

G20 ANTI-CORRUPTION WORKING GROUP

BRAZIL-StAR INITIATIVE REPORT:
SURVEY ON DIRECT RECOVERY OF ASSETS

DECEMBER 2024





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Introduction

1. The direct recovery of assets (DRA) can be a powerful tool in retrieving funds and property misappropriated through corruption. Consistent with Article 53 of the United Nations Convention against Corruption (UNCAC),¹ affected states can assert their rights through DRA by initiating civil litigation or intervening as civil claimants (*parties civiles*) in confiscation proceedings before foreign courts. Through civil litigation, states can establish title or ownership over proceeds of crime or pursue compensation or damages for harm caused by illegal acts. By intervening in confiscation proceedings—which may include criminal, non-conviction-based, or even administrative confiscation—states can seek recognition as legitimate owners of property acquired through corruption.

2. In recent years, the United Nations General Assembly Special Session against Corruption² and the Conference of States Parties to the UNCAC³ have urged all states to utilize the full spectrum of methods available for retrieving proceeds of corruption, including the DRA measures outlined in Article 53. Furthermore, organizations such as UNODC, the World Bank, and the OECD specifically recommend that G20 countries support the broad use of this mechanism.⁴ These recommendations aim not to undermine the importance of criminal proceedings and mutual legal assistance (MLA) but to highlight alternative avenues for asset recovery that are often overlooked. Raising awareness of these instruments can better equip practitioners to choose the most suitable remedy for each individual case.

3. Despite the increased focus on this tool, thematic reviews conducted by these global stakeholders reveal that DRA remains underutilized. Overcoming this challenge will require more active international cooperation, which faces significant obstacles in practice. In particular, states may be unfamiliar with providing legal assistance in non-criminal matters, as there is no established international legal framework to support this dialogue—unlike criminal proceedings, which benefit from clear protocols under UNCAC.⁵ In many jurisdictions, these challenges may be exacerbated by legal asymmetries, a lack of specific experience, and limited resources.⁶ Nevertheless, the international community remains committed to

¹ Article 53 of UNCAC (on measures for direct recovery of property) reads as follows: “Each State Party shall, in accordance with its domestic law: (a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention; (b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.”

² A/RES/S-32/1. Resolution adopted by the General Assembly on 2 June 2021: Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation, at paras. 40-52.

³ CAC/COSP/IRG/2021/8. Second cycle of the Implementation Review Mechanism. Implementation at the regional level of chapter V (Asset recovery) of the United Nations Convention against Corruption. Report prepared by the Secretariat (July 2021), at p. 11.

⁴ The Impact of Corruption on Sustainable Development: Think Piece by UNODC, OECD, and World Bank for the G20 Anticorruption Working Group (2024) at p. 13.

⁵ *Id.*

⁶ CAC/COSP/2023/CRP.8. Conference room paper: Civil and Administrative Liability for Corruption – Domestic Practices and Ways to Enhance International Cooperation Under the United Nations Convention Against Corruption (November 2023), at p. 5.

exchanging knowledge and good practices and developing further guidance to facilitate DRA measures in foreign courts.⁷

4. With this context in mind, the Brazilian Attorney General's Office (*Advocacia-Geral da União*, AGU), in collaboration with the joint UNODC and the World Bank Stolen Asset Recovery (StAR) Initiative, conducted a survey within the G20 Anti-Corruption Working Group (ACWG) to gather insights from participating countries regarding their legal frameworks and practices related to DRA measures. The overarching goals of this initiative were to raise awareness of available remedies in line with Article 53 of UNCAC, provide an exploratory mapping and comparative analysis of relevant legislation, and foster discussions among G20 members and guest countries to strengthen global anti-corruption efforts.

5. A total of twenty-two countries submitted responses to the questionnaire, including sixteen G20 members⁸ and six guest countries.⁹ The present paper examines the information gathered through this exercise and identifies opportunities for enhancing direct asset recovery practices and cooperation among participating countries. It is important to note that the findings herein are based on the available data and reflect the authors' interpretation of the answers as submitted. Where apparent discrepancies were observed, the authors resolved them by considering each country's substantive explanations to individual questions and ensuring internal consistency with its overall responses. As addressed below, further discussions are recommended to ensure that all relevant information is fully captured and accurately conveyed to the G20 ACWG.

6. Part I of the paper presents the key findings of the survey, along with proposed recommendations and strategic directions for the G20 ACWG and participating countries. Part II provides detailed summaries of responses to the questionnaire collected to date. Annex I consolidates and summarizes the precedent referenced by respondents, while Annex II lists the laws and provisions cited by each country in response to the survey questions.

⁷ A/RES/S-32/1 at para. 47.

⁸ Argentina, Australia, Brazil, Canada, China, France, Germany, Indonesia, Italy, Japan, Republic of Korea, Russia, Saudi Arabia, South Africa, United Kingdom, and United States.

⁹ Netherlands, Nigeria, Norway, Singapore, Spain, and Switzerland.

I. Survey Results and Insights

A. Key Findings

1. In the responses to the survey, several trends emerge regarding the regulation and practice of DRA. Insights from respondent countries reveal a complex global landscape shaped by varying legal frameworks, procedural requirements, and approaches to DRA measures and MLA. These trends highlight the challenges and opportunities faced by governments seeking to assert civil claims abroad, as well as the commonalities and differences in how jurisdictions implement procedures in alignment with Article 53 of UNCAC. Overall, these findings outline areas of significant common ground and identify opportunities for further international coordination in this critical area.

(a) Most countries report measures for direct recovery of assets by foreign states, aligned with the requirements of Article 53.

- o **Civil Claims for Title or Ownership:** Twenty¹⁰ countries report that they either explicitly permit or do not preclude foreign states from initiating civil actions to establish title or ownership over property acquired through corruption. Two¹¹ countries indicate that these remedies are unavailable to foreign states.
- o **Civil Claims for Compensation or Damages:** Most respondents indicate that foreign states are allowed to seek compensation or damages for harm caused by corrupt acts. Seventeen¹² countries affirm the right to claim damages via independent civil proceedings, while fifteen¹³ allow for participation in criminal proceedings as victims or civil claimants. Two¹⁴ countries indicate that these remedies are unavailable to foreign states.
- o **Parallel Claims and Proceedings:** Sixteen¹⁵ jurisdictions recognize the right of foreign states to present civil claims within criminal proceedings or join a civil lawsuit to ongoing criminal proceedings. Five¹⁶ respondents specify that restitution and compensation claims are granted priority over confiscation orders in this context. Four¹⁷ countries indicate that these remedies are unavailable to foreign states.

(b) No respondents report specific regulations on the direct recovery of assets by foreign states, instead relying on general legal provisions.

- o **Lack of Specific Regulations:** None of the respondents report specific regulations to permit a foreign state to initiate civil action to establish title or ownership over property acquired through corruption, obtain compensation or

¹⁰ Fourteen G20 countries and six guest countries.

¹¹ Two G20 countries.

¹² Twelve G20 countries and five guest countries.

¹³ Nine G20 countries and six guest countries.

¹⁴ Two G20 countries.

¹⁵ Ten G20 countries and six guest countries.

¹⁶ Four G20 countries and one guest country.

¹⁷ Four G20 countries.

damages for harm caused by corruption, or advance such civil claims within or by joinder to existing criminal proceedings.

- o **General Legal Provisions:** Most respondents referenced relevant laws or provisions that apply to the direct recovery of assets by foreign states in their legal frameworks. A summary of these references, organized by country and survey question, is provided in Annex II.

(c) The substantive and procedural standards applicable to the direct recovery of assets by foreign states vary widely across jurisdictions and legal systems.

- o **Standards for Compensation and Damages:** Respondents report a broad range of doctrines to support compensation or damages in this context, including tort law (six¹⁸ countries) and breach of contract (five¹⁹ countries). Most respondents require proof of damage or harm (thirteen²⁰ countries) and causation (ten²¹ countries) to establish such claims.
- o **Prior Conviction Requirement:** Thirteen²² countries report that their legal systems do not require a prior criminal conviction to recognize property ownership or award damages or compensation to a foreign state in connection with corrupt acts. Six²³ countries report that their laws require a prior conviction before civil claims can proceed.
- o **Civil Forfeiture:** Fourteen²⁴ respondents report that their legal systems permit civil forfeiture. Of these, five²⁵ respondents either explicitly affirm or appear to suggest that civil forfeiture is not available to foreign states. Seven²⁶ respondents report that their legal frameworks do not provide for civil forfeiture at all.
- o **Provisional Measures:** Seventeen²⁷ countries report that provisional measures are available to foreign states in civil proceedings. Depending on the jurisdiction, such measures may include several types of property attachments or general injunctions. It should be noted that the comprehensiveness of tools and the specific requirements for securing provisional measures may vary significantly between common law and civil law countries.
- o **Legal Representation:** Nine²⁸ countries report that foreign states must hire local counsel to appear as plaintiffs in civil proceedings before the

¹⁸ Five G20 countries and one guest country.

