EXECUTIVE SUMMARY

1. The international community is well placed to make significant progress in asset recovery. There is broad awareness and acceptance of the role of asset recovery in the fight against corruption. National authorities have made some progress in developing the institutional and legal structures foreseen under the Convention. The international community has put in place institutions such as the World Bank and UNODC Stolen Asset Recovery Initiative and INTERPOL’s Anti-Corruption Office to support national authorities’ asset recovery and anti-corruption programs. Recent commitments by the international community, such as the Leaders’ Statement at the September 2009 G20 Summit, signal continued high level support. They have also encouraged international anti-corruption and anti-money laundering bodies to collaborate more effectively in addressing the risks posed by the laundering of the proceeds of corruption.

2. The challenge going forward is to accelerate the pace of implementation and to translate goodwill into results: to put to use the institutional and legal framework established under UNCAC by bringing asset recovery cases to court, pursuing and achieving successful judgments, and demonstrating the positive development impacts of asset return on governance and citizens’ quality of life. Success stories will help motivate the key actors and sustain high level support (see Recommendation 1).

3. The purpose of this policy note is to explore how the international community and national authorities can meet this challenge. This is a collective international responsibility: asset recovery by its very nature requires the cooperation and collaboration of multiple jurisdictions. But it is also a national responsibility: national authorities will have put UNCAC’s asset recovery provisions to use by initiating and pursuing asset recovery cases if the international system is to deliver results.

4. Building on previous international agreements, UNCAC provides a robust international framework for asset recovery. Continued efforts are needed to extend the coverage of the convention and promote convergence between countries.

5. An effective review process for international asset recovery would serve three purposes. First, it would help assess progress in establishing the legal and institutional capacity for asset recovery at both the national and international level, thereby signaling particular issues that require further attention. Second, it would provide data on the level of asset recovery activity, allowing the international community to determine whether progress is being made at an operational level, in terms of increasing numbers of asset recovery cases and successful returns. Third, it would generate feedback from case law and operational experience and use this information to inform the design of international standards. These functions do not necessarily have to be embodied in a single review mechanism. Indeed, while some elements of these functions may be adopted by UNCAC CoSP, others may be managed through the review mechanisms established to support other international and regional agreements (Recommendation 2).

6. UNCAC lays out a comprehensive framework of legal instruments to support international asset recovery. Traditional approaches to corruption have focused on the crime, the criminal and the conviction. This note advocates a shift to an integrated law enforcement
approach to corruption, whereby the pursuit of the proceeds of corruption is an integral part of each and every corruption case. The development of an adequate legal framework is critical since jurisdictions will not be able pursue asset recovery cases if they have not criminalized corruption offenses or lack forfeiture procedures. At a minimum, countries should be able to undertake criminal forfeiture. Countries are also encouraged to put in place non-conviction based forfeiture and arrangements for civil asset recovery proceedings.

7. The results of the UNCAC self assessment checklist indicate that many countries recognize that have yet to fully implement UNCAC’s asset recovery provisions. These countries consider legislative development as a priority. National authorities will have to take the lead in the design the appropriate legal framework to meet their needs. Technical assistance can facilitate this process by providing advice and information on good practice drawn from international experience (Recommendation 3).

8. An effective asset recovery process requires leadership, collaboration across multiple agencies and clear lines of accountability for results. This can prove difficult where public agencies operate in institutional silos, with distinct priorities and formal communication requirements. Countries have solved these challenges by establishing multi-agency teams, either on a case-by-case basis or as permanent structures dedicated to asset recovery activities (Recommendation 4).

9. The success of the asset recovery process is determined by the quality of the supporting evidence, so the identification and investigation of corruption cases are critical steps in the asset recovery process. However, they are also the weakest links. Interpol’s Anti-Corruption Office is well placed to provide operational support in these areas. The office will establish a global information exchange portal, UMBRA, to facilitate information exchange and analysis on corruption cases at global level, helping to generate leads and support investigations. Interpol’s Incident Response Teams (Corruption) will assist in the operational aspects of gathering evidence, financial analysis and asset tracing, whilst also providing broad strategic advice. The teams will work under the direction of the national authorities and will comprise IACO staff and specialists on assignment from national law enforcement agencies. This note encourages national authorities to support these initiatives (Recommendation 5).

10. Financial centers should take the initiative in detecting and pursuing the proceeds of corruption in their jurisdiction. This requires a more proactive approach to the proceeds of corruption and significant commitment on the part of the financial center. Law enforcement needs to identify areas of risk, pursue leads on specific cases, follow-up in tracing assets and collecting evidence to support prosecution or asset forfeiture in the home jurisdiction or through the courts in the financial center. Again, there is likely to be little progress unless there are clear lines of accountability. The note encourages financial centers to nominate specialists or put together teams with specific responsibility for pursuing proceeds of corruption cases (Recommendation 6).

