Review of Implementation of UNCAC (IRM). The FATF also conducts relevant assessments against its 40 Recommendations on anti-money laundering and counter-terrorism and proliferation financing (AML/CFT/CPF), assessing both legislative and institutional frameworks as well as the overall effectiveness of countries' efforts in this area. However, progress against G20 High-Level Principles has not been ascertained separately in the past. As such, in this chapter, an overview of G20 countries' progress and challenges faced in the areas of asset recovery and denial of safe haven is provided, based on the contents of the following High-Level Principles:

- Nine Key Principles on Asset Recovery (2011)
- G20 Common Principles for Action: Denial of Safe Haven (2012)
- G20 High Level Principles on Mutual Legal Assistance (2013)
- G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery (2016)

The contents of this section are based on G20 countries' responses to the 2020 Accountability Report Questionnaire,<sup>4</sup> relevant findings and observations from the completed (or almost complete) first and second cycle reviews of G20 countries under the UNCAC Implementation Review Mechanism and the results of the current round of FATF evaluations completed for 12 out of 19 G20 countries. The results from these reviews have been incorporated while noting that, since these reviews have been conducted countries may have taken measures to address issues which reviews brought to light. All 19 G20 countries and Spain as a permanent guest country of the ACWG have provided responses to the questionnaire underlying this report<sup>5</sup>. An overview of verbatim country responses to the questionnaire is provided in the "Responses to the 2020 Accountability Report Questionnaire" document published alongside this report.

## A. Asset Recovery in Corruption Cases<sup>6</sup>

G20 countries have provided some compelling examples of progress in the area of asset recovery since their endorsement of the relevant principles. Areas of positive developments that stand out include the adoption of measures to enable greater flexibility in the provision of MLA, the development of tools which allow for the rapid locating and freezing of assets, the establishment of focal points for formal and informal international cooperation, and the enhancement of technical assistance provided to developing countries. While some progress has been made, the most significant challenges outlined by G20 countries which remain to be addressed include substantial delays in the provision of informal and formal assistance to facilitate the execution of MLA requests, over-reliance on formal communication channels and underutilization of informal networks, and the inability to consistently enforce non-conviction-based confiscation (NCB) requests in corruption cases.

### 1. Legislative Framework

- ❖ **Preventative measures to combat financial crime, including corruption:** G20 members show better implementation of the FATF Standards than the global average and have shown leadership particularly in taking a risk-based approach<sup>7</sup>. However, there are significant gaps on beneficial ownership transparency, due diligence requirements for politically exposed persons, risk-based supervision of non-financial sectors and their implementation of preventative measures, and the detection and prosecution of money

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<sup>4</sup> These are provided in full in the Annex.

<sup>5</sup> A response was also received from the EU, but given overlap with responses from G20 countries within the EU, has not been counted towards the total here.

<sup>6</sup> This section includes content based on principles within the "Nine Key Principles on Asset Recovery" and "G20 High Level Principles on Mutual Legal Assistance"

<sup>7</sup> Analysis in this section only covers G20 members that have been assessed under the FATF's 2013 Methodology. The FATF's current round of mutual evaluations is in progress with 12 G20 members evaluated, five evaluations ongoing and three scheduled to start before the end of 2021.

launderers. Without these building blocks in place, criminals - including those committing offences relating to corruption - will continue to find it easy to move the proceeds of crime, making it more difficult or even impossible to recover them.

While their performance is stronger than the global average, G20 members have not put in place the full range of preventative measures required of the private sector to curb money laundering and other illicit finance with an average of 74% compliance (R.9 – 23). G20 members have lower levels of compliance than the global average in relation to measures for politically exposed persons (PEPs) with seven of the twelve G20 countries<sup>8</sup> assessed to date rated partially compliant or non-compliant with R.12. G20 countries with deficiencies in this area lack the scope or depth or both for the implementation of R.12 regarding PEPs. For example, some G20 members' financial institutions are not required to implement specific due diligence requirements for family members of PEPs. This is a concern as measures for PEPs are an important preventive safeguard against corruption.

Further, compliance related to beneficial ownership transparency is weak with only 38% of assessed G20 countries compliant or largely compliant with R.24 and R.25. This reflects the need for more action from all countries – and leadership from G20 countries – to strengthen laws and regulations on the availability of beneficial ownership information and relevant access by law enforcement agencies.

Another significant concern is that key parts of the private sector are not adequately regulated for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) purposes, including gatekeeper professions such as lawyers, accountants, and company service providers, as well as dealers in precious metals and stones and real estate agents. Lack of regulation of these Designated Non-Financial Business and Professions (DNFBPs) is an issue globally and over half of the G20 members assessed have not adequately regulated them. Only two of the FATF-assessed G20 countries<sup>9</sup> fully apply the PEPs requirements for DNFBPs, and only half of the FATF-assessed G20 members<sup>10</sup> have adequate requirements for these businesses to report suspicious transactions to their Financial Intelligence Units (FIUs). Without these measures in place, FIUs and law enforcement authorities lack the relevant information to identify money laundering and to trace and recover the proceeds of crime. Further progress in this area will assist to prevent and mitigate the risks associated with the laundering of proceeds of corruption via the real estate sector or by professional enablers.

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<sup>8</sup> Canada, China, Mexico, Republic of Korea Russian Federation, Turkey and United States of America

<sup>9</sup> Saudi Arabia and United Kingdom. Indonesia is not included in this statistic as its 2018 evaluation was conducted by the Asia/Pacific Group on Money Laundering (APG; a FATF-style regional body)

<sup>10</sup> Italy, Republic of Korea, Russian Federation, Saudi Arabia, Turkey and United Kingdom. Indonesia is not included in this statistic as its 2018 evaluation was conducted by the APG.

In addition to some gaps in laws and procedures, there are also weaknesses in the implementation of anti-money laundering systems that have an impact on the ability of countries to recover stolen assets. While G20 members are faring better than the global average, there are significant challenges in the application and supervision of preventative measures by non-financial sectors and gaps in the availability of adequate, accurate and up-to-date beneficial ownership information in the jurisdiction. At best, only 15% of G20 members are rated substantially effective against these expected outcomes.

G20 members are actively supporting further work by the FATF to strengthen compliance in these areas, including on developing risk-based supervision guidance, identifying and addressing challenges in international asset recovery and strengthening implementation of beneficial ownership requirements.

❖ **Set-up of tools for the rapid locating and freezing of assets:** The UNCAC Implementation Review Mechanism, particularly during its first cycle, identified that most of the G20 countries had comprehensive legal and institutional frameworks which allow for the rapid locating and freezing of assets. Several successes and examples of good practice were identified, for example:

- In Brazil, a National Database System of Seized Properties has been developed by the National Justice Council as an electronic tool that consolidates information about seized properties and assets in criminal procedures, for the Council's control and monitoring.
- In Saudi Arabia, the establishment of a direct electronic link between the Saudi Arabian Monetary Agency and the courts and between the Saudi Arabian Monetary Agency and the banks has also been identified as a good practice as these links facilitate obtaining information and the prompt seizure of bank accounts.

The effectiveness of such frameworks was nevertheless hindered in five G20 countries in particular<sup>11</sup> by the definition or the range of assets that could be subject to such measures which did not always include instrumentalities used in or destined for use in offences or proceeds of crime that have been transformed or converted into other property, or have been intermingled with property acquired from legitimate sources, as well as income or other benefits derived therefrom (secondary proceeds). On a related topic, the administration of seized and frozen assets has been found to present challenges for several G20 members<sup>12</sup>. Some countries<sup>13</sup> have also been recommended to consider the

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<sup>11</sup> Brazil, China, India, Mexico, and Saudi Arabia. Mexico and Saudi Arabia have subsequently taken measures to address some of these deficiencies.

<sup>12</sup> Brazil, Indonesia, and Saudi Arabia

<sup>13</sup> Brazil, India, and Mexico. Mexico indicated that it has subsequently adopted legislation to address this recommendation.

possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation.

❖ **Adoption of an effective legal basis for providing and requesting MLA in corruption cases:** With regard to mutual legal assistance (MLA), the UNCAC IRM has identified that most G20 countries had comprehensive measures in place allowing them to provide the widest range of assistance on a variety of legal bases.

- As an example of good practice, the EU obligations on mutual enforcement of freezing and confiscation orders allow for such measures to be taken by countries within the EU without any procedural obstacles or delays.

Many countries may render assistance that does not involve coercive action, and many do not require dual criminality for the provision of mutual legal assistance. In some countries, information relating to criminal matters can be transmitted without the involvement of formal requests or on a proactive basis. Several G20 countries have also produced comprehensive guidance or launched other awareness-raising activities to provide directions on all the stages of the mutual legal assistance process. Consultation is used in the majority of G20 countries to assist other States in meeting requirements of requests, and reasons are often given when a request is refused. Good practices were also identified in other areas, such as the high quality of databases in some G20 countries to track mutual legal assistance matters and the active conclusion of bilateral treaties and participation in multilateral agreements on mutual legal assistance.

As for the challenges in the implementation of article 46 of UNCAC, relevant recommendations issued for G20 countries included:

- Adopting dedicated laws or internal procedures on mutual legal assistance;
- Providing time frames for the efficient execution of MLA requests;
- Enhancing monitoring on mutual legal assistance cases through development or improvement of information and data collection systems;
- Applying UNCAC directly in the absence of treaties or when bilateral treaties contain stricter rules;
- Incorporating clear requirements in legislation or policies to consult before refusing or postponing assistance, and exploring further opportunities for active participation in bilateral and/or multilateral agreements.

