Asset Recovery in BRICS Countries

Analytical Note

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Content

Introduction

The BRICS countries have acknowledged on numerous occasions that illicit financial flows and ill-gotten wealth moved to foreign jurisdictions are a global challenge that negatively affects economic growth and sustainable development. This is why enhanced cooperation in asset recovery is a long-standing priority for BRICS. Over the years, they have undertaken multiple initiatives in this regard, including the discussion of an Expert Network on Asset Recovery in 2018, 2023 and 2024, the expert meeting on asset recovery in 2019, and the Initiative on Denial of Safe Haven to Corruption in 2022.

Despite the progress countries have made in the area, new challenges emerge also due to the transnational character of corruption and other economic crimes and associated illicit financial flows. According to some estimates[1], only one per cent of proceeds of crime are recovered. This indicates that the existing mechanisms are not effective enough, and more robust instruments are needed to assist countries in the identification, disruption, prevention of and fight against the transfer of illicit property. In this context, the upcoming special session of the Conference of the States Parties to the United Nations Convention against Corruption to be tentatively held after 2026 may be an important occasion to explore all possible ways for improving the existing international asset recovery frameworks. The BRICS countries are therefore encouraged to consider defining common challenges in asset recovery and identifying ways for eliminating the existing barriers.

In this context, the BRICS Anti-Corruption Working Group (ACWG) has decided to prepare the present analytical note focused on the most essential issues of domestic and international processes associated with asset recovery. It is aimed at providing an overview of the domestic regulations on and the organisational setting for asset recovery in BRICS countries to deepen their mutual knowledge and understanding, exploring the scope of their participation in international cooperation, identifying associated good practices and challenges and putting forward suggestions on how to address them.

The information for the present note was gathered through a dedicated questionnaire (annexed) prepared, agreed upon by consensus by all delegations and circulated by the Russian Presidency in the ACWG which BRICS countries completed on a voluntary basis between April and September 2024. The full returns provided by the countries are also contained in the annex. The following analysis illustrated by multiple examples from BRICS countries provides background to the document entitled “Enhanced Anti-Corruption Cooperation and Recovery and Return of Assets and Proceeds of Corruption: BRICS Common Vision and Joint Action” the ACWG adopted in 2024 and can be referred to with the purpose to enrich further discussions of the subject matter in the Group.

[1] See, for instance, Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes, Research Report, available at: https://bit.ly/4d8rixA.

Domestic legal frameworks

BRICS countries have well-established domestic anti-money laundering and terrorist financing (AML/CFT) systems. They have dedicated laws in place to regulate the interactions between citizens, legal entities, obliged entities (financial institutions and designated non-financial businesses and professions), as well as public authorities and organizations which are part of the AML/CFT system from the legal standpoint. These include Law No. 9,613/1998 of Brazil, Anti-Money Laundering Law of the People's Republic of China, Anti-Money Laundering Law No. 80 of 2002 of Egypt and its Central Bank's regulations establishing the rules and providing guidelines for financial institutions, Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 of Ethiopia, 2002 Prevention of Money Laundering Act of India, 2006 Anti-Money-Laundering Act (amended in 2019) and Combating the Financing of Terrorism Act (amended in 2018) and 2019 Executive Regulations of the Islamic Republic of Iran, Federal Law of 2001 No. 115-FZ on Countering Legalization (Laundering) of Proceeds of Crime and Financing of Terrorism of Russia, and 2001 Financial Intelligence Centre Act of South Africa. A wide range of crimes, including corruption-related ones, can be considered as predicate offences to money-laundering involving any type of property directly or indirectly proceeding from criminal activities regardless of its value.

Ethiopia stresses that its domestic legislation on prevention of money laundering and asset recovery is being improved and is now under consideration in Parliament. The Iranian National Focal Point of the UN Convention against Corruption (UNCAC), in cooperation with other stakeholders, is revising and updating the laws and regulations against the financing of terrorism, *inter alia*, with a view to promoting the effectiveness and efficiency of asset recovery measures.