¹⁹ Four G20 countries and one guest country.

²⁰ Ten G20 countries and three guest countries.

²¹ Seven G20 countries and three guest countries.

²² Ten G20 countries and three guest countries.

²³ Three G20 countries and three guest countries.

²⁴ Eleven G20 countries and three guest countries.

²⁵ Four G20 countries and one guest country.

²⁶ Four G20 countries and three guest countries.

²⁷ Thirteen G20 countries and four guest countries.

²⁸ Five G20 countries and four guest countries.

respondents' courts. However, in three²⁹ of them, this requirement does not apply to civil claims advanced in criminal proceedings. Nine³⁰ respondents report that foreign states may appear without counsel in any of such cases. Separately, four³¹ respondents indicate that their own representatives must engage local counsel to pursue civil claims before foreign courts.

(d) In most jurisdictions, direct asset recovery can present certain advantages to MLA, depending on the specific circumstances and nature of the case. The responses to the survey highlight the comparison points below.

- o **Applicability and Scope:** Civil proceedings may allow foreign states to pursue a variety of legal claims against a wider range of parties (e.g., banks, facilitators). This route may also serve as an alternative when non-conviction based forfeiture is unavailable or MLA conditions are not met. By contrast, depending on the case, civil claims may be limited to specific property or damages, whereas MLA can facilitate the confiscation of both proceeds and instrumentalities of crime.
- o **Evidentiary Standards and Burden of Proof:** Civil litigation generally entails a lower standard of proof, making it easier to secure provisional measures and favorable judgments. Depending on the claim and jurisdiction, plaintiffs may also be relieved of proving criminal facts. However, if the requesting state is able to secure a confiscation order, pursuing MLA may be less burdensome.
- o **Evidence Gathering:** While countries can seek to collect evidence in a foreign jurisdiction under international cooperation treaties in civil matters, MLA may be more suitable in cases where more robust investigative tools and law enforcement powers are necessary (e.g., financial intelligence, search warrants). Plaintiffs should also consider that civil disclosure tools and requirements can vary widely between civil law and common law jurisdictions, which may affect both the scope and accessibility of evidence depending on the forum.
- o **Relative Cost:** Depending on the circumstances, DRA proceedings can be resource-intensive, with high costs for legal representation, court administration, and other related expenses, including the enforcement of judgments. Additionally, claimants may face additional tax liability on assets recovered in foreign courts. By contrast, MLA requests are typically managed through official government channels, with most costs covered by the requested state.
- o **Efficiency, Procedural Simplicity and Transparency:** DRA proceedings offer foreign states more control over the proceedings, without depending on MLA protocols, administrative channels, or the cooperation of the requested state. The relative flexibility of civil procedures may also allow the case to

²⁹ Two G20 countries and one guest country.

³⁰ Seven G20 countries and two guest countries.

³¹ Three G20 countries and one guest country.

proceed in the absence of defendants who have been properly notified. Conversely, the formal structure of MLA offers certainty and clarity throughout the asset recovery process. DRA can be less straightforward, requiring foreign states to navigate complex procedural issues, including jurisdictional challenges and conflicts-of-laws exceptions at the enforcement stage. Given the requested jurisdiction's necessary involvement in return, the MLA process can bring more transparency, where those returns are made public. In direct recovery, the returns stemming from judicial decisions are not typically publicized, in particular by the country of asset location.

- o **Effectiveness and Legal Risk:** DRA proceedings allow foreign states to request provisional measures more promptly and directly, potentially offering a more effective route to preserve assets in urgent cases. Civil judgments are also generally more easily recognized and enforced by foreign jurisdictions, which ultimately facilitates recovery. Additionally, through direct recovery, foreign states are not required to share a percentage of the recovered assets with the forum state, which is often a default arrangement in MLA requests. By contrast, engaging in civil litigation may require waiving sovereign immunity, exposing foreign states to counterclaims and potential liabilities, including attorney fees and taxes.

(e) The responses suggest low engagement by states and little international cooperation to facilitate direct asset recovery across jurisdictions.

- o **Lack of Notification Requirements:** No respondents report special mechanisms or specific legal requirements to notify foreign states of criminal proceedings involving their property. Few jurisdictions report issuing such notifications as a matter of practice (two³² countries), through diplomatic notes (one³³ country), or through the mechanisms generally available to any interested parties (one³⁴ country).
- o **Relevant Precedent:** Few respondents report having adjudicated civil claims brought by foreign states in connection with acts of corruption (four³⁵ countries) or having pursued such remedies before foreign courts (four³⁶ countries).
- o **Focal Points:** Seven³⁷ respondents report a specific agency or authority with powers to bring civil claims before foreign jurisdictions. Two³⁸ respondents specifically note that such agencies can function as a focal point to guide foreign states on direct asset recovery in their own jurisdictions.

³² One G20 countries and one guest country.

³³ One G20 country.

³⁴ One G20 country.

³⁵ Two G20 countries and two guest countries.

³⁶ Two G20 countries and two guest countries.

³⁷ Six G20 countries and one guest country.

³⁸ One G20 countries and one guest country.

(f) **These findings align closely with those presented in the thematic report prepared by UNODC and presented to the Conference of the States Parties to the UNCAC in December 2021, regarding the Implementation of Chapter V on Asset Recovery.**³⁹

- o **Slow Overall Progress:** While the present initiative surveyed a different and more limited group of countries, the consistency of these findings after several years indicates little or slow progress by the international community regarding DRA measures.⁴⁰

B. Recommendations and Strategic Direction

2. This initiative has significantly contributed to increasing awareness of DRA remedies as outlined in Article 53 of UNCAC. Moreover, it has provided valuable insights into the current landscape of legal requirements and practices among participating countries. It is encouraging that most governments report making concerted efforts to implement this critical component of the anti-corruption toolbox.

3. However, it should be emphasized that Article 53 only requires states to “permit” these remedies, setting a relatively low bar for both engagement and compliance. Notably, the survey revealed a broad consensus among respondents regarding the advantages of DRA over MLA in many scenarios. Given that DRA is both valuable and available in most jurisdictions, there is a compelling case for countries to move beyond mere permission and engage more actively with this instrument, furthering the spirit of the Convention. In this context, states are encouraged to act more purposefully and strive to facilitate direct recovery, rather than simply permitting it.

4. This could involve not only taking proactive steps within their jurisdictions but also promoting increased dialogue and cooperation among nations to ensure that DRA becomes a more accessible and widely used option. To this end, potential areas for improvement are recommended below.

(a) Improving the Applicable Framework

³⁹ CAC/COSP/2021/6. Thematic Report on the Implementation of Chapter V (Asset Recovery) of the United Nations Conventions against Corruption prepared by the Secretariat and presented to the 9th session of the Conference of the States Parties to the UNCAC (December 2021). This report was based on information from 57 executive summaries and country review reports submitted in the second cycle of the Convention’s Implementation Review Mechanism.

⁴⁰ In summary, the CAC/COSP/2021/6 report found that: (i) in most countries reviewed, foreign states could initiate civil action to establish title or ownership of property or claim compensation of damages for harm caused by a Convention offense, under general legal provisions or principles (paras. 30, 32); (ii) two countries (Algeria and Burkina Faso) explicitly established jurisdiction over civil actions brought by other states parties regarding compensation or property rights affected by corruption (para. 31); (iii) few countries cited precedent of foreign states litigating within their jurisdictions (para. 30); (iv) respondents often allowed foreign states to claim ownership or civil compensation within or by joinder to ongoing criminal proceedings (para. 33), in some cases as victims or bona fide third parties (para. 34); (v) in many cases, the requirements for a foreign state to establish good faith or prior legitimate ownership in criminal or restitution proceedings remained unclear (para. 35); and (vi) few states described specific mechanisms to give notice to victims or owners of property during asset recovery proceedings (para. 36).

- o **Removing Barriers:** Countries are encouraged to remove any legal barriers to DRA, where appropriate and consistent with their domestic frameworks. This can include measures to streamline applicable procedures while ensuring judicial safeguards and preventing abuse of process.⁴¹
- o **Specific Regulations:** In jurisdictions where DRA is available to foreign states, the lack of specific regulations may hinder access to this tool. Therefore, countries are encouraged to issue explicit provisions that clarify the applicable requirements and processes, in order to increase awareness and facilitate the use of this remedy by foreign states.
- o **Harmonization:** The survey highlights the diverse and often inconsistent rules and requirements across respondent jurisdictions, each shaped by unique legal frameworks. Given these discrepancies, countries should consider whether harmonization efforts would be useful and actionable in this context.