❖ **Establishment of a wide range of options for asset recovery:** Completed UNCAC country reviews of G20 countries have identified that the majority of States had taken measures to allow for civil forfeiture proceedings or for non-conviction-based (NCB) confiscation in criminal proceedings in cases of death, flight or sometimes the mere absence of the offender. A number of G20 countries' responses to the 2020 Accountability Report Questionnaire also

show that NCB methods could be applicable and have been used in a broad number of cases. For example:

- In Australia, the Proceeds of Crime Act provides for non-conviction-based confiscation. This includes where a person cannot be prosecuted or has died or absconded (though it is not a requirement of these provisions) and also more broadly where it can be shown on the balance of probabilities that a person has committed a serious offence or that property is the proceeds of an indictable or foreign indictable offence.
- For the United Kingdom, Unexplained Wealth Orders (UWOs) are a highly publicized instance of an investigative tool. UWOs are designed for application against those involved in serious crime or politically exposed persons (PEPs) outside the EEA with assets that do not match their income. In addition to UWOs, UK law enforcement is expanding the use of account freezing/forfeiture orders (AFOs), another civil power established by the Criminal Finances Act 2017.

However, for NCB confiscation methods to be effective, all parties to an asset recovery case should ideally legally recognize the enforcement of foreign NCB orders. Completed UNCAC country reviews of G20 countries identified that one country<sup>14</sup> had not introduced non-conviction-based confiscation at the time of the review. However, this State has indicated in its Accountability Report Questionnaire that it is in the process of establishing the relevant regulation. At the time of review, another State<sup>15</sup> limited its system of “termination of ownership” to cases of illicit enrichment, but could not forfeit or confiscate without a conviction for other underlying offences and was also not in a position to enforce a foreign non-conviction-based confiscation order. However, this State has subsequently passed new legislation to broaden its NCB regime and address this issue.

In addition, of the 12 G20 countries evaluated under the FATF’s 2013 methodology, three countries<sup>16</sup> did not fully meet the requirement to provide international assistance for NCB confiscation in the minimum circumstances where it is required (where the perpetrator is unavailable by reason of death, flight, absence or the perpetrator is unknown).

One particular challenge cited by G20 countries in the use of NCB methods is differing evidential standards for the use of NCB techniques. With regard to the use of UWOs on high net worth individuals, such individuals tend to have access to extensive legal and financial resources to challenge asset recovery requests, often leading to longer, more adversarial processes of civil asset recovery in court, which can place an additional burden on States’ resources.

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<sup>14</sup> Indonesia

<sup>15</sup> Mexico

<sup>16</sup> China, Mexico and the Russian Federation.

- ❖ **Developing or reviewing domestic legislation or practices to enable greater flexibility in providing assistance in asset recovery requests:** While only two G20 countries indicated that they conduct formal reviews of domestic legislation<sup>17</sup> with the aim of enabling greater flexibility in asset recovery cases, 15 countries cited examples of implementation of measures to enable greater flexibility providing assistance in asset recovery requests. An overview of the key types of measures outlined along with select examples is provided below.

*Table 1: Overview of measures taken by G20 countries to enable greater flexibility in providing assistance in asset recovery requests*

Measures undertaken	Number of G20 countries that cited examples of implementation
Updated or developed laws to enable greater flexibility in responding to MLA requests	10
Established or facilitated signing of bilateral agreements or MOUs between states	6
Conducted a review of domestic legislation	2

- In 2020, Saudi Arabia approved a standardized Memorandum of Understanding (MOU) for the Oversight and Anti-Corruption Authority (Nazaha). This MOU can be signed immediately (without any requirement to engage in any further legal procedures from Saudi Arabia’s side), and Nazaha can welcome any anti-corruption authority worldwide to sign this MOU in light of the standardization. The MOU allows for enhanced international cooperation in the exchange of information on corruption-related crimes in terms of enforcement, investigation, asset tracing, and recovery, and with respect to criminal methodologies and activities leading to corruption, amongst other areas. The Guiding Model for the MOU can be found on Nazaha’s website<sup>18</sup>.
- Argentina signed a cooperation agreement in the framework of the Ibero-American Association of Public Ministries (AIAMP). This agreement allows prosecutors who are members of the AIAMP to request and obtain information in an agile and direct way, i.e. through the direct exchange of information between Public Ministries, always within the scope of their respective powers. The cooperation can be carried out without prejudice to formal legal assistance in criminal matters.
- Spain is currently working on a profound reform of the Criminal Procedure Law that attempts to update procedures in accordance with the latest developments in information and communication technology (ICT). This reform will enable the Intelligence Centre against Organized Crime (CITCO)

<sup>17</sup> Australia and South Africa

<sup>18</sup> Available [here](#).



to make use of ICT to the fullest while regulating the use of such techniques through adaptation of the Criminal Procedure Law.

- In 2019, South Africa set up the Special Investigation Tribunal, which includes both public and private sector persons and entities. This tribunal helps to fast-track the finalization of matters that the Special Investigating Unit (SIU) refers for civil litigation following conclusion of their investigations, thus expediting recovery of monies and assets lost by state institutions through irregular and corrupt means.

These findings are echoed in the outcomes to date of the second cycle of the UNCAC Implementation Review Mechanism, which focuses on preventive measures and on asset recovery. The executive summaries of eight G20 countries that have been finalized to date under this cycle show that several of these countries have implemented measures to enable greater flexibility in asset recovery cases. All of the eight countries<sup>19</sup> indicated, for example, that it was possible for their domestic authorities to share pertinent information with their foreign counterparts spontaneously or proactively, i.e. also without a specific request for assistance. In addition, in most of these countries, procedures were in place that allowed – to varying degrees – for the recognition and enforcement of foreign court orders in asset recovery related matters.<sup>20</sup> Similarly, in most jurisdictions, it is possible for foreign States to initiate legal action in the domestic courts to establish ownership of property.<sup>21</sup> Finally, several States reported that mutual legal assistance requests, including those related to asset recovery, could be dealt with through direct channels (e.g. FIU channels, or requests sent directly to prosecutors or courts), sometimes subject to data-sharing arrangements or memoranda of understanding.

## 2. Institutional Framework

- ❖ **Creation of specialized asset recovery teams:** In this analysis, a broad interpretation of specialized asset recovery teams has been adopted to cover the different set-ups of such teams in G20 countries depending on each country's domestic laws and procedures. 18<sup>22</sup> G20 countries that responded to the Accountability Report Questionnaire had set up specialized asset recovery teams of investigators and prosecutors, either through multi-agency taskforces, single specialized agencies, or specialized personnel embedded within public prosecutors' and police offices, as indicated in Table 2 below. These teams tend to have the relevant access to financial and non-financial information to identify, locate and freeze assets, and several regularly receive specialized training.

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<sup>19</sup> Australia, France, Germany, Indonesia, Italy, Mexico, Saudi Arabia, UK.

<sup>20</sup> Australia, Germany, Italy, Saudi Arabia.

<sup>21</sup> Australia, Germany, Italy, Saudi Arabia, United Kingdom

<sup>22</sup> Given the broad interpretation taken in this section, even where no one team was referenced but several distinct entities with trained personnel were cited, those have been counted towards the total.

Table 2: Overview of chosen institutional set-up for asset recovery teams in G20 countries<sup>23</sup>

Chosen institutional set-up	Number of G20 countries
Multi-agency taskforce	6
Single specialized agency	9
Specialized personnel embedded within public prosecutors' or police offices	7

- In 2014, China set up the Fugitive Repatriation and Asset Recovery Office under the Central Anti-Corruption Coordination Group. This office brings together officials from the supervisory, police, foreign affairs, FIU, judicial and other relevant agencies which have responsibilities related to recovering assets. These agencies cooperate with each other on asset recovery matters, with the National Commission of Supervision taking the lead in recovering corruption-related proceeds.
- Canada's Integrated Proceeds of Crime (IPOC) Initiative aims at the disruption, dismantling, and incapacitation of organized criminal groups by targeting their illicit proceeds and assets, which may include those derived from corruption-related offences. It brings together the Canada Border Services Agency (CBSA), the Canada Revenue Agency (CRA), the Public Prosecution Service of Canada (PPSC), Public Safety Canada (PSC), the Forensic Accounting Management Group at Public Services and Procurement Canada (PSPC), and the RCMP, which cooperate and share information to facilitate investigations.
- In June 2018, the Korean Government launched the Foreign Illicit Asset Recovery Task Force for the forfeiture of criminal proceeds arising from tax crimes overseas related to corruption; the Task Force consists of prosecutors, as well as investigators from the National Tax Service, the Korea Customs Service, and the Financial Supervisory Service.
- In 2010, the United States established The Kleptocracy Asset Recovery Initiative. The Kleptocracy Asset Recovery Initiative is led by a team of dedicated prosecutors in the Criminal Division's Money Laundering and Asset Recovery Section, in partnership with federal law enforcement agencies, and often with U.S. Attorney's Offices, to forfeit the proceeds of foreign official corruption and, where appropriate, to use those recovered asset to benefit the people harmed by these acts of corruption and abuse of office. Also, in 2008, the Federal Bureau of Investigation (FBI) launched the International Corruption Unit (ICU), which consists of a dedicated team of agents focusing on foreign bribery, kleptocracy, and international antitrust investigations. The ICU partners routinely with foreign law enforcement to combat international anticorruption matters. In 2015, the FBI formed

<sup>23</sup> Set-up within individual countries has been broadly categorized into the categories listed above based on G20 countries' responses to the questionnaire. The set-up mentioned in some G20 countries fell into multiple categories listed above.

International Corruption Squads across the country to address national and international implications of foreign corruption.