BRICS countries are also parties to the major international conventions providing for anti-money laundering and asset recovery mechanisms, including the United Nations Conventions against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Transnational Organized Crime, and Corruption. In line with the aforementioned treaties, the States have criminalised money laundering. Their domestic legislation envisages criminal, administrative and civil liability of natural and legal persons. The relevant provisions include article 1 (money laundering) of Brazil's Law No. 9,613/1998, articles 191 and 312 of the Criminal Code of the People's Republic of China, article 29 of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No. 780/2013 of Ethiopia, Section 3 (money laundering) of the Prevention of Money Laundering Act of India, articles 174 (legalization (laundering) of money or other property that are proceeds of crime acquired by third parties), 174.1 (legalization (laundering) of money or other property acquired by a person as a result of a crime) and 175 (acquisition or disposal of property knowingly acquired through commission of a crime) of the Criminal Code of the Russian Federation, and article 15.27.3 (transactions or financial operations with the property that is proceeds of crime in the interest of a legal person) of the Code of Administrative Offences of the Russian Federation, and articles 4 (money laundering) and 5 (assisting others in benefiting from proceeds of unlawful activities) of the Prevention of Organised Crime Act of South Africa.

In spite of the fact that virtual assets pose high money laundering risks also associated with corruption offences, some countries lack regulation of their use. At the same time, there is a need to adequately protect the rights of victims. Some BRICS countries have actually accumulated relevant judicial practice in this regard.

In Russia, virtual assets are recognized as property for the purposes of the AML/CFT and anti-corruption legislation and enforcement proceedings. The Supreme Court of the Russian Federation confirmed the admissibility of qualifying the conversion of criminally acquired virtual assets into non-cash funds using third-party accounts as laundering (legalization) in 2023. Some BRICS countries do not recognise virtual assets as property for the purposes of criminal legislation, but the terms "property" or "other property" can be interpreted broadly enough to cover any type of assets, including virtual ones, which is the case of relevant laws in Brazil and India. In article 1 of Anti-Money Laundering Law No. 80 of 2002 Egypt recognizes virtual assets as a type of money, which means that the rules for tracing, seizing and confiscating money are equally applicable to virtual assets.

The Supreme Court of China acknowledges that with the widespread use of Internet technologies, the number of criminal cases involving money laundering also with the use of virtual assets is rapidly growing with the methods getting ever more sophisticated. In order to step up the efforts to protect China's financial system and interests, the Supreme People's Court in collaboration with the Supreme People's Procuratorate of China issued a judicial interpretation effective from 20 August 2024 that clarifies the circumstances under which money laundering offenses are considered as "serious" and subject to harsher penalties. Additionally, judges are to focus on cases involving digital platforms and impose severe punishment on offenders. As per this new interpretation, a person who repeatedly launders money and handles amounts exceeding CNY 5,000,000 will be deemed to have committed a "serious" offense and could face imprisonment of up to ten years. Those who refuse to cooperate with property recovery efforts or cause losses exceeding CNY 2,500,000 will also be subject to a more severe punishment[2].

In order to improve the national system and to increase the effectiveness of confiscation (forfeiture) and return of criminal assets, including virtual assets, the National Council of Prosecutors' Offices of Brazil adopted Resolution No. 288/2024. The act regulates the actions of the Prosecutor's Office staff under the procedures related to seizure, confiscation (forfeiture) and return of virtual assets. Confiscation of virtual assets is carried out on the basis of a court decision, followed by the use of information and communication technologies and technical means, since control over the private keys of virtual assets is directly held by virtual asset service providers as per Law No. 14,478/22.

BRICS have both conviction and non-conviction-based confiscation mechanisms, with the latter in some countries being subject to the fundamental principles of their legal systems. In China, India, South Africa and Russia, these mechanisms are used also with regard to the assets the value of which cannot be explained in relation to the lawful income of a public official. In Russia, such assets can be confiscated also under civil proceedings following a lawsuit initiated by prosecution. In South Africa, national legislation provides for both criminal and civil confiscation of assets: according to Chapter 6 of the Prevention of Organised Crime Act 121 of 1998, confiscation of proceeds of illegal activities is carried out on the basis of a decree and in the absence of criminal prosecution.