(b) Enhancing Implementation and International Cooperation

- o **Notification Mechanisms:** To incentivize and improve the practical execution of asset recovery measures, countries are encouraged to establish and maintain specific notification mechanisms related to confiscation proceedings. Such mechanisms would ensure that foreign states are timely informed about relevant developments and have ample opportunity to explore all possible recovery avenues.
 - As an initial step towards establishing such mechanisms, this dialogue could begin under a pilot program for informal communications facilitated by the StAR Initiative and the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network).
- o **Specific Guidance:** To foster awareness and facilitate cooperation, states should strive to assist foreign counterparts in navigating the unique requirements of their domestic legal systems.
 - While most countries do not report a dedicated focal point for such matters, providing this resource may ease and incentivize the use of DRA by foreign states.
 - Countries should consider developing a guide or detailed instructions outlining the specific steps and requirements for foreign states interested in pursuing DRA, based on the most frequent types of claims and scenarios. Alternatively, this guidance could be incorporated into the new country-specific Asset Recovery Guides currently being prepared by the StAR Initiative.
 - These measures could benefit from the knowledge and framework established by the StAR/GlobE pilot program proposed above.

⁴¹ Consistent with A/RES/S-32/1, *supra* note 2, at para. 42.

(c) Next Steps

- o **Continued Dialogue:** It is important to recognize that these findings are based on available data and subject to further analysis, and that ongoing dialogue will be crucial for further progress. Participating countries are encouraged to provide feedback and additional input on this report's conclusions and recommendations.
- o **Future Engagements:** We recommend that this matter be carried forward into the next G20 ACWG Presidency and the 11th session of the Conference of the States Parties to the UNCAC. This will ensure that discussions continue and evolve based on the insights gained from the survey and further discussions within the G20 ACWG and other intergovernmental fora. Maintaining this topic on the agenda will help promote collaboration and the sharing of good practices, thereby enhancing the global response to asset recovery challenges related to corruption.

II. Detailed Summary of Responses

A. Domestic Legal Framework

a) Title or Ownership over Proceeds

Survey Question 1

- *Has your country adopted specific regulations to permit another state to initiate a civil action in your courts to establish title to or ownership of property acquired through corruption?*
- *If YES, please provide any links and translated versions, if available. If there is NO specific regulation, please specify if there are other means based on general legal provisions.*

5. Most respondents report that foreign states are either allowed or not precluded from initiating civil actions to establish title or ownership over property acquired through corruption.⁴² A majority also relies on general legal provisions that recognize foreign states as legal persons with the capacity to participate in civil proceedings.⁴³ These provisions often stem from due process guarantees and fall under general civil procedure codes, allowing foreign states to initiate claims much like any other legal entity. Therefore, civil remedies are broadly available to foreign states as a means to establish their property rights in this context, even in the absence of specialized regulations.

6. Two respondents⁴⁴ also highlight that recognizing foreign judgments may offer another avenue for direct asset recovery. In these jurisdictions, foreign states can seek to enforce their title or ownership over corrupt proceeds through civil proceedings, where such rights were initially established by a foreign court or arbitral tribunal.

b) Compensation and Damages for Corrupt Acts

Survey Question 2

- *Has your country adopted specific regulations to permit its courts to order those who have committed corrupt acts as defined in the UN Convention against Corruption to pay compensation or damages to another State Party harmed by corruption?*
- *If YES, please provide any links and translated versions, if available. If there is NO specific regulation, please specify if there are other means based on general legal provisions.*

[Cont'd]

⁴² One G20 country reports that foreign states have no standing to appear as plaintiffs in civil court. One G20 country answered this specific question in the affirmative but its overall responses suggest that these remedies may not be available to foreign states.

⁴³ Six G20 countries answered the binary part of this question in the affirmative but provided explanations that appear to reference only general provisions of law.

⁴⁴ Two G20 countries.

Survey Question 4

- *Based on your country's law, would a foreign state be entitled to claim compensation for damages suffered as a result of an act of corruption?*
- *If YES, please describe what the foreign state would need to show as a plaintiff in terms of, e.g., legitimate ownership, good faith, the harm suffered, and causation. Please describe which types of compensation states can seek before your national courts, e.g., material damages, loss of profits, non-pecuniary damages, and explain or cite the legal provisions on which a claim for compensation in corruption cases could be based (e.g., contractual or tort claims).*

i. Available Remedies

7. While the particular remedies and standards may vary, most respondents report that their legal frameworks allow foreign states to seek compensation or damages for harm caused by corruption through general provisions under civil or criminal procedural law.⁴⁵ Specifically, seventeen countries⁴⁶ report that foreign states have a right to claim compensation or damages through independent civil proceedings. In addition, fifteen countries⁴⁷ report that foreign states have standing to appear as victims or civil claimants within criminal proceedings and seek compensation or restitution as a component of sentencing.

8. By contrast, two countries⁴⁸ report that such remedies are not available to foreign states within their legal systems.

ii. Elements of the Claim

9. The respondents identify a wide range of requirements for foreign states to obtain compensation or damages in this context. For example, depending on the jurisdiction, key elements of the claim may include legitimate ownership (two countries),⁴⁹ good faith (one country),⁵⁰ damage or harm (thirteen countries);⁵¹ causation (ten countries);⁵² fault, intent, negligence, or breach of obligation (six countries);⁵³ a right to reparation (one country);⁵⁴ and redressability of the harm (one country).⁵⁵

iii. Types of Compensation

⁴⁵ Seven G20 countries and one guest country answered the binary part of this question in the affirmative but provided explanations that appear to reference only general provisions of law.

⁴⁶ Twelve G20 countries and five guest countries.

⁴⁷ Nine G20 countries and six guest countries.

⁴⁸ Two G20 countries.

⁴⁹ Two G20 countries.

⁵⁰ One G20 country.

⁵¹ Ten G20 countries and three guest countries.

⁵² Seven G20 countries and three guest countries.

⁵³ Four G20 countries and two guest countries.

⁵⁴ One guest country.

⁵⁵ One G20 country.

10. The types of compensation offered to foreign states also vary across respondents. Most jurisdictions specifically reference the possibility of recovering material or financial damages (ten countries),⁵⁶ including loss of profit (three countries),⁵⁷ loss of income (one country),⁵⁸ and loss of chance/opportunity (two countries).⁵⁹ In addition, some respondents also report the availability of non-material or moral damages (seven countries),⁶⁰ punitive damages (one country),⁶¹ and specific performance or injunctive relief (three countries).⁶²

iv. Legal Basis

11. The respondents rely on various legal doctrines and principles to redress corrupt acts in their jurisdictions. For example, depending on the circumstances of the case, foreign states can seek compensation or damages on the basis of tort law (six countries),⁶³ civil liability (three countries),⁶⁴ breach of contract (five countries),⁶⁵ unjust enrichment (one country),⁶⁶ or equity (one country).⁶⁷

Box 1: Examples of Causes of Action for Compensation or Damages

Tort Law and Civil Liability⁶⁸

Based on tort law and civil liability principles, plaintiffs can seek compensation for losses, injury, or harm caused by corrupt acts. The remedy in such cases is to place the victims in the position they would have been, had the damage not occurred. In many jurisdictions this requires proving compensable damage, a fault or breach of duty by the defendant, and a causal link between the corrupt act and the damage. In some civil law countries, however, it may be sufficient to demonstrate only damage, conduct, and causality. Depending on the legal system, these claims can also be brought against individuals and entities who facilitated corruption or failed to implement adequate controls to prevent it, such as lawyers, third-party intermediaries, parent companies, or employers.

[Cont'd]

Invalidity, Unenforceability, or Breach of Contract⁶⁹

If a contract was awarded as a result of bribes to government officials, courts and arbitral tribunals may consider it illegal, invalid, or unenforceable due to vitiated consent. Breach of contract claims may also be possible in some jurisdictions, especially in cases where the

⁵⁶ Seven G20 countries and three guest countries.

⁵⁷ Three G20 countries.

⁵⁸ One G20 country.

⁵⁹ Two G20 countries.

⁶⁰ Six G20 countries and one guest country.

⁶¹ One G20 country.

⁶² Two G20 countries and one guest country.

⁶³ Five G20 countries and one guest country.

⁶⁴ Three G20 countries.

⁶⁵ Five G20 countries and one guest country.

⁶⁶ One G20 country.

⁶⁷ One G20 country.

⁶⁸ JEAN-PIERRE BRUN *et alter*, ASSET RECOVERY HANDBOOK: A GUIDE FOR PRACTITIONERS 280-284 (StAR/World Bank Group, 2d ed. 2020).

⁶⁹ BRUN, *supra* note 68 at 286-288.

contract included specific anticorruption clauses and safeguards. Remedies here may include, for example, termination of the contract, suspension of obligations, and monetary damages (such as compensatory, incidental, liquidated, or punitive damages).

Illicit or Unjust Enrichment⁷⁰

Claims for illicit or unjust enrichment are generally based on the principle that no one should benefit from wrongdoing. Depending on the jurisdiction, defendants may be ordered to disgorge or return illegal gains even if the victim did not directly suffer harm. These gains may include, for example, amounts received as bribes by a public official, or profits earned by a company that secured a contract through corruption.