- Italy has developed specialized expertise on asset recovery through a National Agency for the Administration and Allocation of Confiscated Goods – ANBSC. The Agency was established in 2010 and recently its governance was strengthened. To date, about 27,000 real estate properties as well as other commercial buildings have been confiscated for a global value of €25 billion. The system prioritizes the return of confiscated property to local communities.

For certain jurisdictions, coordination between asset recovery teams (where trained and authorized individuals sit in different departments or locations) as well as with relevant domestic authorities involved in the national asset recovery framework was outlined as a challenge. The need for open lines of communication between various law enforcement and prosecution authorities, clear delineation of roles and responsibilities between authorities involved, and appropriate conferral of authority and mandate for each entity (e.g. investigative or prosecutorial powers) is required to ensure the functionality of the asset recovery system. Additionally, one G20 country<sup>24</sup> cited a lack of qualified personnel to conduct investigations in asset recovery cases, as well as a lack of financial resources to recruit such personnel as challenges when establishing specialized asset recovery teams.

- ❖ **Establishment of focal points:** 18 G20 countries that responded to the Accountability Report Questionnaire indicated they had established focal points of contact to facilitate formal cooperation in the spirit of Principle 7b in the “Nine Key Principles on Asset Recovery”. 13 G20 countries<sup>25</sup> also provided examples of appointed focal points for informal cooperation.

Furthermore, under UNODC’s Online Directory of Competent National Authorities, States have provided information on various competent national authorities in relation to the implementation of UNCAC, such as their central authority for asset recovery and their central authority for Mutual Legal Assistance. To date, 15 G20 countries have nominated central authorities for asset recovery<sup>26</sup> and all G20 countries have nominated central authorities for mutual legal assistance. In addition, the Directory contains information on focal points for international cooperation in the use of civil and administrative proceedings in four G20 countries<sup>27</sup>.

In terms of challenges, G20 countries cited that a frequent change of focal points sometimes hinders the efficient use of networks, and that focal points

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<sup>24</sup> Indonesia

<sup>25</sup> Australia, Brazil, Canada, Germany, India, Indonesia, Italy, Japan, Mexico, Saudi Arabia, South Africa, UK, USA

<sup>26</sup> Argentina, Australia, Brazil, Canada, France, Germany, India, Indonesia, Mexico, Republic of Korea, the Russian Federation, Saudi Arabia, Turkey, the United Kingdom, and the United States.

<sup>27</sup> Argentina, Brazil, Germany, India.

for informal cooperation are not always able to help navigate the relevant legal framework for asset recovery, or prompt in responding. Additionally, where different government departments are responsible for formal and informal assistance, domestic coordination between focal points can be a challenge.

- ❖ **Active participation in international cooperation networks:** In their questionnaire responses, 19 G20 countries indicated that they participate in international cooperation networks as members or observers. Based on their responses, G20 countries cited the use of the INTERPOL/StAR Global Focal Point Platform the most, followed by the Camden Asset Recovery Interagency Network (CARIN), and then various regional Asset Recovery Inter-Agency Networks (ARINs).

Table 3: Overview of membership vs observer status of G20 countries for select networks

Network <sup>28</sup>	Number of G20 countries that are part of key networks	
	Members	Observers
INTERPOL/StAR Global Focal Point Platform	20	0
Camden Asset Recovery Interagency Network (CARIN)	7	8
Asset Recovery Inter-Agency Network Asia-Pacific (ARIN-AP)	4	16

Table 4: Overview of key networks used cited by G20 countries in their responses

Network <sup>29</sup>	Number of countries that cited use of these networks	Distribution between number of members and observers of cited networks	
		Members	Observers
INTERPOL/StAR Global Focal Point Platform	16	16	0
Camden Asset Recovery Interagency Network (CARIN)	11	5	6
Asset Recovery Inter-Agency Network Asia-Pacific (ARIN-AP)	6	4	2
Asset Recovery Inter-Agency Network Southern Africa (ARIN-SA)	2	1	1
Asset Recovery Inter-Agency Network Caribbean (ARIN-CARIB)	2	1	1

<sup>28</sup> The table only includes the most cited networks by G20 countries. Sources: INTERPOL website Members page (available [here](#)), Camden Asset Recovery Inter-agency Network: The History, Statement of Intent, Membership and Functioning of CARIN (2015) (available [here](#)) Open-ended Intergovernmental Working Group on Asset Recovery, Directory of Asset Recovery Networks (2018) (available [here](#)).

<sup>29</sup> The table only includes the most cited networks by G20 countries.

- In Russia, an analysis of the workflow of the National Central Bureau for the years 2019-2020 demonstrates that Russian law enforcement bodies more actively employed the INTERPOL channels to detect assets acquired with proceeds of crimes. The requests regarding economic crimes, including corruption, amount to 30-40% of the workflow of the National Central Bureau of INTERPOL of the Ministry of the Interior of the Russian Federation. From January 2019 to June 2020, the National Central Bureau received 380 requests and investigation materials from Russian law enforcement bodies to verify if certain individuals under investigation had movable and immovable property, bank accounts and other assets abroad. The information received through the INTERPOL channels made it possible to detect movable and immovable property, bank accounts and other assets under 106 requests of Russian law enforcement bodies.

While the majority of G20 countries cited the use of networks, challenges and limitations can be seen in the nature and frequency of use, and the time taken to receive the requested information. For example, five G20 countries<sup>30</sup> did not refer to the use of networks to facilitate active case resolution, but cited the use of networks to share good practice examples. Data demonstrating the frequency of use of informal cooperation networks was not shared by the vast majority of G20 countries and is generally not consistently collected, rendering this hard to assess. However, the frequency of utilization of these networks for active case resolution for many G20 countries might generally be improved. Several G20 countries referred to delays in evidential enquiries being made, and in the provision of information through networks which impede timely action.

Barriers cited by G20 countries in the use of networks to enhance international cooperation include:

- Legislative constraints
  - Differences in evidential standards diminishing a receiving country's ability to act in certain cases.
  - The need for evidence collection to adhere to certain procedural requisites to be admissible in court. Differences in procedural requisites between jurisdictions sometimes make it difficult to obtain admissible evidence through informal channels. In these cases, formal mutual legal assistance channels that meet the procedural requisites need to be resorted to.
- Institutional constraints
  - Lack of regular, direct contact points for law enforcement officials. The use of dedicated networks for other entities within the value chain (e.g. FIUs, the police) requires domestic coordination between entities which

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<sup>30</sup> Argentina, Japan, Mexico, Republic of Korea, Spain

can be a challenge, but is also sometimes impeded by data sharing restrictions between law enforcement officials and foreign police forces.

- Barriers to the use of certain networks due to a regional focus, or focus within one type of corruption offence.
  - Legal limitations to the sharing of certain information containing personal data through unsecured informal channels, but a lack of secure informal channels to transmit these inquiries or requests.
  - Lack of a dedicated channel for investigation and prosecution of anti-corruption cases and asset recovery.
  - Lack of established interagency cooperation amongst law enforcement agencies dealing with corruption and money laundering.
- Operational barriers<sup>31</sup>
- Lack of full global acceptance and willingness to actively support such networks.
  - Unfamiliarity with informal communication networks by some departments, including regulations on data sharing and subsequent use of such data.
  - Lack of understanding of the other jurisdiction's domestic legislation in MLA proceedings.
  - Language barriers.
  - Delays in evidential enquiries being made, leading to the dissipation of assets.
  - Delays in the requested State supplying the relevant information.

❖ **Proactive exchange of information and pursuit of cases:** The proactive exchange of information and pursuit of cases as defined here involves proactive communication regarding the presence of corrupt proceeds from a detecting jurisdiction to the jurisdiction of the corrupt person, before the latter has submitted a formal or informal request for assistance.

Only three G20 countries<sup>32</sup> indicated they had engaged in the proactive pursuit of cases in which a foreign jurisdiction was alerted to an ongoing investigation in their jurisdiction, and where evidence which could be of interest, such as the bank account of a corrupt politically exposed person, was proactively shared. While not an example of proactive exchange of information, a good practice example from the UK's FATF Mutual Evaluation relates to proactive

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<sup>31</sup> These operational barriers relate only to those identified in the use of informal networks. Capacity and operational effectiveness within the asset recovery system at large is addressed in section 3.

<sup>32</sup> India, UK, Republic of Korea.

engagement to facilitate communication between states upon receipt of information regarding criminal proceeds.

- The UK allocates foreign liaison officers to countries based on the money laundering/illicit finance risks. This allows financial crime experts to be in place to facilitate better communication and cooperation on issues such as asset tracing and recovery, upon detection of cases.

Barriers cited by G20 countries in the proactive pursuit of cases include:

- Challenges in the identification of stolen assets as methods of transferal are becoming increasingly swift and complex.
- Limited participation of jurisdictions in practitioner networks, along with other challenges raised in the “active participation in international cooperation networks” section, as use of informal cooperation networks is an enabler of the proactive pursuit of cases.

❖ **Facilitating coordination between jurisdictions on investigations, prosecution and judicial proceedings:** Collaborative or joint investigations can enhance the speed and effectiveness of recovery of corrupt proceeds. Nine countries<sup>33</sup> indicated in their response to the Accountability Report Questionnaire that they have developed mechanisms for such pursuits, and that they conducted cases in this style. A further four countries outlined examples of the conduct of parallel investigations with other States.