Despite this comprehensive legal regulation of anti-money laundering associated also with corruption and asset recovery, countries note that there is space for further improvement. In particular, the need to timely update relevant domestic legislation so that it would allow for adequately tackling new avenues of crime, for example, involving the use of virtual assets and advanced technologies, is highlighted.

[2] SPC to focus on cyber money laundering, Supreme People's Court of the People's Republic of China: https://bit.ly/3XJNIzU.

Institutional frameworks

The competent authorities of BRICS countries have the appropriate powers to identify, trace, seize, confiscate and return criminal assets. At the same time, there are considerable differences in countries' approaches to determining the domestic competent authorities operating in the recovery of assets also from foreign jurisdictions and their functions.

In accordance with Presidential Decree No. 11.348/2023 the asset recovery functions in Brazil are entrusted with the Department of Assets Recovery and International Legal Cooperation (DRCI) of the Ministry of Justice and Public Security, whereas the management and disposal of assets is addressed by the Judiciary on a case-by-case basis. Brazil has started an initiative within the National Secretary for Policies on Drugs and Asset Management, located within the Ministry of Justice in the Federal Public Administration, to work on such cases, but only at judges' requests in the cases before the Judiciary.

In Ethiopia, it is the Ministry of Justice that performs and coordinates the functions of recovery of proceeds of crimes also from foreign jurisdictions as per article 40(b) of Proclamation No. 1263/2021.

In Egypt, it is the General Prosecution that carries out international judicial cooperation through the Department of International Cooperation and Enforcement of Judgments of the General Prosecutor's Office, which was established pursuant to General Prosecutor's Decree No. 1884 of 1999 and reorganized following the General Prosecutor's Decree No. 975 of 2020. The Department reports directly to the General Prosecutor. It is concerned with the identification of criminal proceeds, property or other things, or tracing them for evidentiary purposes and recovery. The Department prepares requests for judicial assistance sent abroad in order to identify criminal proceeds, property, tools, or other things, and works to follow up on their execution with the competent authority in the requesting country. It also addresses requests received from abroad by issuing the necessary decision to the competent national authorities to execute them. These authorities prepare reports of the measures taken in execution of the General Prosecution's decisions and the outcomes of the execution and submit them to the Prosecution; the General Prosecution subsequently sends the execution documents to the requesting countries. At the same time, Egypt has no specific legal provision regulating legal assistance or asset recovery: several legal texts that refer to international judicial cooperation state that cooperation in this area is conducted within the framework of the rules established by international treaties or according to the principle of reciprocity (article 18 of the Anti-Money Laundering Law). Any treaty that is ratified and published has the same force of law in Egypt, and its provisions, except for those that require the imposition of a penalty or coercive measure, can be applied directly without the need for legislative intervention (article 150/1 of the Constitution of the Arab Republic of Egypt).

In China, there is the Fugitive Repatriation and Asset Recovery Office under the Central Anti-Corruption Coordination Group, which brings together officials from supervisory, police, foreign affairs, financial intelligence unit, judicial and other relevant agencies that have responsibilities related to recovering assets. Before a verdict is made by the court, assets are under the temporary management of the police and supervisory commissions.

Under Special Investigation Unit and Special Tribunals Act No. 74 of 1996 in South Africa, the relevant entities are entrusted with the investigative and asset recovery functions. Furthermore, the Asset Forfeiture Unit located within the National Prosecuting Authority and the South African Receiver of Revenue are engaged in these activities.

India does not have a single body responsible for asset recovery. One of the main agencies operating in this area is the Directorate of Enforcement under the Ministry of Finance mandated with investigation of offences of money laundering and violations of foreign exchange laws. Other competent agencies are the Ministry of Home Affairs, Financial Intelligence Unit and Central Bureau of Investigation.