Equity⁷¹

In certain common law jurisdictions, available civil remedies may be both legal and equitable in nature. Legal remedies are typically monetary and are awarded to compensate for a past wrong. By contrast, equitable remedies are designed to provide relief when traditional legal remedies, such as damages, are inadequate. Courts have greater discretion and flexibility in determining how an equitable remedy should address the plaintiff's rights. These measures are generally non-monetary and aim to prevent future harm or compel a party to perform a specific act. Commonly used equitable remedies include injunctions, specific performance, accounting for profits, constructive trust, and equitable rescission.

c) Confiscation Proceedings and Notification Mechanisms

Survey Question 3

- *Has your country adopted specific regulations to permit its courts or competent authorities, when deciding on confiscation in a criminal procedure, (a) to adjudicate a civil claim in criminal court as part of an ongoing criminal proceeding or (b) to join an active civil lawsuit to a criminal trial? For example, to recognize another foreign State as a party injured by corruption, and thus, entitled to the ownership of property acquired through the commission of corruption, to other proceeds of corruption, or compensation because of acts of corruption?*
- *If YES, please provide any links and translated versions, if available. If there is NO specific regulation, please inform if there are other means based on general legal provisions.*
- *Please indicate if you have a mechanism to notify foreign states of any criminal trial that may result in confiscation involving their property.*

i. Parallel Claims and Proceedings

12. Most respondents report that their legal frameworks do not include specific regulations whereby foreign states can present civil claims within criminal proceedings or join

⁷⁰ *Id.* at 293-294.

⁷¹ Samuel Bray, *The System of Equitable Remedies*, 63 UCLA L. REV. 530, 545, 551-562, 568-570 (March 2016).

a civil lawsuit to ongoing criminal proceedings, in order to assert their rights over confiscated property or seek compensation for corrupt acts.⁷²

13. However, in most respondent jurisdictions, foreign states have standing to appear as victims or civil claimants in criminal proceedings based on general legal provisions (sixteen countries).⁷³ Some respondents specify that restitution and compensation claims are granted priority over confiscation orders in this context (six countries).⁷⁴ Two respondents⁷⁵ also report that courts have authority to award such civil claims *sua sponte/ex officio* within criminal proceedings, and two⁷⁶ report that the prosecution may advance such claims on behalf of the foreign state.

14. Separately, four respondents report that the joinder of civil and criminal proceedings is specifically prohibited.⁷⁷ One country⁷⁸ reports that civil and criminal claims are generally brought together in the same proceedings, unless the victim opts to seek civil compensation independently. One country⁷⁹ reports that courts may decline to issue a confiscation order where the victim has brought or is likely to bring their own civil claims relating to the same assets.

ii. Notification Mechanisms

15. No respondents report special mechanisms or specific legal requirements to notify foreign states of criminal proceedings involving their property. Nevertheless, some jurisdictions report issuing such notifications as a matter of practice (two countries)⁸⁰ or under general legal provisions, either through diplomatic notes (one country)⁸¹ or through the mechanisms generally available to any interested parties (one country).⁸²

d) Provisional Measures in Civil Proceedings

Survey Question 5

- *Are there any provisional measures available in civil proceedings that may be employed to secure civil liability (e.g., sequestration, seizure, freezing, or other means to prevent dissipation of assets)?*
- *If YES, please specify.*

⁷² Eight G20 countries and two guest country answered the binary part of this question in the affirmative but provided explanations that appear to reference only general provisions of law.

⁷³ Ten G20 countries and six guest countries.

⁷⁴ Five G20 countries and one guest country.

⁷⁵ Two G20 countries.

⁷⁶ One G20 country and one guest country.

⁷⁷ Four G20 countries.

⁷⁸ One guest country.

⁷⁹ One G20 country.

⁸⁰ One G20 country and one guest country.

⁸¹ One G20 country.

⁸² One G20 country. An additional G20 country reports that a general mechanism is used to notify foreign states of confiscation orders, but the related explanation appears to regard situations where the responding country is the party seeking confiscation.

16. Seventeen countries⁸³ report that provisional measures are available to foreign states in civil proceedings to prevent the dissipation of assets and to secure civil liability in cases involving corruption. As examples of such measures, respondents cite a wide range of property attachments, including sequestration or seizure (eight countries),⁸⁴ freezing (three countries),⁸⁵ liens or security rights (four countries),⁸⁶ as well as general injunctions or restraining orders against the transfer or disposal of assets (eight countries).⁸⁷ Some respondents specify that the plaintiff must establish a *prima facie* case and demonstrate a risk of dissipation to justify these protective orders (two countries).⁸⁸

Box 2: Examples of Provisional Measures⁸⁹

*The comprehensiveness of tools and the specific requirements for securing provisional measures may vary significantly between common law and civil law countries. Some common law jurisdictions offer unique measures such as orders compelling third parties to disclose an offender's identity (see *Norwich Pharmacal Co. v. Customs & Excise Commissioners* (1974) (U.K.)); gag orders to prevent breaches of confidentiality; ex parte disclosure and restraint orders on bank accounts ("Bankers Trust" orders); orders allowing plaintiffs' attorneys to enter premises to preserve evidence at risk ("Anton Piller" orders in the U.K.); and extrajudicial injunctions that notify third parties of potential liability for transferring corrupt proceeds ("Mareva by Letter" in the U.K.). However, applicants in common law countries often face stringent conditions, such as demonstrating good cause, identifying and locating assets, proving the risk of dissipation, and providing undertakings to compensate the defendant for any unjustified losses. In contrast, as illustrated in the present survey, civil law jurisdictions typically allow for a more streamlined approach, whereby demonstrating an arguable case and the risk of potential loss may suffice to secure protective orders.*

e) Legal Representation

Survey Question 6

- Do foreign countries need to hire local counsel to represent them on such claims?
- If NO, please specify other ways foreign states can be represented, including any relevant legal provisions.

17. Nine respondents⁹⁰ indicate that foreign states are generally required to hire local counsel to appear as plaintiffs in civil proceedings related to corruption. However, two of these countries⁹¹ provide exceptions to this requirement, for example, where the claim does

⁸³ Thirteen G20 countries and four guest countries.

⁸⁴ Eight G20 countries.

⁸⁵ Three G20 countries.

⁸⁶ Three G20 countries and one guest country.

⁸⁷ Five G20 countries and three guest countries.

⁸⁸ One G20 country and one guest country.

⁸⁹ BRUN, *supra* note 68, at 298-301.

⁹⁰ Five G20 countries and four guest countries.

⁹¹ Two G20 countries.

not exceed a specific threshold amount. Additionally, three of these countries do not require legal representation to advance civil claims within criminal proceedings.⁹²

18. Nine respondents allow foreign states to participate in any such legal proceedings without the need to engage local counsel.⁹³ In these jurisdictions, foreign states may represent themselves or appoint other representatives, such as the adjudicating state’s public attorneys (one country),⁹⁴ the foreign state’s diplomats (one country),⁹⁵ foreign counsel (one country),⁹⁶ or other individuals authorized under a written proxy or contract (two countries).⁹⁷

f) Standing Requirements

Survey Question 7

- *Is there any condition that states must meet before bringing a civil claim to recover damages, establish prior ownership, or participate as “partie civile” in a criminal procedure?*
- *If YES, please specify.*

19. Most respondents indicate that foreign states are subject to the same rules and procedural requirements as any other plaintiff when initiating civil claims. Some respondents reiterate that foreign states must establish standing and prove the substantive elements of their claims (as examined under Survey Questions 1, 2, and 4), without citing any special conditions that may apply exclusively to this type of plaintiff.⁹⁸

g) Relevant Precedent

Survey Question 8

- *Have foreign countries ever litigated in your country to pursue compensation for harm suffered by an act of corruption? Has your country ever pursued civil claims for corruption before a foreign court?*
- *If YES, please provide details.*

⁹² Two G20 countries and one guest country.

⁹³ Seven G20 countries and two guest countries. One of these G20 countries answered the binary part of this question in the negative but provided explanations that appear to relate to standing requirements.

⁹⁴ One G20 country.

⁹⁵ One guest country.

⁹⁶ One guest country.

⁹⁷ One G20 country and one guest country.

⁹⁸ Some countries answered the binary part of this question in the affirmative but provided explanations referencing the general elements of a claim for damages, as addressed in previous questions (one G20 country and three guest countries). Other respondents appear to have interpreted this question as regarding conditions applying exclusively to states (two G20 countries and one guest country). Others simply answered in the negative (five G20 countries and one guest country). Based on previous answers, it appears that this question is not applicable to two other respondents (two G20 countries).