- Since 2016, French judicial authorities have concluded three joint investigations concerning acts of corruption. One investigation ultimately led to the signing of a “convention judiciaire d’intérêt public” – a transaction between the French judicial authority and the company involved. The publication in the media of this transaction led to the opening of investigations in several countries and the possibility for the French judicial authority to share, under certain conditions, some evidence that was obtained thanks to the joint investigation team.
- Argentina has conducted several parallel investigations with other jurisdictions in the past years. The Argentine Public Prosecutor's Office has created and recently updated a guide that summarizes its vision and experiences in joint investigation teams<sup>34</sup>.
- The United Kingdom’s International Anti-Corruption Coordination Centre (IACCC), hosted in the National Crime Agency, provides a formal coordination route for grand corruption investigations, bringing together specialist law enforcement officers from multiple agencies and supporting non-participating law enforcement agencies.

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<sup>33</sup> Argentina, Brazil, France, Germany, Republic of Korea, Saudi Arabia, South Africa, Spain, UK..

<sup>34</sup> This guide is available online in Spanish [here](#).

G20 countries outlined that the conduct of joint, parallel or related investigations tends to be limited by differing legal systems and legislative constraints which prevent jurisdictions sharing certain information with each other, and difficulties obtaining timely assistance. The need to ensure the perimeter of prosecution (suspects, offences, etc.) by each country is clearly defined and to formalize an agreement between the two parties to avoid any difficulties at later stages was emphasized in G20 countries' responses. The UNCAC Implementation Review Mechanism, in particular its first cycle, identified that several G20 countries did not have specific domestic legislation on joint investigations and instead establish joint investigative teams on an ad hoc basis, which could in some cases slow down progress and lead to inconsistencies.

❖ **Provision of technical assistance to developing countries:** 17 countries<sup>35</sup> indicated in their responses that they provided technical assistance to other jurisdictions, and several positive examples were outlined. This assistance is most often provided in the forms outlined in

❖ Table 5: Overview of types of assistance provided by G20 countries, and number of countries providing each type of assistance

Type of assistance	Number of G20 countries
Direct provision of support and advice to developing countries (e.g. by sending experts to those countries in need of assistance)	4
Hosting training programs or individual sessions in person or virtually	13
Sharing of best practice examples in international fora	10
Funding programs against transnational crime	5

- Germany provides technical assistance to developing countries across Africa, South America and in South-Eastern Europe, including the sharing of best practices and direct technical support. In West Africa, the German development cooperation delivers technical assistance to the corresponding network ARIN-WA. ARIN-WA is currently supported in the development and implementation of an overall strategy and an action plan. In South-Eastern Europe, Asset Recovery and Asset Management Offices are supported in North Macedonia and Albania, and capacity-building activities related to their institutional and legal frameworks conducted. In North Macedonia, for example, governmental partners have received support in a legal assessment of the Asset Recovery Office, and in the further development of the draft Law on Asset Recovery.
- Italy has developed a lot of capacity- and institution-building activities in its academies and abroad through technical assistance programs. For

<sup>35</sup>Australia, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, the Russian Federation, Saudi Arabia, South Africa, Spain, Turkey, UK, United States.



example, Italy developed the *Plan de Apoyo a la ESCA* training program, specifically focused on asset recovery in Central America, in coordination with the SICA. The program gives notable attention to the reuse and disposal of confiscated assets in Costa Rica, the Dominican Republic El Salvador, Guatemala, Honduras and Panama.

- In India, the CBI Academy conducts training sessions focused on asset recovery, financial/economic crime angles and international instruments facilitating asset recovery for other countries. In 2019, training sessions were conducted for Bangladeshi and Sri Lankan police officials.
- The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), a training and research institute established by the United Nations and Japan, has conducted an annual international training course for criminal justice practitioners around the world entitled “UNAFEI-UNCAC Training Programme”. This programme addresses the issues of tracing, restraining and confiscating the proceeds of corruption. In 2019, 32 participants from 25 countries joined this programme. In addition, since 2007, UNAFEI has organized an annual regional seminar entitled “Regional Seminar on Good Governance for Southeast Asian Countries” to explore ways to strengthen anti-corruption measures in Southeast Asian countries. The thirteenth Seminar in 2019 focused on "Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats".
- Russia regularly conducts capacity-building training courses and expert workshops for practitioners from Member States of the Eurasian Group on Combating Money Laundering and Financing of Terrorism. In 2019, the International Training and Methodology Centre for Financial Monitoring, based in Moscow, hosted a programme on enhancing the potential of financial intelligence units and law enforcement authorities of Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia under the UNODC Regional Programme for South Eastern Europe. These capacity-building initiatives also include material relevant to anti-corruption.
- Turkey conducts training programs for foreign judicial members through the Justice Academy of Turkey. Through this academy, various programs on the fight against transnational crimes were carried out with Qatar, Kyrgyzstan, Kazakhstan, Mongolia and Uzbekistan.

❖ and some indicative examples are provided below.

*Table 5: Overview of types of assistance provided by G20 countries, and number of countries providing each type of assistance*

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<sup>36</sup> This only includes G20 countries that actively specify they provide each of these forms of assistance in their Accountability Report Questionnaire response.

world entitled “UNAFEI-UNCAC Training Programme”. This programme addresses the issues of tracing, restraining and confiscating the proceeds of corruption. In 2019, 32 participants from 25 countries joined this programme. In addition, since 2007, UNAFEI has organized an annual regional seminar entitled “Regional Seminar on Good Governance for Southeast Asian Countries” to explore ways to strengthen anti-corruption measures in Southeast Asian countries. The thirteenth Seminar in 2019 focused on "Effective Financial Investigation and Anti-Money-Laundering Measures for Confiscation and Asset Recovery to Counter New and Emerging Corruption Threats".

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### 3. Capacity and Operational Effectiveness

- ❖ **Putting in place mechanisms for the timely provision of and responses to MLA requests:** Providing clear, up-to-date and accessible information on requirements for MLA requests enables prompt submission from requesting jurisdictions and prevents submissions of incomplete or deficient requests. 16 G20 countries<sup>37</sup> have indicated that they provide such information through websites or MLA and/or asset recovery guides.

However, this, along with other enablers of a timely response to MLA requests can be further improved by G20 countries. Of the twelve G20 countries evaluated under the FATF's 2013 methodology, six countries did not fully meet the requirement to have a central authority, a case management system and processes for timely prioritization and execution of MLA requests. The need to incorporate mechanisms to enhance the speed of the response to an incoming MLA request has also been extensively highlighted across several UNCAC reviews of G20 countries.

Reasons outlined for delays include:

- Delays in inter-governmental interactions within a State
  - Difficulties in the use of informal cooperation channels (refer to the “active cooperation in international cooperation networks” section)
  - Lack of case management systems to monitor requests or issues with case management which make it difficult to monitor progress on individual requests
  - Lack of clear processes for the prioritization of requests
  - Lack of clear time frames for the efficient execution of MLA requests
- ❖ **Collection of data on cases and sharing information on impact and results:** Data collection on asset recovery cases is important to assess the effectiveness of and the key impediments within asset recovery systems, but it remains a key challenge for G20 countries.

Under article 61(2) of UNCAC, it is recommended that countries consider developing and sharing statistics concerning corruption with each other and through international and regional organizations. 14 G20 countries<sup>38</sup> demonstrated collection of statistics on asset recovery cases in their responses to the Accountability Report Questionnaire. The sophistication or desirable set-up of data collection methods on mutual legal assistance and extradition

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<sup>37</sup> Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, the Russian Federation, Saudi Arabia, South Africa, Spain, UK, United States.

<sup>38</sup> Australia, Brazil, Canada, China, Germany, India, Indonesia, Italy, Japan, Russia, South Africa, Republic of South Korea, Spain, USA.

requests was highlighted in the UNCAC reviews of several G20 countries, including Australia, Mexico and the Republic of Korea.

- In Australia, “the Attorney General’s Department liaises with domestic law enforcement agencies when processing mutual assistance requests. All active requests are tracked via an electronic casework database of exceptional quality”<sup>39</sup>.
- In the Republic of Korea, the Digital Forensic Center operated by the Korean Supreme Prosecutors’ Office to combat crimes committed through modern technology and the centralized database among law enforcement agencies represent good practices in enhancing law enforcement cooperation. The availability and use of detailed statistics on the investigation, prosecution and related aspects of corruption offences, as well as actual case examples also represent good examples.
- Mexico has a statistical information system that facilitates the provision of disaggregated information on extradition.

Additionally, in their response to the Accountability Report Questionnaire, Indonesia outlined a good practice example of development of an internal database on asset recovery cases:

- The Indonesian Attorney General’s Office (AGO) has developed an Integrated Asset Recovery Database that contains data and information on asset recovery. Currently, the database is for internal use only; however, it is expected that in 2021, the AGO will be able to share the data and information with other relevant institutions and law enforcement agencies.

While several G20 countries collect some form of data on asset recovery cases and related activities, this data is often piecemeal, limited to a few indicators, and not regularly collected. The collection of data tends to require significant time and resources, particularly where initial data is collected by several agencies within a State. Additionally, a lack of standardization between countries in how to interpret and present such data can result in conflicting messages. Comparisons between jurisdictions and evaluations done by foreign assessors may also suffer from a lack of precision and overly subjective analyses.

The development of comprehensive, centralized systems for data collection can help improve the effectiveness of asset recovery systems through the identification of sources of delay in the asset recovery process. However, the development of such systems requires careful consideration and implementation in order not to result in too great an operational burden for the relevant authorities (thus decreasing efficiency of the system), or to distort incentives.

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<sup>39</sup> Review of implementation of the United Nations Convention against Corruption, Executive summary: Australia, 15 May 2012, p. 11, available [here](#).

Internationally, data collection exercises also remain a challenge. The most recently available information obtained via systematic collection of asset recovery data through a questionnaire to countries' authorities is the StAR/OECD study "Few and Far – the Hard Facts on Stolen Asset Recovery". This was published in 2014, and was based on responses by OECD countries for the time frame between 2010 and June 2012. No systematically collected information since 2012 or for non-OECD countries is currently available.