In the Islamic Republic of Iran, article 113 (m) of the Seventh Development Plan (2024-2028), as a matter of priority, makes a reference to article 49 of the Constitution providing that the Government has to inform the relevant authorities about the information and documentation related to illicit property (subject to the Constitution), and shall pursue the matters to achieve final results, acting, as appropriate, through competent international authorities, for the recovery of assets and proceeds of corruption. The Ministry of Justice (MoJ) of Iran has formulated the draft Executive Regulations on Recovery of Proceeds of Corruption in relation to implementing the relevant provision of the Seventh Development Plan, and with a view to promoting coordination among competent national agencies. The relevant Executive Regulations introduce an Asset Recovery Office (ARO) within the Iranian National Authority for UNCAC at the MoJ. The primary responsibility of the ARO will be to facilitate the reception and dispatch of formal and informal asset recovery requests. Additionally, it will work in collaboration with the Anti-Corruption Academy.

Russia has multiple agencies involved in repatriating assets from foreign jurisdictions, ranging from the Prosecutor General's Office and Investigative Committee to the Ministries of the Interior, Foreign Affairs and Justice. Moreover, the Federal Tax, Customs and Bailiff Services, the Ministry of Finance, the Federal Service for Financial Monitoring and the Federal Agency for the Management of State Property have specific competencies in asset recovery.

BRICS countries highlight that **interagency coordination**, including law enforcement, financial intelligence and other bodies involved in asset recovery at all stages, makes the frameworks for confiscation of criminal proceeds stronger. In Russia for example, there is a dedicated interagency working group, guidance on how to undertake interagency cooperation and share information on AML/CFT, as well as specific instructions for competent authorities such as that on the work of the Prosecutor General's Office of the Russian Federation in the area of return of assets from abroad.

In Brazil, there are multiple initiatives aimed at highlighting the importance of asset recovery and enhancing interagency coordination. These include the National Anticorruption Plan with asset recovery being one of its core pillars, Presidential Decree No. 11.842/2023 that established the National Counsel for Policies on Asset Recovery, Ordinance No. 533/2023 on the creation of the National Network for Asset Recovery (RECUPERA) under the Ministry of Justice and Public Security, and conclusion of 27 Leniency Agreements signed by the Attorney General's Office and the Office of the Comptroller General of the Union.

In Iran, the Ministry of Justice has established the Working Group on Coordinating International Cooperation for Asset Recovery Cases with a view to promoting coordination between stakeholder institutions. This Group comprises representatives from various entities, including the national prosecutor's office, the office of international affairs of the Judiciary, the office of the legal deputy to the President, Article 90 Parliamentary Commission, the Ministry of Intelligence, the Ministry of Foreign Affairs, the Financial Intelligence Unit and the International Department of the Law Enforcement Command. These members actively participate in the Group's regular meetings.

In South Africa, the Special Investigation Unit and Special Tribunals Act No. 74 of 1996 established the Special Tribunal. This is a specialist forum, where the Special Investigation Unit (SIU) litigates, which facilitates access to justice and the quick obtaining of the relief the SIU seeks. At the same time, the fact that the SIU must await a presidential proclamation for it to conduct investigations is considered to be a major shortcoming compromising SIU's independence and the speed to market in terms of its investigations.

Training and capacity building is also an important prerequisite for the competent authorities to operate effectively. All BRICS countries provide their practitioners with training on asset recovery and anti-money laundering on a regular basis. In many cases, the training is targeted at specific audiences to meet their professional needs, but cover a wide range of personnel both at the national and regional levels and are therefore of a comprehensive scope. Some courses can be compulsory and provide professionals with the essential knowledge of certain issues they deal with as per their duties. Curricula can be focused both on theoretical issues such as the provisions of applicable legislation and practice-oriented matters, with the mixed approach being the most common. Training is prevalently provided by the competent domestic authorities rather than academic institutions and can be supported by international partners such as the United Nations Office on Drugs and Crime. The need for regular capacity-building activities in specific cases and trainees' competency certification is also stressed.