20. Four countries⁹⁹ report having adjudicated civil claims brought by foreign states in connection with acts of corruption, while four countries¹⁰⁰ report having pursued such remedies before foreign courts. Additionally, one country¹⁰¹ reports that its state-owned enterprises have successfully engaged in civil proceedings in other jurisdictions to recover assets lost to corruption.

21. Respondents highlighted various cases involving claims of ownership over corrupt proceeds and compensation for damages (*see infra*, Box 3; Annex I). Brazil, for example, recovered assets from officials who concealed proceeds abroad, including \$14 million through U.S. proceedings against a state attorney involved in social security fraud, and \$4.8 million and \$16.3 million through Swiss proceedings against a judge involved in procurement fraud and a former São Paulo mayor who embezzled city funds, respectively. Similarly, China cited civil cases in which the Bank of China recovered RMB 1.4 billion illegally transferred by former managers and co-conspirators across multiple countries, and the Agricultural Bank of China secured over \$9 billion in a U.K. court related to fraudulent letters of credit.

22. In France, foreign states sought damages from officials involved in corruption, with Uzbekistan securing compensation in a case involving funds embezzled by companies tied to the former Uzbek president's daughter. Singapore highlighted a case where the Philippine National Bank (PNB) was recognized as holding legal title to funds tied to corruption by a former Philippine president, following interpleader proceedings in Singapore. In the U.S., the Republic of the Philippines pursued a civil suit to recover stolen artwork, whose ownership was in dispute. Lastly, the Nigerian government successfully recovered \$85 million in the U.K. related to a corrupt oil deal involving the company Malabu.

Box 3: Direct Asset Recovery Case Examples

Recovery of Proceeds of Corruption¹⁰²

The Singapore High Court recognized the Philippine National Bank (PNB) as holding legal title to funds to which there were competing claims. These funds, alleged to be ill-gotten gains accumulated by a former Philippine president, were originally frozen in Switzerland and placed in escrow with PNB, which transferred them to a Singapore bank account. When the Philippine Supreme Court ordered the funds to be forfeited to the Philippines, PNB instructed the Singapore bank to release the funds to it. The Singapore bank did not do so, as it had received competing claims to the funds. The Singapore bank thus initiated interpleader proceedings in the Singapore High Court. The Philippines applied to be added as a party to the proceedings and the Singapore High Court held that PNB held legal title to the funds. This was affirmed on appeal.

[Cont'd]

Default Order for Restitution (Defendant In Absentia)¹⁰³

⁹⁹ Three G20 countries and one guest country. Two additional G20 countries answered the binary part of this question in the affirmative but provided explanations that appear to relate to criminal proceedings.

¹⁰⁰ Three G20 countries and one guest country.

¹⁰¹ One G20 country.

¹⁰² Republic of the Philippines v Maler Foundation and others [2008] 2 SLR(R) 857.

¹⁰³ Lionel Faull, *Malabu Scandal: UK court rules in favour of Nigerian govt*, PREMIUM TIMES (Dec. 16, 2017), <https://www.premiumtimesng.com/news/headlines/252614-malabu-scandal-uk-court-rules-favour-nigerian-govt.html?tztc=1>.

In civil proceedings, a U.K. court ordered the release of \$85 million to the Nigerian government in connection with the corrupt sale of an offshore oil block. The block had originally been awarded to Malabu, a company linked to a former Nigerian oil minister, who was accused of awarding the asset to himself. Years later, foreign companies purchased the block from the Nigerian government, which transferred \$801.5 million to Malabu. Legal disputes over the ownership of these funds ensued, leading to \$215 million being restrained by the U.K. Commercial Court. After Malabu failed to respond to the proceedings, the U.K. judge ruled in favor of Nigeria, authorizing the release of \$85 million from these funds.

h) Prior Conviction Requirement

Survey Question 9

- *Does your country require a previous criminal sentence affirming the commission of a corrupt act before granting property ownership, compensation, or damages in a civil claim based on the same facts?*
- *Where the success of any civil claim is contingent upon a prior criminal conviction, please provide details on the relationship between the two. Does one take precedence over the other, and is there any suspension of the civil proceeding?*

23. Thirteen countries¹⁰⁴ report that their legal systems do not require a prior criminal conviction to recognize property ownership or award damages or compensation to a foreign state in connection with corrupt acts. However, two of these countries¹⁰⁵ specify that a finding of criminal liability is required if the civil claims are brought within criminal proceedings.

24. Additionally, two of these respondents¹⁰⁶ note that civil proceedings may be stayed while a related criminal case is pending and that certain findings and judgments reached in criminal court may be binding in civil court in order to avoid inconsistent rulings (e.g., material findings of fact or affirmative defenses such as self-defense, necessity, and legality of the conduct). In one of them,¹⁰⁷ however, the civil case may proceed where the underlying claim only requires proof of ownership over a confiscated asset and criminal liability is therefore immaterial.

25. By contrast, six countries¹⁰⁸ report that their laws require a prior conviction before civil claims can proceed, for reasons including avoiding uncertainty and inconsistent rulings. Of these, two respondents¹⁰⁹ specify that while criminal proceedings take precedence, civil claims may still proceed independently of the criminal case under certain exceptional circumstances (e.g., strict liability cases, urgency, risk of asset dissipation) or where liability

¹⁰⁴ Ten G20 countries and three guest countries. Two additional G20 countries answered the binary part of this question in the affirmative but their overall responses to the questionnaire indicate that these remedies are not available to foreign states.

¹⁰⁵ Two G20 countries.

¹⁰⁶ Two G20 countries.

¹⁰⁷ One G20 country.

¹⁰⁸ Three G20 countries and three guest countries.

¹⁰⁹ One G20 country and one guest country.

exceptions apply (e.g., expiration of the statute of limitations, amnesty, settlement, or mental illness).

i) Civil Forfeiture

Survey Question 10

- *Does your country allow for civil forfeiture?*

26. Fourteen countries¹¹⁰ report that their legal systems permit civil forfeiture, with some variations in the specific conditions and requirements for its use. However, five of these respondents either explicitly note or appear to suggest that this remedy is not available to foreign states.¹¹¹

27. By contrast, seven other countries¹¹² report that their legal frameworks do not provide for civil forfeiture at all. One of these respondents¹¹³ notes that legislation has been proposed to regulate this remedy and that it is currently under consideration.

Box 4: Civil Forfeiture Case Example

Foreign Enforcement of Non-Conviction Based Asset Forfeiture¹¹⁴

The U.S. successfully used non-conviction based civil asset forfeiture to recover funds embezzled by a former Nigerian president, which had been laundered through U.S. accounts and transferred to financial institutions abroad. The U.S. filed a forfeiture complaint targeting \$625 million, including \$311.8 million in the Bailiwick of Jersey, \$144 million in France, and \$27 million in the U.K. After litigation, \$480 million of these assets were forfeited. Jersey courts enforced the U.S. court order, leading to the forfeiture of \$311.7 million, which was returned to Nigeria under an agreement between the U.S., Jersey, and Nigeria. The U.K. enforced the U.S. order against \$27 million, while proceedings over \$144 million in France and other funds remain ongoing.

j) Comparison between Direct Recovery and Mutual Legal Assistance

Survey Question 11

- *What are the advantages or disadvantages for a foreign State in pursuing civil litigation instead of MLA in your country?*

¹¹⁰ Eleven G20 countries and three guest countries. One of these G20 countries answered this question in the affirmative but provided explanations that appear to relate to statute of limitations provisions.

¹¹¹ Four G20 countries and one guest country.

¹¹² Four G20 countries and three guest countries.

¹¹³ One guest country.

¹¹⁴ StAR Asset Recovery Watch Database, *Abacha US civil forfeiture case - Doraville Properties Corporation (Jersey/United States/Nigeria)* (ARW-563), <https://star.worldbank.org/asset-recovery-watch-database/abacha-us-civil-forfeiture-case-doraville-properties-corporation>.

28. Respondents highlight a range of perspectives on the advantages and disadvantages of civil litigation versus mutual legal assistance (MLA) for foreign states seeking to recover assets related to corruption. Generally, countries observe that the choice between these two avenues should depend on the specific circumstances, objectives, and nature of the case.

i. Applicability and Scope

29. Some respondents¹¹⁵ report that DRA through civil proceedings may offer broader applicability compared to MLA. Specifically, civil action may allow foreign states to target a wider range of parties, including banks and facilitators, and pursue claims based on various legal grounds or causes of action. Furthermore, some respondents¹¹⁶ note that civil litigation may provide an avenue in cases where MLA conditions are not satisfied (e.g., absence of cooperation treaty, failure to meet dual criminality requirements) or where non-conviction based forfeiture is not feasible because the requesting state was unable to secure an enforceable asset recovery order (e.g., incomplete criminal confiscation proceedings).