Several data collection exercises are currently being conducted by international organizations, such as the International Asset Recovery Efforts questionnaire prepared by the Stolen Asset Recovery (StAR) Initiative. This data collection exercise aims to gain a better understanding of actual practices and efforts by UNCAC States parties to recover and return proceeds of corruption, and quantities of assets frozen, confiscated, and returned to a requesting State, prior owner, or victims of corruption. Additionally, the exercise seeks to standardize how countries collect such data and allow for comparisons between jurisdictions, and to assist countries with developing their own internal data collection mechanisms. As of 24 September 2020, eleven G20 countries<sup>40</sup> had already replied to that questionnaire<sup>41</sup>. Further contributions to this data collection exercise will be important in gauging progress in the area of asset recovery by G20 and other countries.

- ❖ **Ensure adequate resourcing to support investigations and asset recovery:** The majority of G20 countries did not emphasize the need for greater human and financial resourcing to support asset recovery efforts in their responses. Only one G20 country outlined the need for further training of judges, prosecutors and other judicial staff in provisions of the international asset recovery regime, and a lack of qualified personnel to fill such positions. However, the COVID-19 pandemic has placed particular strains across all G20 countries on resourcing for teams in charge of matters related to international cooperation and asset recovery. G20 countries need to make specific efforts to ensure sufficiency of resourcing to enable effectiveness of these activities in the coming months and years.

## 4. Other topics highlighted in UNCAC reviews

- ❖ **Strengthening mechanisms to preserve, dispose or repatriate assets:** Individual challenges identified in completed second cycle reviews include the inability to return confiscated property in line with or on the basis of UNCAC, disposal mechanisms being at the discretion of a minister<sup>42</sup> or a lack of transparency and accountability in asset disposal<sup>43</sup>. In general, many G20

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<sup>40</sup> Australia, Brazil, China, France, India, Italy, Mexico, Republic of Korea, Russian Federation, South Africa, and United Kingdom.

<sup>41</sup> This questionnaire is available [here](#).

<sup>42</sup> Australia

<sup>43</sup> Italy, in some limited cases.

countries that have already been reviewed relied on asset sharing agreements with no particular provisions in place requiring return in cases of embezzlement of public funds or of laundering of embezzled public funds in the absence of such agreements.

The recommendation to strengthen mechanisms for the preservation of property pending confiscation, including through the establishment of an adequately resourced central asset management office was also highlighted in the second cycle UNCAC reviews for several G20 countries, as well as the need to consider adopting comprehensive asset management guidelines to facilitate the confiscation and supervision role of such an office. Legislation in asset management was also lacking in some countries and inter-agency coordination was at times found to be a challenge in terms of asset management.

Certain G20 countries are already working towards tackling the challenges raised above, as per the examples below.

- The USA and UK, and four focus countries (Nigeria, Sri Lanka, Ukraine, Tunisia) developed and agreed to the Global Forum on Asset Recovery (GFAR) Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases in 2017. These principles address approaches and mechanisms for enhancing coordination and cooperation, and for strengthening transparency and accountability of the processes involved in disposition and transfer of confiscated stolen assets<sup>44</sup>.
- The United States is currently working on a Distributed Ledger Programming project which seeks to develop and launch a platform powered by distributed ledger technology (DLT) that will increase transparency and accountability around the disposition of assets returned by the United States to a recipient country. The solution will provide immutable information about how funds are spent and by whom – institutionalizing transparency and advancing the rule of law in recipient countries. This open-source system will provide the U.S. Government and the recipient country with a decentralized chain of evidence that will enhance accountability and transparency in asset return.
- In France, a parliamentary committee was tasked with assessing existing tools allowing for asset restitution and with providing a new and efficient mechanism for the return of confiscated assets to the benefit of victim populations. Its report was published on 26 November 2019, and a reform for responsible asset repatriation based on its conclusions is currently under consideration.

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<sup>44</sup> The principles are available [here](#).

- ❖ **Establishing effective and enforceable financial disclosure systems for senior public officials:** In UNCAC reviews, several G20 countries are encouraged to consider the implementation of requirements for public officials to identify the existence of foreign financial accounts over which they have interest or signatory authority.

## B. Denial of Safe Haven<sup>45</sup>

Many G20 countries allow for denial of safe haven for corruption-related offences as part of their broader immigration frameworks, and several also regularly review their immigration systems to prevent abuse. In addition, G20 countries have made great effort to implement relevant provisions of the United Nations Convention against Corruption (UNCAC), in particular on extradition (art. 44), mutual legal assistance (art. 46) and cooperation between national authorities (art. 38). However, there is significant room to enhance the efforts of G20 countries in the area of denial of safe haven, particularly regarding the specification of denial of safe haven policies and legal frameworks in place for corruption, and identification of specific corruption offences to which such measures apply. Timely coordination and data sharing between countries on denial of safe haven cases also remains a challenge, as does effective enforcement of denial of safe haven measures. While comprehensive coverage of content contained in the relevant high-level principles was attempted in this section, content pertaining to principle 10 of the “G20 High-Level Principles on Cooperation on Persons Sought for Corruption an Asset Recovery” involving enhancing capacity-building, institutional values and ethics, and experience-sharing could not be covered due to insufficient information.

### 1. Legislative Framework

- ❖ **Adopting denial of entry authorities (policies, legal frameworks, and enforcement measures) that apply specifically to corruption:** 17 countries<sup>46</sup> indicated in their responses that they have adopted policies, legal frameworks and enforcement measures to allow for denial of entry, but only as part of their broader immigration framework. Certain corruption offences may fall under the broader definitions applied here, although references to corruption-related offences are not specifically outlined in law. For example:
  - As part of the Schengen system, entry can be denied if the foreigner is considered a threat to public policy, internal security, public health or to the international relations of any of the Schengen Member States (in particular, where an alert has been issued in Member States’ national database for the

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<sup>45</sup> This section features content relevant to the “G20 Common Principles for Action: Denial of Safe Haven” and the “G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery”.

<sup>46</sup> Australia, Brazil, China, France, Germany, India, Indonesia, Italy, Japan, Republic of Korea, Russia, Saudi Arabia, South Africa, Spain, UK, US.



purpose of refusing entry on the same grounds). Corruption offences may be covered under this.

- Brazil has updated its Migration Law to allow for the denial of entry of persons who acted in a manner contrary to the principles established within the Federal Constitution or whose name has been included in a list of restrictions through a judicial order, or a commitment made by Brazil in an international forum, including commitments regarding corruption.

Only one G20 country<sup>47</sup> was able to demonstrate adoption of denial of entry authorities that apply specifically (by specific reference) to corruption. Absence of laws or measures in place to deny entry to corrupt actors has prevented such action by several G20 countries.

❖ **Defining corrupt conduct which will trigger denial of entry:** One G20 country<sup>48</sup> in particular indicated that it has defined corruption conduct which will trigger denial of entry:

- The United States denies visas to corrupt foreign officials and their immediate family members through Presidential Proclamation 7750 (PP 7750) and the Anti-Kleptocracy and Human Rights Provision in the annual appropriations bill (“Section 7031(c)”). PP 7750 applies to current or former foreign officials, who took bribes, misappropriated public funds, or interfered with electoral or judicial processes, particularly where such actions had adverse effects on U.S. interests. PP 7750 also applies to non-officials who bribed a foreign official when the bribery had adverse effects on U.S. interests and to certain family or household members who benefited from the corrupt act(s).

Given that the vast majority of G20 countries have not defined the corrupt conduct that will trigger denial of entry, there is a risk of a lack of application or the potential for inconsistent application of denial of entry measures for corruption cases within states.

❖ **Denying entry even absent a prior conviction where there is sufficient other information to make a determination:** Several G20 countries have provisions for denial of entry absent a prior conviction as part of the broader framework of denial of entry in place. As per the example related to the Schengen system above, a foreigner can be considered a threat to public policy, international security, public health or to the international relations of any of the Schengen Member States without having been convicted of a corruption-related offence.

19 G20 countries did not provide examples of denial of entry absent prior conviction in their responses. Three countries<sup>49</sup> in particular noted that this was due to data sharing restrictions. Overall, this renders it difficult to assess the

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<sup>47</sup> USA

<sup>48</sup> USA

<sup>49</sup> UK, China, and Saudi Arabia

application and effectiveness of such measures. In terms of challenges, it was noted that while situations deriving from criminal sentences are clear to proceed on, preventive entry bans (based only on intelligence) may result in conflicts with fundamental rights, in particular the right to defense in legal cases.

❖ **Denying entry to family members or close associates who are considered to have derived personal benefit from corrupt behavior of the principal target:**

The United States allows for such action to take place, as indicated in the example below. No other G20 country reported on their legal means to accomplish this or provided examples of such cases.

- Under Section 7031(c) of the Annual Appropriations Bill, the Secretary of State may publicly designate foreign government officials, and their immediate family members, for the official's involvement in significant corruption as ineligible for entry to the United States. For example, in July 2020, the Secretary of State publicly designated a senior public official from a South American country and his wife for the official's involvement in significant corruption. The judicial official had received money or property bribes to influence the outcome of civil and criminal cases in his country.

## 2. Institutional Framework

❖ **Facilitate international cooperation, including through the designation of competent authorities for case coordination and sharing of contact points of relevant authorities:**

Under UNODC's Online Directory of Competent National Authorities, States have provided information on various competent national authorities in relation to the implementation of UNCAC, such as their Central Authority for Extradition and their Central Authority for Mutual Legal Assistance. Though these authorities do not have direct mandates to deal with cases for denial of safe haven, they have played a vital role in providing information, including intelligence, and facilitating relevant investigations, prosecutions and judicial proceedings in relation to corruption offences established under UNCAC. To date, all G20 countries have nominated central authorities for mutual legal assistance, but only six G20 countries have nominated central authorities for extradition<sup>50</sup>.