In Brazil, the Department of Assets Recovery and International Legal Cooperation (DRCI) of the Ministry of Justice and Public Security, in compliance with target No. 25/2004 of the National Strategy to Combat Corruption and Money Laundering (ENCCLA), manages the National Program of Training on Money Laundering and Corruption (PNLD) targeted at training public agents of all powers and federative spheres, disseminating the culture of prevention and fight against corruption and money laundering, promoting exchange of experience between public institutions, especially those that are members of ENCCLA, building trust and fostering partnerships and the organization of the State in the fight against organized crime. The short- and medium-term courses are focused on practical cases, types of money laundering or specific training, while long-term multidisciplinary courses train highly specialized public agents in the fight against money laundering, covering legal, financial, investigative techniques and the use of state-of-the-art software and equipment. Between 2004 and 2022, about ten face-to-face training events were held per year (as well as virtually during the COVID-19 pandemic, from 2020 through mid-2022 with the modalities and scope adjusted accordingly) with over 25,000 public agents being trained in the 26 States and the Federal District. Public agents from foreign countries such as Peru, Paraguay, Bolivia, Colombia and Angola also participated in courses as guests. Over the years, the training methodologies have considerably evolved, addressing the needs of wider target audiences, from the public servants working in the anti-corruption and anti-money laundering areas and those employed in the Technology Laboratories against Money Laundering to the public police servants working in judicial police units specialized in the fight against corruption. Since 2010 the National Program for the Dissemination of International Legal Cooperation, a complementary programme of the PNLD, has been operational. The DRCI is also elaborating an advanced PNLD module on asset recovery.

The Asset Forfeiture Unit (AFU) of the National Prosecuting Authority of South Africa provides detailed compulsory induction training on all legal, investigation and enforcement-related matters of the 1998 Prevention of Organised Crime Act (POCA) to all staff members. The training provides the litigation staff with a POCA overview and interpretations of its

specific definitions and provisions with regard to criminal and civil forfeiture (POCA Chapters 5 and 6 respectively). It also allows for the in-depth discussions of civil litigation in the South African High Courts, rules of evidence relevant to POCA case law (Constitutional Court, Supreme Court of Appeal and High Courts), as well as exercises of drafting of asset recovery applications under POCA Chapters 5 and 6. The financial investigators are trained on investigation techniques, analysis of financial flows, interpretation of financial documents and other related information and Court documents, asset tracking in criminal investigations, methods of concealing assets and identifying them, asset tracing investigations, proper case management, evidence gathering and reporting, profiling of individuals and analysis of financial profiles. The training for the enforcement officials is centered on such topics as the purpose of and reasons for asset forfeiture, asset forfeiture cases and their types, legal process and risk areas, and role of the AFU and financial investigators. Furthermore, regular informal training is provided by each AFU Regional Office to its staff on novel asset recovery-related case law and other relevant subject matters.

In China, a training workshop on asset recovery and anti-money laundering is organised annually by the National Commission of Supervision. The initiative is targeted at practitioners with the purpose to introduce them into the legal frameworks of major economies and enhance their skills in dealing with different situations in real practice.

Egypt provides multiple trainings for asset recovery and anti-money laundering practitioners, as well as for the Egyptian cadres and officials. More specifically, the training is focused on how to identify, trace, seize, confiscate and return assets, and on anti-money laundering provisions.

The Enforcement Directorate (ED) of India organizes regular training sessions on an ongoing basis for its officers on anti-money laundering and asset recovery laws, rules, procedures, relevant case laws, emerging tools and practices with the total number of ten to 15 trainings held per year. The ED also collaborates with the Stolen Asset Recovery Initiative (StAR) for training, sharing of best practices and informal cooperation in recovery of assets.

In Iran, the Central Bank and the Financial Intelligence Unit issue advisory notices to financial institutions and have organized relevant trainings on combating money-laundering and financing of terrorism.

The International Training and Methodology Centre for Financial Monitoring and the International Network AML/CFT Institute (ITMCFM) in Russia is an important platform for capacity building of and ensuring sustainable cooperation between law enforcement bodies, financial intelligence units and other competent authorities both at the national and international levels. The ITMCFM provides continuous training for both operational agents and investigators on advanced AML methods, emerging threats and options for international cooperation.