11. The Leaders’ Statement at the September 2009 Pittsburgh summit called on “the FATF to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership and transparency.” FATF has taken up this challenge. This note highlights a number of measures that would help integrate the anti-corruption and anti-money laundering agendas more effectively and thereby facilitate asset recovery.
12. The AML/CFT assessment methodology can be strengthened by requiring assessors to review risks related to the laundering of domestic and foreign proceeds of corruption. This would focus attention on possible sources of corruption – such as the pillaging of natural resources, embezzlement, and the abuse of public procurement or state owned enterprises – and the mechanisms used to launder the proceeds. Similarly, in financial centers, assessors would be asked to assess the risks that the center is a destination for the proceeds of corruption and, if so, the features that make the jurisdiction attractive for these illicit purposes. These risk assessments would help national authorities identify possible preventive measures.

13. FATF recommendations related to the definition of the designated predicate offenses for money laundering, the treatment of politically exposed persons as high risk customers requiring enhanced due diligence, and the identification of beneficial ownership all merit particular attention. The definition of designated offenses and politically exposed persons can both be strengthened by incorporating elements from UNCAC. FATF mutual evaluations indicate poor compliance against the recommendation dealing with politically exposed persons. A recent StAR policy note on politically exposed persons has made practical recommendations aimed at strengthening implementation. A FATF interpretative note would further clarify implementation issues and ensure more consistent treatment across jurisdictions. Similarly, attention needs to focus on the implementation of FATF recommendations regarding beneficial ownership. FATF can support this process by providing guidance clarifying outstanding technical issues (Recommendation 7).

14. **Inter-agency coordination** on anti-money laundering and anti-corruption issues would enhance national authorities’ ability to detect and investigate corruption-related money laundering. There is little evidence that this coordination is taking place. These coordination issues will have to be addressed if progress is to be made in tackling the proceeds of corruption. This note encourages national authorities to include both the financial intelligence unit and the anti-corruption body in the multi-agency task teams working on proceeds of corruption cases as appropriate. It also proposes that national authorities develop policies targeting the risks related to the laundering of domestic and foreign proceeds of corruption, since this would provide a framework around which agencies can define common priorities and assign roles. UNCAC and FATF can promote this coordination by issuing guidance for national authorities to incorporate anti-corruption bodies in their anti-money laundering structures where appropriate (Recommendation 8).

15. UNCAC Art. 46(1) calls on States Parties “to afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention”. The convention promotes and facilitates **international cooperation** by strengthening key elements of the existing international arrangements. There should be strong incentives for countries to collaborate, since all countries are both requesting and requested parties. Nonetheless, implementation is lagging and there remains room for improvement in the provision of mutual legal assistance to support asset recovery.

16. At a policy level, the goal is to gradually reduce the scope for discretion and focus attention on technical considerations when responding mutual legal assistance. At an operational level, performance of the mutual legal assistance regime can be strengthened by improving the signaling of gateways and addressing management and capacity constraints. There is also potential for expanding the use of systems established for other purposes, such as the Interpol I-24/7 system, and for making greater use informal cooperation, particularly in the preparatory
stages of investigations. International bodies can promote more effective cooperation by developing international standards, guidance and tools supporting streamlined procedures for mutual legal assistance. They can also encourage more extensive use of alternative, informal channels and support the development of informal networks linking practitioners at a regional and international level (Recommendation 9).

17. Taking a broader perspective, the note briefly reviews third party approaches to asset recovery and their implications for the asset recovery regime. These include: transnational criminal approaches, human rights approaches and third party civil litigation. Developments in this area are unlikely to be driven through a negotiated process in the framework of international agreement. Instead, alternative avenues will be opened through the decisions of national authorities, judiciaries and activist litigants. Cases following human rights approaches are currently before national and regional courts.

18. The note concludes with a brief discussion of the role of development assistance and civil society in supporting the goal of more effective, timely asset recovery. The note encourages development agencies to play an active role at home, advocating for improvements in their domestic asset recovery regime and measures to prevent the jurisdiction becoming a destination for the proceeds of corruption. Development agencies can similarly encourage national authorities to exert peer pressure in international bodies to demand the highest standards of other jurisdictions. National law enforcement and specialist international agencies are best placed to assist developing countries’ asset recovery programs. Development financing for these activities will help deliver results in the short term. At the same time, it is important to maintain a long-term, institutional development perspective and integrate the key elements of the anti-money laundering, anti-corruption and law enforcement agendas.

19. Civil society will play an important role in promoting demand, not just for asset recovery but also for institutional reforms in financial centers that will hinder access for corrupt officials and the proceeds of corruption. Civil society is encouraged to take an active role in monitoring the progress made by financial centers and as advocates for reform. Similarly, civil society can play an active role in promoting demand for asset recovery in the developing countries, though it is important to moderate expectations as regards to the timing and scale of possible returns. Strengthening demand is critical to the success of asset recovery agenda since the system can only function when there are cases to pursue.

20. The joint UNODC and World Bank Stolen Asset Recovery Initiative supports this agenda across a broad front. StAR’s work program includes the development of policy analysis and guidance, knowledge products for practitioners, and support to national authorities in launching and implementing their asset recovery programs. The challenge is to translate these activities into results on the ground, in terms of successful asset recovery cases and asset returns. Here the commitment of national authorities in both developing countries and financial centers are critical to success. In this context, the present policy note should be read as a call to action. Conditions are now set for a significant progress in tackling the proceeds of corruption and recovering stolen assets. What is now needed is the will to make it happen.