In terms of other measures to enhance international cooperation, the use of technology to facilitate information sharing was highlighted by several Schengen states:

- Entry bans will be rendered more effective through the ongoing changes to the large-scale IT systems of the EU in the field of Justice and Interior, and the interoperability among them. For example, the Schengen Information System (SIS) will have a growing base of biometric data to prevent the

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<sup>50</sup> Argentina, Brazil, China, Germany, Turkey, USA.

circumvention of restrictions by individuals through the use of false documents. The use of Passenger Name Record (PNR) data, which is gaining momentum, together with the already functioning Advanced Passenger Information (API), contributes to search objectives. The European Criminal Record Information System for Third Country Nationals (ECRIS-TCN) will be another useful tool for Member States to exchange information on people sentenced for corruption.

Beyond this, the sharing of information between jurisdictions poses challenges due to confidentiality restrictions and delays in provision of requisite information to receiving countries to enable action. Many G20 countries have referred to a lack of action in certain cases due to such delays.

❖ **Review immigration programs to prevent abuse by corrupt offenders:** Seven G20 countries<sup>51</sup> indicated that they periodically review their immigration programs to prevent general abuse by criminal offenders, although no specific reports or examples of subsequent action have been shared with the group through questionnaire responses, and no corruption-specific assessments were mentioned.

- Immigration programs or policies are periodically and continually reviewed in China to detect loopholes which may be utilized by persons seeking safe haven for themselves and their proceeds of crime. The National Immigration Administration collaborates with customs, anti-corruption, trade and investment and other relevant authorities to ensure that integrity in the immigration program is upheld.

❖ **Enhance coordination between domestic authorities:** Successful denial of entry procedures require not only international cooperation, but strong domestic coordination between anti-corruption, immigration and law enforcement authorities. China in particular outlined its efforts in this area in its response to the questionnaire, as per the example below.

- China has been making efforts to weave a tight domestic network to prevent corrupt persons from escaping from justice. A joint work mechanism has been set up between the anti-corruption, immigration and police authorities. As a result, when the anti-corruption agency detects that a corrupt suspect could possibly flee abroad, the information can be immediately transferred to the immigration administration agency, and the latter can trigger a denial of exit process.

In addition, article 38 of UNCAC addresses the issue of cooperation between national authorities. Under the IRM, G20 countries mainly reported on their domestic cooperation on the investigation and prosecution of corruption offences committed on their territories, rather than referring to specific measures taken among their national agencies in denial of safe haven to corruption offenders. However, challenges identified in the implementation of

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<sup>51</sup> Australia, China, Germany, India, Indonesia, Saudi Arabia, United States.

this article may reflect similar difficulties encountered in the coordination between domestic authorities in denial of safe haven as outlined in the section on asset recovery, such as potential overlap of the competencies of different agencies, and lack of or inadequate inter-agency coordination, in particular on exchange of information.

❖ **Effective application of the extradition and MLA provisions of UNCAC:** The first cycle of the UNCAC IRM identified a wide range of good practices followed by G20 countries in their implementation of article 44 on extradition and article 46 on mutual legal assistance. Here, an overview of good practices and key challenges is only provided for extradition, as content regarding good practices and key challenges for MLA is very similar to points raised in the asset recovery section of this report.

Most G20 countries do not make extradition conditional on the existence of a treaty and can conduct extradition based on reciprocity or domestic laws, whereas others may consider UNCAC as a legal basis. Below is one such example:

- Extradition in Indonesia is stipulated in Law No 1 of 1979 on Extradition. As of 2020, Indonesia has ratified 12 bilateral Extradition Treaties. The Extradition Law also stipulates that in the absence of an extradition treaty, extradition may be conducted based on a good working relationship and if the interest of the nation requires it, under the coordination of the Minister of Law and Human Rights as the Central Authority of Indonesia for Extradition.

In addition, many G20 countries tend to use a flexible approach to decide the fulfillment of the requirement of dual criminality which focuses on the conduct underlying the extradition request rather than the category of offence or terminology used. While maintaining close observation of due process and safeguarding of human rights in the extradition process, a number of G20 countries could apply simplified procedures and evidentiary requirements to expediate extradition. Some countries also provide for consultation with requesting countries before refusing extradition requests. While the principle of “*aut dedere aut judicare*” (either extradite or prosecute) is widely applied, a few countries have reported that they can extradite their own nationals in certain cases. In addition, most G20 countries have concluded a significant number of bilateral and multilateral treaties to facilitate extradition.

Key challenges and areas for improvement involve ensuring that all, rather than some, G20 countries are able to work towards the good practices outlined above. Several G20 countries were advised to work on ensuring that the offences established under UNCAC are included as extraditable offences in law or in practice, expediting extradition procedures, simplifying evidentiary requirements, specifying refusal grounds, providing opportunities for consultation before refusing extradition, and endeavoring to conclude more bilateral and multilateral agreements in this regard.

### 3. Capacity and Operational Effectiveness

❖ **Application of denial of entry measures and data collection:** Only two countries<sup>52</sup> were able to report successful cases of denial of entry, although, as outlined in the “denying entry even absent a prior conviction” section, certain countries indicated they could not share information due to data sharing restrictions. Three G20 countries<sup>53</sup> indicated in their response that they regularly collect information on extradition cases.

- Mexico has a statistical information system that facilitates the provision of disaggregated information on extradition, as per article 44 of UNCAC.

The main challenges cited by G20 countries in enforcement of denial of entry from an operational perspective include insufficient or inaccessible data and obstacles to border control. With regard to data, delays occur as a result of insufficient data to verify if the person being dealt with is the same person as referenced in the database. From an operational perspective, further obstacles in border control cited by G20 countries include:

- Several national entry points, not all of which are manned;
- A lack of qualified immigration officers, and a mismatch between responsibilities and expertise of enforcement officials.

## C. Key Areas for Potential Future Work by the G20

Based on input from G20 countries’ responses to the Accountability Report Questionnaire and the analysis above, there are several areas that G20 countries may usefully conduct further work on. In this section, an overview of key areas which the G20 ACWG may consider in its future work is provided. These actions should be read alongside the Proposals for G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets. These two documents will help inform further detailed discussions under the Italian Presidency on how the G20 can best support initiatives to improve international cooperation and the recovery of stolen assets.

### 1. Asset Recovery in corruption cases

❖ **Preventative measures:** G20 countries should endeavor to strengthen preventative measures within their own AML/CFT regime, with particular focus towards effective implementation of the FATF Standards. This includes compliance with FATF Recommendation 12 on politically exposed persons ensuring accurate and up-to-date beneficial ownership information is available to competent authorities on a timely basis, and AML/CFT regimes include

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<sup>52</sup> United States and Indonesia

<sup>53</sup> United States, Mexico and Australia

coverage of FATF requirements to real estate agents, lawyers, accountants, trust and company service providers and precious metals and stones dealers.

- ❖ **Effective policy response:** As important financial centers, G20 countries should endeavor to have in place an effective policy response against providing safe haven to stolen assets and proactively share information in line with article 56 of UNCAC.
- ❖ **Non-conviction-based (NCB) confiscation:** NCB confiscation methods are most effective when all jurisdictions involved legally recognize such methods and have the means to enforce them. To this end, G20 countries can consider encouraging the widespread adoption of non-conviction-based confiscation or other methods such as forfeiture or unexplained wealth orders. Where this is not possible, G20 countries can consider amending legal systems to allow the broadest possible cooperation with those countries that do have non-conviction-based regimes. A useful focus would not only be on adoption of NCB methods but on broadening the number of cases in which NCB methods can be applied to facilitate the use of such techniques across jurisdictions. For example, this can include non-criminal procedures verifying whether the assets, including those situated abroad, possessed by public officials and their close relatives, as appropriate, match their income (Net Worth Analysis). Additionally, G20 countries could consider the development of reference or example guides identifying non-conviction based mechanisms used to successfully recover criminal proceeds.
- ❖ **Proactive pursuit of cases:** Only three G20 countries<sup>54</sup> indicated that they had engaged in the proactive pursuit of cases in their Accountability Report Questionnaire response. As such, G20 countries can explore tools to encourage the proactive pursuit of cases, such as:
  - Considering the full implementation of principle two in the “Nine Key Principles on Asset Recovery” around strengthening preventive measures against the transfer or laundering of proceeds of corruption consistent with international standards such as those set forth in the FATF Standards and relevant UNCAC provisions. This can be conducted with a view to facilitating the detection of suspicious activity by FIUs or other relevant entities, and subsequent proactive engagement of other jurisdictions in the recovery of proceeds of crime.
  - Endeavoring to actively participate in informal networks, such as the new Global Network of the Riyadh Initiative in so far as it facilitates international cooperation. Such networks provide salient channels through which contacts in other countries can be established with a view to facilitating the proactive pursuit of cases (see point on informal networks below).

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<sup>54</sup> India, Republic of Korea, UK.