30. Conversely, one respondent¹¹⁷ observes that the scope of asset recovery may be broader via MLA. Depending on the jurisdiction, DRA may be limited to civil claims for damages caused by the corrupt act, whereas criminal proceedings may result in the confiscation of both proceeds and instrumentalities of crime.

ii. Evidentiary Standards and Burden of Proof

31. Several respondents¹¹⁸ emphasize the difference in evidentiary standards and burden of proof between DRA through civil litigation and MLA. As these countries report, civil cases generally have a lower standard of proof compared to criminal proceedings, making it easier for foreign states to secure provisional measures and favorable judgments. Additionally, some jurisdictions¹¹⁹ report that foreign states are not always required to prove that a crime has occurred, which simplifies the asset recovery process through civil litigation. However, other countries¹²⁰ highlight that civil cases can still require establishing certain criminal facts or ownership claims, which can present significant hurdles to plaintiffs litigating abroad. In contrast, pursuing MLA may eliminate the need for this burden of proof, especially in cases where the requesting state already has a confiscation order.

iii. Evidence Gathering

32. Respondents also emphasize differences in fact-finding and evidence-gathering capabilities between DRA and MLA. Several countries¹²¹ stress that MLA provides requesting states with access to more robust investigative powers and procedures that are unavailable in DRA through civil litigation. This includes tools like financial intelligence, search warrants, production orders, and other coercive measures facilitated by the requested state, which can

¹¹⁵ Two G20 countries.

¹¹⁶ Two G20 countries.

¹¹⁷ One G20 country.

¹¹⁸ Three G20 countries and one guest country.

¹¹⁹ Three G20 countries and one guest country.

¹²⁰ Two G20 countries.

¹²¹ Three G20 countries and one guest country.

strengthen a case and expedite asset recovery. In contrast, DRA through civil litigation often requires reliance on less powerful tools such as discovery or subpoenas.

Box 5: Evidence Gathering and Disclosure¹²²

*In building a civil case, countries can seek to collect evidence in foreign jurisdictions under international cooperation treaties in civil matters, including the Hague conventions. Additionally, disclosure rules in civil proceedings may impose obligations on both parties and third parties to produce relevant documents and evidence, with specific conditions varying by jurisdiction. In civil law countries, disclosure is often court-ordered, and applications can be made without any formality. In common law countries, parties are required to disclose all relevant documents to their opponents, and they can also petition the court for the disclosure of third-party documents and, in some cases, the identity of wrongdoers (e.g., in the U.K, see *Norwich Pharmacal Co. v. Customs & Excise Commissioners* (1974)).*

iv. Relative Cost

33. Several respondents¹²³ note that MLA is generally the most cost-effective option for asset recovery. In these jurisdictions, DRA may be resource-intensive, involving expenses relating to legal representation, court administration, depositions, expert witnesses, among others, as well as the potential costs associated with enforcing civil judgments in subsequent proceedings. By contrast, MLA requests are typically handled through official government channels, with most costs shouldered by the requested state.

v. Efficiency, Simplicity of Process and Transparency

34. Respondents also highlight the relative efficiencies and inefficiencies of DRA compared to MLA. Several respondents¹²⁴ note that DRA proceedings allow foreign states to assert their rights and interests independently, without the need for MLA protocols, administrative channels, or the cooperation of the requested state. This offers foreign states more control over their claims, including direct access to case files and the ability to manage the proceedings according to their own objectives and timelines. Additionally, DRA through civil litigation is often seen as faster and more flexible than MLA.¹²⁵ It involves fewer procedural steps, which can expedite resolution, especially in time-sensitive cases. For instance, foreign states can initiate actions and seek urgent provisional measures to preserve assets or prevent their dissipation without the need for MLA approvals. In addition, civil matters are typically subject to more flexible due process standards, allowing litigation to proceed in situations that may be more challenging in a criminal context—for example, where defendants are deliberately evading the legal process.

35. In contrast, some countries¹²⁶ observe that the relative formality and structured framework of MLA requests may provide more certainty and clarity throughout the asset recovery process. For example, requesting states can leverage established channels between central authorities and law enforcement agencies, allowing for efficient coordination and swift action. This is seen as particularly beneficial in urgent matters, where MLA offers a clear path

¹²² BRUN, *supra* note 68, at 275, 298.

¹²³ Three G20 countries and one guest country.

¹²⁴ Two G20 countries and two guest countries.

¹²⁵ Two G20 countries and one guest country.

¹²⁶ Three G20 countries and two guest countries.

for executing freezing, seizure, or confiscation orders. On the other hand, DRA through civil litigation can be perceived as less straightforward,¹²⁷ with foreign states often being required to appoint legal representatives abroad and navigate complex procedural and substantive issues that would not arise in a criminal context, such as jurisdictional challenges, parallel proceedings, *forum non conveniens*, or conflict of laws at the enforcement stage.

36. One country¹²⁸ observes that MLA may offer advantages in terms of transparency. Given the requested jurisdiction's necessary involvement in return, the MLA process can bring more transparency, where those returns are made public. In direct recovery, the returns stemming from judicial decisions are not typically publicized, in particular by the country of asset location.

vi. Effectiveness and Legal Risk

37. Respondents provided diverse views on the relative effectiveness and risks of DRA versus MLA. One country¹²⁹ emphasizes that DRA through civil litigation may be more effective in preserving and protecting assets from dissipation, as it allows foreign states to request provisional measures more promptly and directly. This approach is also seen as more reliable for recovering assets in multiple jurisdictions, since civil decisions are often recognized and enforced more easily by other states than criminal judgments. Some countries¹³⁰ also observe that DRA through civil litigation may result in the recovery of a greater total sum in favor of the foreign state. For instance, in jurisdictions where establishing criminal liability is not required, the broader scope of available civil claims and causes of action may enable the foreign state to reach a larger pool of recoverable assets. Additionally, through DRA, foreign states are not required to share a percentage of the recovered assets with the adjudicating state, which is often a default arrangement in MLA requests.

38. In contrast, other respondents¹³¹ observe that MLA is generally more effective and can offer a higher likelihood of success compared to DRA. Another key advantage highlighted¹³² is the reduced legal exposure for foreign states. In DRA, foreign states may need to waive sovereign immunity, exposing themselves to counterclaims—including potential liability for attorney fees and other legal costs—as well as tax obligations.

B. Representation of States before Foreign Courts

a) Authority to Pursue Claims before Foreign Courts

Survey Question 12

- *Is there a specific agency or authority that has the competency to bring civil claims on behalf of your state before foreign jurisdictions?*

¹²⁷ Two G20 countries and one guest country.

¹²⁸ One G20 country.

¹²⁹ One G20 country.

¹³⁰ Two guest countries.

¹³¹ Two G20 countries and one guest country.

¹³² One G20 country.

- *If YES, please provide the body's name and contact information. Also, if YES, can this body function as a focal point for DRA or provide information about domestic law to a requesting counterpart?*

39. Seven countries report the presence of a specific agency or authority with powers to bring civil claims on behalf of the state before foreign jurisdictions, such as the Ministry of Justice, Attorney-General's Office, or State Treasury Solicitor's Office.¹³³ Two of these respondents¹³⁴ specify that these agencies can function as a focal point for direct asset recovery in their own jurisdiction and provide relevant information to foreign states.

40. By contrast, thirteen countries¹³⁵ report the absence of such specific agencies or authorities. Some of these respondents¹³⁶ indicate alternative mechanisms for pursuing civil claims abroad, including by hiring local counsel through diplomatic representatives or state attorneys.

b) Domestic Requirements to Pursue Claims before Foreign Courts

Survey Question 13

- *According to your domestic legislation, is any specific act necessary to enable your state to bring a civil claim before a foreign court? (more than one option can be checked).*
 - o *Hiring of legal representation/counsel abroad.*
 - o *Special authorization by a specific authority.*
 - o *Consider using MLA.*
 - o *Other.*
- *If YES to any option, please provide more details.*

41. Few respondents indicate that their designated representatives must engage local counsel to pursue civil claims abroad (five countries),¹³⁷ obtain specific authorization for such purposes (five countries),¹³⁸ or consider using MLA before resorting to DRA (three countries).¹³⁹ Conversely, ten countries¹⁴⁰ report that no such requirements apply in their jurisdictions.

¹³³ Specifically, Argentina (*Procurador del Tesoro de la Nación*), Brazil (*Advocacia-Geral da União*), Italy (Directorate-General for International Affairs and Judicial Cooperation Office for International Judicial Cooperation), Nigeria (Federal Ministry of Justice), Russia (Ministry of Justice), South Africa (Department of International Relations and Cooperation), and United States (Department of Justice's Office of Foreign Litigation).

¹³⁴ Brazil and Nigeria.

¹³⁵ Eight G20 countries and five guest countries.

¹³⁶ One G20 country and one guest country.

¹³⁷ Four G20 countries and one guest country.

¹³⁸ Four G20 countries and one guest country.

¹³⁹ Two G20 countries and one guest country.

¹⁴⁰ Six G20 countries and four guest countries.