Since 2012, Russia has been cooperating with the United Nations Office on Drugs and Crime on regularly hosting training for the focal points and intergovernmental experts participating in the Mechanism for the Review of the UN Convention against Corruption from different States parties to the treaty. Such initiatives have been focused, in particular, on chapter V (asset recovery) of the Convention. In the course of the training, the participants not only get acquainted with the methodology of assessment of implementation of relevant provisions of the UNCAC, but are also encouraged to share good practices in the area. The seven annual

editions of the training (in 2012-2014, 2017-2019 and 2024) saw the participation of experts from over 60 countries.

Russia has also been cooperating with the International Anti-Corruption Academy on creating a catalogue of free online courses on different aspects of the prevention of and fight against corruption that have become popular among practitioners across many regions. Based on this positive experience, the Russian BRICS Presidency suggested developing a new online self-paced course on asset recovery and mutual legal assistance as a part of the ACWG activities in 2024. The BRICS members welcomed the initiative, and some countries provided specific suggestions with regard to the content of the training.

The topics suggested to be incorporated in the curriculum are the following: an overview of the up-to-date legal provisions and regulations of different countries, including associated requirements, on requesting mutual legal assistance and applying for asset recovery; international legal frameworks and practical bilateral and multilateral cooperation in asset recovery; information sharing between competent authorities (financial intelligence units, law enforcement bodies); investigative tools in corruption and money laundering cases and international law enforcement cooperation; asset tracing also in foreign jurisdictions; financial flows of the purchase of assets located in foreign jurisdictions; detection of suspicious transactions by financial intelligence units; prevention of money-laundering; link between corruption and money laundering. Additionally, some other topics such as bribery in the public and private sectors, illicit enrichment, embezzlement, and integrity of the police, prosecutorial and judicial authorities were suggested for potential future courses.

The analysis of BRICS countries' returns demonstrates that their institutional frameworks with regard to asset recovery differ in terms of the authorities/agencies that have a central role or are engaged in this process and the distribution of powers and responsibilities among them. This is largely determined by the legal and general institutional systems of each country, as well as its administrative setting. What unites the countries is their dedication to create effective frameworks also through increased interagency cooperation and corrective action, as well as targeted professional capacity-building. There is therefore the need for countries to raise awareness about the peculiarities and specifics of each other's institutional systems for the purposes of international cooperation and mutual and joint learning.

Management and disposal of confiscated property and information-gathering on asset recovery

The legal regulations with regard to the management and disposal of confiscated assets differ in a considerable manner from one BRICS country to another.

In China, the disposal of confiscated assets is regulated by the Criminal Procedure Law, the Supervision Law, and the Regulations for the Implementation of the Supervision Law. For each case, there is a special taskforce responsible for managing and disposing of assets whose activities are recorded and monitored.

India has mechanisms in place to manage seized assets and ensure they retain their value until confiscation occurs, following the completion of the judicial process or non-conviction-based confiscation. At the central level, the Enforcement Department manages all assets seized and confiscated by it. The processes and procedures for managing moveable and immoveable assets, as well as intangible property, such as patents and virtual assets, are in place, with greater capacity and capability at the central level. At the state and district levels, this is primarily achieved through the Competent Authority and Adjudicator (CAAs) located in four metropolitan cities (Delhi, Kolkata, Mumbai and Chennai), or via local police stations. The assets managed by them are generally moveable property seized in the course of predicate offence investigations, including low-level offending.

In South Africa, there is a provision for a curator to be appointed through a court order to administrate, manage and preserve the assets seized and bank accounts frozen pending the final confiscation/forfeiture. Given the great emphasis on the management and preservation of value of the assets, the curator should submit relevant status reports to account for how the assets are managed and preserved. At the same time, curators are not appointed for all matters. This prevalently regards liquid assets, frozen or seized, held by third parties such as banking institutions. Subject to the direction of the High Court they can be retained by these parties pending the finalization of the asset forfeiture process.

Furthermore, Chapter 7 of the Prevention of Organised Crime Act, 1998 (POCA) of South Africa, creates the Criminal Assets Recovery Account (CARA), which is a National Revenue Fund, consisting, *inter alia*, of the money and property from confiscation and forfeiture orders, including foreign ones. Section 69 of POCA sets out the powers and functions of the Criminal Assets Recovery Committee of CARA that provides recommendations on the allocation of the money and property to law enforcement agencies, victim organisations, institutions and funds, as well as on policy issues in respect of the forfeiture and realization of property (not money).