- Where appropriate and in compliance with data protection laws, considering publication of non-sensitive information regarding corruption cases, for example on the websites of anti-corruption authorities. While not an example of the proactive pursuit of cases as defined here, such a measure could facilitate the desired outcome – alerting a foreign jurisdiction to cases where action regarding asset recovery may be taken from their side.
- ❖ **Joint, parallel or related investigations:** Conducting joint investigations tends to be hampered by differing legal systems and legislative constraints which prevent jurisdictions sharing certain information with each other and difficulties obtaining timely assistance. The G20 could work to outline good practices for conducting joint, parallel or related investigations to encourage such activities between countries. The ACWG could also explore ways to promote joint, parallel or related investigations, such as the strengthening of central authorities to overcome legal hurdles and coordinate the sharing of information, in accordance with respective domestic laws. This could help avoid delays which often limit the effectiveness of such investigations, and ensure the admissibility at trial of the evidence gathered.
- ❖ **Informal networks:** Analysis revealed that countries tend to be overly reliant on formal communication channels, with formal cooperation often taking significant amounts of time (months, or even years). While further use of informal cooperation channels is desirable, barriers to such use include:
  - Unfamiliarity with these channels by some departments
  - Regulations on data sharing and subsequent use of such data
  - Lack of secure informal transmission channels for sensitive data
  - Limitations to the use of certain networks due to a particular geographic focus or focus on particular corruption offences
  - Difficulties in domestic coordination between relevant entities (such as FIUs, law enforcement and police forces) as access to certain networks is limited to specific entities
  - Lack of political will or operational priority on international corruption cases

The Riyadh Initiative seeks to address these issues through the provision of an inclusive, global operational network for anti-corruption law enforcement officials to interact through a secure, dedicated anti-corruption communication channel under the umbrella of the UNODC. To ensure the success of this initiative in the coming years, the following can be considered:

- Global buy-in is crucial for the new network to function effectively in conjunction with existing networks. G20 countries are encouraged to make active use of this network, particularly with a view to, where appropriate, strengthening communication necessary to facilitate the MLA process through bilateral channels.



- Ensuring optimal interactivity and cohesive functioning with other networks within the anti-corruption landscape, such as the OECD Global Law Enforcement Network, the INTERPOL/StAR Global Focal Point Network, and other global and regional networks. To this end, the OECD, INTERPOL and UNODC are encouraged to work together to ensure that in practice these networks cooperate and are mutually reinforcing, and that potential synergies can be drawn through, inter alia, conducting joint sessions.
  - The need for greater coordination between anti-money laundering and anti-corruption authorities was cited in G20 countries' responses. The new network can seek to institutionalize links to relevant anti-money laundering networks, such as the Egmont Group of Financial Intelligence Units, through:
    - Ensuring a direct contact with the Egmont Group Secretariat based in Canada
    - Sharing a list of public contact details of the FIU members of the Egmont Group
    - Encouraging Egmont Group's member FIUs to contribute to the platform by providing case studies that highlight good practices and challenges. The Egmont Group can also helpfully share information on any further work relating to red-flag indicators and typologies related to the fight against corruption and combating the laundering of the proceeds of corruption
    - Engaging in further discussions with the Egmont Group to ensure the role taken by the group across all components of the Riyadh Initiative is optimized.
  - Language barriers were cited as a reason for delayed provision of assistance by G20 countries. The use of technology-based solutions to overcome such barriers in use of the new global network can be explored.
  - Organizing training sessions to ensure designated focal points are fully aware of the functionality and operational requirements of the network, and practice to facilitate behavioral adaptation towards use of the network may be helpful. Under the third component of the network, "Development of knowledge and capacity within the global operational network", training sessions to facilitate the understanding of relevant jurisdictional MLA requirements for individual countries may be helpful.
  - Exploring G20 participation in various informal networks, and addressing barriers preventing countries from joining and utilizing these networks.
- ❖ **Formal cooperation:** G20 countries are encouraged to further enhance the implementation of their obligations under UNCAC, particularly those under article 46 on mutual legal assistance. As such, G20 countries may further explore opportunities for bilateral and multilateral agreements to promote



formal assistance, but also endeavor to engage in international cooperation in the absence of such agreements, for example through the use of UNCAC as a sufficient legal basis for asset recovery. G20 countries can also explore and widen the use of civil rather than criminal approaches to MLA as international cooperation is still largely focused on criminal approaches despite its generally known limitations.

In addition, G20 countries should ensure that up-to-date information on domestic requirements for international cooperation is readily available for requesting countries, such as guidance materials or model MLA forms. In this regard, the G20 ACWG should commit to regularly reviewing and updating previously provided information in this regard, such as, inter alia, the MLA and asset recovery guides, as well as the asset tracing country profiles.

The lack of timely provision of MLA was the greatest barrier to formal cooperation highlighted by G20 countries. To facilitate the timely provision of MLA, G20 countries may consider the following:

- Exploring the feasibility of creating a universal MLA template to facilitate MLA among different jurisdictions.
  - Compiling country-specific and user-friendly MLA guidance with periodical updates.
  - Domestically assessing where delays to the provision of formal assistance are incurred as per the data collection point in the Emerging Themes section, and actively work to mitigate such delays where possible. This includes ensuring MLA requests sent to other countries are properly reviewed by a central authority with necessary expertise to ensure they meet proper criteria.
  - Ensuring central and competent authorities are adequately resourced and staffed with qualified experts to enhance law enforcement cooperation and proper exchange of information and evidence.
- ❖ **Establishment of focal points:** Those G20 countries that have not yet nominated asset recovery focal points in UNODC's Online Directory of Competent National Authorities to facilitate formal cooperation may consider doing so. As focal points also play a significant role in facilitating informal cooperation, in order to mitigate disruption caused by frequently changing such focal points, G20 countries can consider providing contact details for a general departmental email inbox rather than a personal email account for the networks they are members or observers to.
- ❖ **Provision of technical assistance:** Given their resources and experience in providing mutual legal assistance and recovering and returning assets to requesting jurisdictions, G20 ACWG countries should continue to provide technical assistance in the area of asset recovery, with a view to increasing developing countries' capacity and increasing the efficiency of MLA and cross-

border asset recovery procedures. In particular, G20 ACWG countries could individually or collectively help address the implementation gaps and technical assistance needs identified through the UNCAC reviews, and strengthen knowledge exchange and capacity-building with and between non-G20 countries.

- ❖ **Asset disposal and return:** As more and more asset recovery cases are successfully completed, G20 countries should endeavor to ensure transparency and accountability in the return of assets in line with article 57 of UNCAC. In addition, G20 countries could further explore the possibility of applying article 57(5) of UNCAC, which encourages countries to consider concluding agreements or mutually accepted arrangements, on a case-by-case basis, for the final disposal of confiscated property. These agreements can facilitate more timely returns that meet the needs and objectives of all stakeholders involved. The G20 can use its expertise to better understand these agreements, with the objective of encouraging their use in future returns and also seek to standardize them to promote more frequent use. G20 countries could also explore the use of ICT to promote integrity and transparency in asset return. In particular with a view to the depletion of many States' resources due to the COVID-19 crisis, G20 countries could consider how to address challenges in ongoing asset return processes to ensure assets are returned in a more effective manner.
- ❖ **Sustained relevance of previous work by the ACWG:** To ensure previous work produced remains relevant to current and emerging challenges and associated good practices in the asset recovery landscape, G20 countries may wish to revert to relevant work such as associated Principles and Asset Recovery Guides to incorporate any applicable updates. The G20 ACWG is encouraged to build on the results of evaluations by, and expertise of, international organizations and bodies by providing political support for potential solutions to the challenges in asset recovery.

## 2. Denial of Safe Haven

While not explicitly raised here, points outlined above regarding mutual legal assistance and sustained relevance of previous work by the ACWG could also be applied to denial of safe haven.

- ❖ **Implementation of and adherence towards prior work:** The majority of G20 countries did not provide answers to the sections of the Accountability Report Questionnaire relevant to Denial of Safe Haven. As such, G20 countries could work towards:
  - Improved implementation of the “G20 Common Principles for Action: Denial of Safe Haven”. In this regard, G20 countries can continue to encourage each other to implement these principles, and where possible, to provide assistance to other countries in doing so.

- Further implementation of articles 44 and 46 of UNCAC on extradition and mutual legal assistance.
  - Organizing special sessions during ACWG meetings to share lessons learned and good practices based on the collective experience of G20 and invited countries in the area of preventing corrupt officials and those who corrupt them from being able to travel abroad with impunity.
- ❖ **Further measures G20 countries could work towards:** Building upon prior work in the area of denial of safe haven, G20 countries could consider the following to further their work in this area:
- Actively participating in the new network established as part of the Riyadh Initiative to share information relevant to extradition and mutual legal assistance requests, along with all other relevant networks.
  - Further assessing and addressing the risk of the cross-border movement of the perpetrators of corrupt acts where immigration programs are abused by such persons, particularly in cases where residency or nationality can be acquired through investment of a particular monetary sum. To this end “Corruption and Investment Immigration” may be included as a topic for discussion at future meetings with the aim of establishing concrete actions or guidance for G20 countries.
  - Ensuring appropriate systems to enable effective enforcement measures are in place:
    - Requesting countries can work towards ensuring availability of latest details on the present status of legal proceedings against person wanted for corruption
    - Countries can work towards ensuring IT systems associated with border control and immigration are fully functional, and information therein is precise and up-to-date.
  - Consider utilizing the specialized biometric databases maintained by international organizations or national governments which contain, for example, information on the facial recognition, DNA, and fingerprints to help prevent the entry of recorded suspects, in particular those who have engaged in corrupt conduct.

### 3. Emerging Themes

Based on the analysis conducted, the following emerged as key themes in terms of challenges faced by G20 countries in the areas of asset recovery and denial of safe haven.