Annex I: Relevant Precedent

42. This annex presents a summary of relevant cases referenced in the survey to illustrate instances where foreign states have pursued civil recovery in the jurisdictions of responding countries, or where respondent countries have sought to pursue such remedies in foreign courts. These cases highlight the varied approaches to direct asset recovery and the legal frameworks that facilitate or challenge these efforts.

- **Damages for Embezzlement and Corruption**: In France, several foreign states have filed civil actions against high-ranking officials, including ministers and heads of government. For instance, the Republic of Uzbekistan was awarded damages in civil proceedings against companies that embezzled funds for the benefit of the former Uzbek president's daughter.
- **Recovery of Proceeds of Corruption**: The Singapore High Court recognized the Philippine National Bank (PNB) as holding legal title to funds to which there were competing claims. These funds, alleged to be ill-gotten gains accumulated by a former Philippine president, were originally frozen in Switzerland and placed in escrow with PNB, which transferred them to a Singapore bank account. When the Philippine Supreme Court ordered the funds to be forfeited to the Philippines, PNB instructed the Singapore bank to release the funds to it. The Singapore bank did not do so, as it had received competing claims to the funds. The Singapore bank thus initiated interpleader proceedings in the Singapore High Court. The Philippines applied to be added as a party to the proceedings, and the Singapore High Court held that PNB held legal title to the funds. This was affirmed on appeal.
- **Recovery of Proceeds of Fraud**: Brazil recovered assets from officials who concealed proceeds abroad, including \$14 million through U.S. proceedings against a state attorney involved in social security fraud, and \$4.8 million and \$16.3 million through Swiss proceedings against a judge involved in procurement fraud and a former São Paulo mayor who embezzled city funds, respectively.
- **Recovery of Stolen Artwork**: In the U.S., the Republic of the Philippines filed a lawsuit in U.S. federal court to recover a Picasso painting stolen from its New York office, which resurfaced at the auction house Christie's. The painting was consigned to Christie's by an unidentified party, and the auction house refused to release it until the issue of ownership was resolved.
- **Default Order for Restitution (Defendant *In Absentia*)**: In civil proceedings, a U.K. court ordered the release of \$85 million to the Nigerian government in connection with the corrupt sale of an offshore oil block. The block had originally been awarded to Malabu, a company linked to a former Nigerian oil minister, who was accused of awarding the asset to himself. Years later, foreign companies purchased the block from the Nigerian government, which transferred \$801.5 million to Malabu. Legal disputes over the ownership of these funds ensued, leading to \$215 million being restrained by the U.K. Commercial Court. After Malabu failed to respond to the proceedings, the

U.K. judge ruled in favor of Nigeria, authorizing the release of \$85 million from these funds.

- **Restitution for State-Owned Enterprises:** The Bank of China sued its former managers, their corporate vehicles, and co-conspirators in Hong Kong, the U.S., Canada, and Switzerland, recovering RMB 1.4 billion in illegally transferred funds. In a separate case, the Agricultural Bank of China filed a civil action in the U.K. to claim ownership of fraudulent standby letters of credit, which had been transferred to the US by criminals and seized by U.K. authorities. The court awarded the bank more than \$9 billion as restitution.

Annex II: Relevant Laws and Provisions

43. This annex compiles the relevant authorities referenced by respondents in their questionnaires. The first section contains a summary chart presenting which countries included this information in response to each question. The second section lists the specific laws and provisions cited, organized by survey question. This compilation aims to facilitate further discussions and comparative analysis of the diverse frameworks applicable to participating jurisdictions.

A. Overview

Country	Survey Question												
	1	2	3	4	5	6	7	8	9	10	11	12	13
ARG	✓	✓	✓	✓	✓	✓	✓	-	✓	-	-	-	✓
AUS	✓	-	✓	✓	-	-	-	-	-	✓	✓	-	-
BRA	✓	✓	✓	✓	-	-	-	-	✓	✓	-	-	-
CAN	✓	✓	✓	✓	-	-	-	-	-	-	-	-	-
CHI	-	-	✓	✓	✓	✓	✓	-	-	-	-	-	-
FRA	-	✓	✓	✓	✓	✓	-	-	✓	-	-	-	-
GER	✓	✓	✓	-	-	-	-	-	-	-	-	-	-
IDN	-	-	✓	-	✓	✓	-	-	✓	-	-	-	-
ITA	✓	✓	✓	✓	✓	-	-	✓	✓	-	-	-	-
JPN	✓	✓	✓	✓	✓	-	-	-	-	-	-	-	-
KOR	-	-	✓	-	-	-	-	-	-	-	-	-	-
NLD	-	-	-	-	-	-	-	-	-	-	-	-	-
NGA	-	✓	✓	✓	✓	-	-	-	-	✓	-	-	-
NOR	✓	✓	✓	-	✓	✓	✓	-	-	-	-	-	-
RUS	✓	✓	✓	✓	✓	-	-	✓	-	-	-	✓	-
SAU	✓	✓	✓	✓	✓	✓	✓	-	-	✓	-	-	-
SGP	✓	✓	✓	✓	✓	✓	-	✓	-	✓	-	-	-
ZAF	✓	✓	✓	✓	✓	✓	-	-	-	-	✓	-	-
ESP	✓	✓	✓	✓	-	-	-	-	-	-	-	-	-
CHE	✓	-	✓	✓	✓	-	✓	-	✓	-	-	-	-

GBR	-	-	-	-	-	-	-	-	-	-	-	-	-
USA	-	✓	✓	-	✓	-	-	-	-	-	-	-	-

B. Laws and Provisions Cited

- **Survey Question 1**

Argentina	National Civil and Commercial Code (arts. 146, 1716, 1737, 1740, 1772); National Code of Criminal Procedure (arts. 14-17, 87-96); Law No. 48; Decree Law 1285/58 (art. 24, para. 1)
Australia	Mutual Assistance in Criminal Matters Act 1987; Proceeds of Crime Act 2002
Brazil	Civil Code (arts. 43, 148, 149, 186-188, 389, 884, 885, 927-943)
Canada	Civil Code of Quebec
Germany	Code of Civil Procedure (s. 50)
Italy	Criminal Code (art. 185)
Japan	Code of Civil Procedure
Norway	Dispute Act (s. 2-1, para. 1, alt. b)
Russia	Constitution (arts. 35, 62); Criminal Procedure Code (ch. 55.1); Civil Procedure Code (ch. 45; arts. 209, 417); Arbitration Procedure Code (ch. 31); Federal Law No. 297-FZ (art. 17); Federal Law No. 382-FZ
S. Arabia	Law of Procedure before Sharia Courts (arts. 16, 23-26); Basic Law on Governance (art. 47); Criminal Procedure Law (arts. 16, 23, 147); Implementing Regulations of the Criminal Procedure Law (arts. 3, 103); Decree No. 62/1426 H)
Singapore	Prevention of Corruption Act 1960 (ss. 14(1), 14(2))
S. Africa	Superior Courts Act (s. 21), Constitution (s. 173)
Spain	Civil Code
Switzerland	Code of Civil Procedure (CPC RS 272) (arts. 64, 84-90)

- **Survey Question 2**

Argentina	Criminal Code (arts. 29, 30)
Brazil	Civil Code (arts. 186-188; IX, chs. I-II)
Canada	Civil Code (ss. 730, 737.1(1))
France	Code of Criminal Procedure (arts. 2, 3, 4, 706-164); Law No. 2014-1
Germany	Civil Code (ss. 823, 826)
Italy	Criminal Code (art. 185)
Japan	Civil Code
Nigeria	ICPC Act (s. 48); EFCC Act (ss. 20-22); Criminal Code Act (ss. 113-117); Criminal Justice Act 2015 (s. 314)
Norway	Act on Compensation for Damages (s.1-6); Penal Code (ss. 387, 389)
Russia	Criminal Procedure Code (arts. 42, 44, 442)
S. Arabia	Riyadh Arab Agreement on Judicial Cooperation (art. 4); Criminal Procedure Law (art. 147)

Singapore	Criminal Procedure Code 2010 (s. 359); Penal Code 1871 (ss. 406, 407, 408, 409, 417, 419, 420); Prevention of Corruption Act 1960 (ss. 5, 6)
S. Africa	Criminal Procedure Act (ss. 297, 300(1), 301)
Spain	Criminal Code (arts. 109-122, 126, 127); Mutual Recognition Law
US	18 U.S. Code § 3663A