- ❖ **Data collection:** Insufficient availability of data was a common theme cited across several sections of the analysis. This includes data collection on asset recovery and denial of safe haven to assess the effectiveness of the overall

system (domestic, and international), but also to enhance pursuit and enforcement within individual cases. For example, data collection was cited as a barrier in:

- Enhancing domestic monitoring on mutual legal assistance cases, to assess the status and effectiveness of such measures and identify relevant bottlenecks
- Assessing the effectiveness of asset recovery efforts globally
- Ascertaining the level of utilization and efficiency of informal cooperation networks (for example, the number of requests submitted, the time taken for a request to be resolved and number of requests resolved)
- Demonstrating effective enforcement of denial of safe haven measures
- Correct identification of persons subject to denial of safe haven restrictions due to incorrect or insufficient data entries in the relevant databases
- Enabling rapid tracing and freezing of assets

In the G20's upcoming work on the measurement of corruption, G20 countries could consider:

- Further working to define and potentially standardize the type of data collected, and contributing to ongoing data collection initiatives such as that of the “StAR Data Collection: International Asset Recovery Efforts in Corruption Cases, 2010–2019” initiative<sup>55</sup>.
- Sharing good practices regarding domestic data collection systems in place.
- Using data collected to identify bottlenecks in domestic asset recovery systems as well as relevant solutions.
- Explore the use of information and communication technology (ICT) to facilitate efficient data collection and utilization, building upon the G20 High-Level Principles on Promoting Public Sector Integrity Through the Use of ICT.

❖ **Coordination between domestic authorities:** Coordination between domestic entities emerged as a challenge when considering enforcement of MLA and denial of safe haven measures, as well as when engaging in activities such as data collection. Article 5 of UNCAC mandates countries to “develop and implement or maintain effective, coordinated anti-corruption policies” and article 38 of UNCAC addresses cooperation between national authorities. G20 countries are encouraged to further explore mechanisms to facilitate domestic coordination between relevant authorities. This may include, where appropriate, the development of national anti-corruption strategies, in line with the G20 High-Level Principles for the Development and Implementation of

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<sup>55</sup> The link to the StAR questionnaire is available [here](#):

National Anti-Corruption Strategies and the OECD's Oslo Dialogue, which aims to develop a "whole of government" approach to fighting illicit financial flows.

- ❖ **Exchange of information between States:** Inability to exchange information was cited as a barrier to effective action in several areas, including:
  - Informal cooperation, where unfamiliarity with data sharing regulations and subsequent use of data shared through informal cooperation channels prevents use of such channels
  - Joint investigations, where the inability to share data between jurisdictions hinders the effectiveness of the investigation
  - Enforcement of denial of safe haven measures, where incorrect or incomplete entries into databases make it difficult to identify corrupt persons
  - Assessing effectiveness of the system and sharing good practices; inability to share cases and data on enforcement of denial of safe haven measures limits the potential for States to learn from good practice examples shared by others, and demonstrate functionality of their respective legal and institutional frameworks.

To tackle this, G20 countries may consider discussing the data sharing restrictions outlined in the cases above with a view to establishing ways to overcome them. Where possible, G20 countries may support research into this area, for example, the ongoing work by the FATF on the interaction between data protection, privacy and anti-money laundering laws.

## V. WAY FORWARD

- A. **Asset Recovery and Denial of Safe Haven:** Given the need to enhance asset recovery and denial of safe haven efforts globally, these two areas will remain a priority for the G20 ACWG. The analysis of key achievements and challenges, and suggested areas for future work provided in this document will inform future efforts by the G20 ACWG in these areas, particularly as G20 countries seek to further strengthen cooperation in line with relevant principles previously endorsed by G20 leaders. This analysis will also help shape and refine related lines of work being pursued by the group. Specifically, the analysis herein will contribute towards the first step of the framework outlined within the paper on “G20 Action on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets”, by informing G20 countries of progress against past deliverables endorsed by the group. Complemented by the “Scoping Paper on International Cooperation on Corruption and Economic Crimes, Offenders and Recovery of Stolen Assets”, the results of this analysis can help shape future action by the G20 ACWG within this framework.
- B. **Further Implementation of the 2019-2021 Action Plan:** Going forward, the G20 ACWG will continue to work towards priorities outlined in the 2019-2021 Action Plan, including those on measurement of corruption, integrity and sports, and corruption and gender, and other legacy issues. The G20 ACWG will also commence work towards the creation of the 2022-2024 Action Plan.
- C. **Accountability Reporting:** While this year’s accountability reporting exercise focused on the topics of asset recovery and denial of safe haven, an in-depth overview of G20 countries’ progress with regard to other key areas of the group’s work have not yet been conducted. Given consensus of G20 countries, future presidencies may consider selection of these topics for future accountability reporting exercises conducted in this style.

## ANNEX: OVERVIEW OF INDIVIDUAL PROGRESS ON OTHER LEGACY ISSUES

To date, the executive summaries of eight G20 countries have been finalized under the second cycle of the UNCAC IRM and three of these countries have fully completed their reviews under this cycle, as outlined in **Error! Reference source not found.** below. With regard to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business, 15 G20 countries<sup>56</sup> indicated ratification of the Convention. The remaining four countries outlined steps taken towards possible adherence to the Convention, some of which are outlined in the “Foreign Bribery” section below. Additionally, G20 countries were given the opportunity to report on individual progress with regard to other legacy topics covered by the group. Based on G20 countries’ responses to this question, an overview of key highlights is provided below.

### ❖ National anti-corruption strategies

In addition to the UK’s Anti-Corruption Strategy, which was first released in December 2017, the UK has developed an Economic Crime Plan which sets out how the UK is tackling a range of crimes closely related to corruption, such as fraud and money laundering from 2019-2022.

### ❖ Foreign bribery

In December 2019, the Australian Government introduced legislation into Parliament to strengthen Australia’s foreign bribery offences and to introduce a deferred prosecution agreement scheme for specified corporate offences related to financial crime. If passed, this legislation will introduce a new corporate offence for ‘failure to prevent’ foreign bribery and strengthen the tools available to law enforcement to detect and investigate a corporate crime.

In France, a strategy for repressing foreign bribery which actualizes and expands upon previous orientations was outlined on 2 June 2020 in a circular on penal policy in the area of international corruption from the Minister of Justice. The circular recalls the central role that the National Financial Prosecutor’s Office plays in this area, then presents the principles that should guide legal action at the stage of detection, investigations, prosecution and sanction of international corruption and related offences.

Indonesia has focused on developing the legal framework that stipulates the criminalization of foreign bribery by drafting the amendment of Indonesian Anti-Corruption Law. The revised law addresses gaps identified in the UNCAC

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<sup>56</sup> Argentina, Australia, Brazil, Canada, France, Germany, Italy, Japan, Mexico, Republic of Korea, Russian Federation, South Africa, Turkey, UK, US.

review from the 1<sup>st</sup> cycle, including by providing the legal framework for the criminalization of foreign bribery.

#### ❖ **Whistleblower Protection**

In Australia, the Parliament passed whistleblower protection reforms in February 2019 to strengthen protections for corporate and tax whistleblowers. The reforms require public and large proprietary companies and registrable superannuation entities to have a whistleblower policy in place.

In the Republic of Korea, the Act on Prohibition of False Claims for Public Funds and Recovery of Illicit Profits was enacted on 16 April 2018 and was implemented on 1 January 2020. This provides protective measures for whistleblowers to make sure that whistleblowers do not face any disadvantages as a result of the act of reporting, and that their safety is guaranteed. It also specifies rewards for whistleblowers to facilitate reporting on fraudulent claims for public funds.

#### ❖ **Public Sector Integrity**

In China, an oversight mechanism into poverty reduction programs has been introduced to ensure transparency and integrity throughout implementation of the program. For example, an electronic ID system has been established and widely applied to ensure funds from the program are directed to their rightful recipients.

In Italy, the new legislation based on law 3/2019 has strengthened the standards to fight corruption against public administration, as well as on the matter of statute of limitations and transparency of political parties and movements. It incorporates new measures such as no pursuit for self-report informers, a banning order for both public officials and private individuals convicted for corruption and the possibility to condemn them as subject to more robust economic sanctions or penalties.

Russia's membership of the Group of States against Corruption of the Council of Europe aims to strengthen public sector integrity. The Russian Federation completed its third evaluation round on incriminations and the funding of political parties and electoral campaigns and is undergoing the fourth round focused on the prevention of corruption in respect of members of parliament, judges and prosecutors.

South Africa is currently reviewing its anti-corruption strategy and signed the Promotion of Access to Information Amendment Act in June 2020, which requires political parties to record their funding. The act makes it an obligation for the head of a political party – including independent candidates – to create and keep records of any donation exceeding a threshold in any given financial year.



The Republic of Korea implemented the Act on Prohibition of False Claims for Public Funds and Recovery of Illicit Profits in January 2020. The Public Funds Recovery Act stipulates that relevant public institutions recover the entire amount of the unfair gains and interests and it enables the administrative agency to disclose the list of those who make fraudulent claims on large amounts or on a habitual basis. Additionally, it allows the Anti-Corruption and Civil Right Commission (ACRC) to check and inspect the implementation status of the recovery of illicit gains and imposition of additional sanctions.

Table 6: Overview of G20 countries' status in completion of second cycle UNCAC reviews

	Argentina	Australia	Brazil	Canada	China	France	Germany	India	Indonesia	Italy	Japan	Mexico	Rep. of Korea	Russian Federation	Saudi Arabia	South Africa	Turkey	UK	US
Ratification of UNCAC	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Second cycle under development	✓	✓	✓	✓	✓	✓	✓	✓			✓	✓	✓	✓		✓	✓	✓	✓
Executive summary finalized		✓				✓	✓		✓	✓		✓			✓			✓	
Second cycle completed									✓	✓					✓				