- **Survey Question 3**

Argentina	Criminal Code (arts. 23, 29, 30)
Australia	Proceeds of Crime Act 2002
Brazil	Penal Procedure Code (arts. 91, 63, 513, 515; VI; 268-273)
Canada	Criminal Code (XII.2, ss. 462.37, 462.43, 490(5)(9)); Mutual Legal Assistance in Criminal Matters Act
China	Criminal Procedure Law (arts. 101, 298-300); Provisions of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of the Confiscation Procedures for Illegal Proceeds in a Case Where a Criminal Suspect or Defendant Escapes or Dies (art. 12); Law on International Criminal Judicial Assistance (art. 20); Law on Foreign State Immunity (art. 17)
France	Code of Criminal Procedure (arts. 706-164)
Germany	Code of Criminal Procedure (ss. 111, 373b, 403, 406,)
Indonesia	Law No. 1/2006
Italy	Civil Procedure Code (art. 75); Criminal Procedure Code (art. 74 <i>et seq.</i>)
Japan	Act on Emergency Measures on Criminal Procedure to Confiscate Items Owned by Third Parties
Korea	Act on Special Cases Concerning Expedition of Legal Proceedings (arts. 25, 25-2, 26)
Nigeria	Administration of Criminal Justice Act 2015 (ss. 319-320)
Norway	Criminal Procedure Act (ss. 427, 428); Criminal Act (s. 74)
Russia	Criminal Procedure Code (arts. 42, 44, 442)
S. Arabia	Criminal Procedure Law (arts. 16, 63, 64, 124, 149, 152, 180, 183, 192, 198); Implementing Regulations of the Criminal Procedure Law (art. 132); Procedures Manual for Legal Assistance and Recovery of Assets (art. 11)
Singapore	Criminal Procedure Code 2010 (s. 359); Penal Code 1871 (ss. 406, 407, 408, 409, 417, 419, 420); Prevention of Corruption Act 1960 (ss. 5, 6, 14(1), 14(2))
S. Africa	Prevention of Organised Crime Act (chs. 5, 6; ss. 24(4), 26(10), 29(6), 30(3)(4)(5), 35, 36, 38(1)(2), 39(3), 48(1)(2)(4), 52(1), 54(1))
Spain	Criminal Procedural Law (arts. 100-117)
Switzerland	Code of Criminal Procedure (art. 122, para. 1); Penal Code (70 al. 1)
US	18 U.S.C. §§ 981-983; Federal Rule of Criminal Procedure s. 32.2(c)

- **Survey Question 4**

Argentina	National Civil and Commercial Code (arts. 146, 1716, 1737, 1738, 1740, 1722); National Criminal Procedure Code (arts. 14-17, 89, 90, 93, 330); National Constitution arts. 116-117); National Criminal Procedure Code (arts. 14-17, 87-96); Law No. 48; Decree-Law No. 1285/58 (art. 24, para. 1)
Australia	Proceeds of Crime Act 2002 (s. 297) Criminal Matters Act 1987
Brazil	Civil Procedure Code (arts. 294-311).
Canada	Criminal Code (ss. 2, 715.34(1)(g), 738(1))
China	Civil Procedure Law (arts. 13, 67, 122); Civil Code (arts. 179, 238)
France	Civil Code art. 1231-1, 1240)
Italy	Criminal Code (art. 185)
Japan	Civil Code (arts. 415(1), 416(1), 709)
Nigeria	Criminal Justice Act 2015 (s. 321)
Russia	Criminal Procedure Code (art. 42)
S. Arabia	Criminal Procedure Law (arts. 69, 147, 153); Civil Transactions Law (arts. 119, 120, 136-141, 143); Procedures Manual for Legal Assistance and Recovery of Assets (arts. 10-11)
Singapore	Prevention of Corruption Act 1960 (s. 14(1)); Criminal Procedure Code 2010 (s. 359)
S. Africa	Superior Courts Act (s. 30), Uniform Rules of Court (18)
Spain	Criminal Code (arts. 110-113)
Switzerland	Code of Obligations (arts. 41; 97 <i>et seq.</i> ; 127 <i>et seq.</i>); Criminal Code (art. 322ter <i>et seq.</i>)

- **Survey Question 5**

Argentina	National Civil and Commercial Procedure Code (arts. 195-208, 209-233)
China	Civil Procedure Law (chs. 9, 21; arts. 103, 106); Criminal Procedure Law (art. 102); Application of the Criminal Procedure Law (2021) (art. 189)
France	Code of Civil Enforcement Procedures arts. L. 511-1, L. 511-4, L. 521-1, L. 531-1, R. 511-7)
Indonesia	Indonesian Civil Code (art. 1131)
Italy	Code of Civil Procedure (arts. 670, 700)
Japan	Civil Provisional Remedies Act (art. 20(1))
Nigeria	Administration of Criminal Justice Act 2015 (331. (1))
Norway	Dispute Act (chs. 32, 33)
Russia	Civil Procedure Code (art. 140)
S. Arabia	Law of Procedure before Sharia Courts (arts. 29, 83, 206); Enforcement Law by Royal Decree No. M/53 (art. 46)
Singapore	Rules of Court 2021 (ord. 13)
S. Africa	Prevention of Organised Crime Act (chs. 5, 6; ss. 13, 37, 38)
Switzerland	Civil Procedure Code (arts. 261, 262); Code of Obligations (art. 168, para. 2)
US	Federal Rules of Civil Procedure (VIII)

- **Survey Question 6**

Argentina	Civil Commercial Procedure Code (art. 56); National Constitution (art. 120)
China	Civil Procedure Law (art. 274)
France	Code of Judicial Organization (art. L. 213-6); Code of Civil Enforcement Procedure (arts. L. 121-4, L. 511-3, R. 121-6); Code of Civil Procedure (art. 760)
Indonesia	Law No. 18/2003 (art. 23)
Norway	Dispute Act (s. 3-3 no. 5)
S. Arabia	Code of Law Practice (art. 3)
Singapore	State Immunity Act 1979 (s. 4(7))
S. Africa	Legal Practice Act (ss. 24, 25)

- **Survey Question 7**

Argentina	Civil and Commercial Code of the Nation (arts. 146, 1716, 1737, 1739, 1740, 1744, 1772); National Code of Criminal Procedure (arts. 14-17)
China	Civil procedure Law (arts. 13, 67, 122); Interpretation by the Supreme People's Court Regarding the Application of the Criminal Procedure Law of the PRC (2021) (arts. 182, 184, 188)
Norway	Criminal Procedure Act (s. 427)
S. Arabia	Law of Procedure before Sharia Courts
Switzerland	Code of Criminal Procedure (art. 122 para. 1)

- **Survey Question 8**

Italy	<i>Civil Procedure Code (art. 75); Criminal Procedure Code (art. 74)</i>
Russia	Federal Law No. 299 FZ (2007)
Singapore	State Immunity Act (Cap. 313, 1985 Rev. Ed.) (s. 3)

- **Survey Question 9**

Argentina	National Civil and Commercial Code (art. 1775)
Brazil	Penal Procedure Code (arts. 64, 65, 66); Civil Code (art. 935); Civil Procedure Code (art. 315)
France	Code of Civil Procedure (arts. 4, paras. 2-3; 41-1; 99-2; 420-1, 420-2, 478-482; 706-144; 706-164; 713-36 to 713-46); Civil Code for Immovable Property (art. 2272); Civil Code for Movable Property (art. 2276); Law No. 2010-768; Criminal Code (art. 131-21, para. 10); General Code of Public Property (art. L. 1124-1); Law No. 2012-409; Law of 4 August 2021
Indonesia	Law No. 31/1999 as amended by Law 20/2001 (arts. 25, 32-34, 38c)
Italy	Code of Criminal Procedure (arts. 74 <i>et seq.</i> , 538, 5787)
Switzerland	Criminal Procedure Code (arts. 24(1), 124(1), 126(1)(a), 126(2)(b)(d)-(4))

- **Survey Question 10**

Australia	Proceeds of Crime Act 2002
Brazil	Misconduct in Public Office Act (Law No. 8429/1992) (art. 12); Corporate Anti-Corruption Act (Law No. 12426/2013) (art. 19(I), 19(4))
Nigeria	Corrupt Practices and Other Related Offences Act (2000) (ss. 3-19, 48(1)); Economic and Financial Crimes Commission Act 2004 (arts. 20-22, 26)
S. Arabia	Basic Law of Governance (art. 19); Royal Order No. A/277 (s. 9); Oversight and Anti-Corruption Authority (art. 20); Anit-Money Laundering Law (art. 34)
Singapore	Organised Crime Act 2015 (s. 50); Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (s. 30)

- **Survey Question 11**

Australia	Criminal Matters Act 1987; Proceeds of Crime Act 2002
S. Africa	Prevention of Organised Crime Act; International Cooperation in Criminal Matters Act

- **Survey Question 12**

Russia	Criminal Procedure Code (art. 299); Order of the President No. 1799 of 18 December 2008; Federal Law No. 273 FZ (arts. 10, 12-14); Federal Law No. 230-FZ (art. 17); Federal Law No. 2202 I (art. 35); Civil Procedure Code (part 2, para 8)
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- **Survey Question 13**

Argentina	Decree No. 1116/2000 (on Law 25.344) (III, art. 15); Resolution of the National Treasury Procurator's Office No. 106-E/2017
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