Brazil stresses that it faces challenges in managing and disposing of confiscated assets due to the lack of a national legal structure to face the hurdles of such institutional activities. Currently, the management and disposal of assets is made on a case-by-case basis by the Judiciary. Brazil has also started an initiative within the National Secretary for Policies on Drugs and Asset Management, located within the Ministry of Justice, in the Federal Public Administration to work on those cases, but it will do so only at the request of the judges in the cases before the Judiciary.

In Egypt, the Anti-Money Laundering and Terrorist Financing Unit, beyond investigating operations suspected of generating proceeds or involving money laundering or terrorist

financing and informing the General Prosecution of the outcomes, is responsible for creating a database of the information available to it and making it available to the judicial and other competent authorities. The Unit may also exchange this information with the competent foreign authorities in the framework of enforcement of applicable international agreements or based on the principle of reciprocity.

In accordance with article 57(4) of the UN Convention against Corruption, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property. Furthermore, paragraph 5 of the same article states that, where appropriate, States Parties may give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property. Most BRICS countries have implemented these provisions in their domestic law.

Egypt's policy is to return assets without deducting any part of them, except for the cases to cover the costs at a reasonable range as stipulated in the enforced agreements. However, there have not been any cases so far in which Egypt has deducted expenses related to asset/properties recovery. Article 20 of the Money Laundering Law stipulates that it is permissible to conclude bilateral or multilateral agreements regulating the disposal of the proceeds of funds ultimately ruled to be confiscated in money laundering crimes by Egyptian or foreign judicial authorities, including the rules for distributing those proceeds between the parties to the agreement in accordance with the provisions stipulated therein. In this context, Egypt has not concluded any agreements related to sharing assets, and there have been no issues involving sharing assets to date. Egypt does not impose any conditions on the return of assets or property.

In India, Section 60(7) of the 2002 Prevention of Money-Laundering Act (PMLA) provides that when any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of the PMLA, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction of reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property. Similar provisions are incorporated in Section 21 of South Africa's International Cooperation in Criminal Matters Act, 75 of 1996.

Article 49 of the 2018 Law on International Mutual Legal Assistance in Criminal Matters of China stipulates that where a foreign state assists in the confiscation or return of proceeds of crime and other property involved in a case as requested, it shall be for the foreign liaison authorities, in conjunction with the competent authority, to negotiate with the foreign state on transfer of the relevant property. Where a foreign state requested to assist in confiscating or returning proceeds of crime and other property involved in a case demands a share thereof, it shall be for the foreign liaison authorities, in conjunction with the competent authority, to negotiate with the foreign state to determine their amount or proportion.

Additionally, similar provisions are incorporated by BRICS countries in bilateral agreements on mutual legal assistance in criminal matters. For example, article 20 of the 2013 Treaty between the United Kingdom of Great Britain and Northern Ireland and the People's Republic of China on Mutual Legal Assistance in Criminal Matters states that when the requested party confiscates assets that constitute public funds, whether or not these have been laundered, and which have been embezzled from the requesting party, the requested party shall return the confiscated assets or the proceeds from the sale of such assets, less any

reasonable costs of realization, to the requesting party. Similar provisions can be found in a number of bilateral agreements concluded by China with other countries, and in over 15 bilateral treaties of Brazil with other jurisdictions, whereas Russia is at the stage of initiating the necessary improvements to its domestic law.

All BRICS countries that provided their input to the questionnaire gather and regularly update the **information on the seized, confiscated and repatriated assets**. The competent authorities of most BRICS countries make this data publicly available.

In India, the Enforcement Directorate (ED) has a digital database for collection and regular update of this information. It is also categorized and analyzed for various purposes. The ED regularly issues press releases about the cases in which assets have been restrained, seized or confiscated under the 2002 Prevention of Money-Laundering Act and makes them available on its website.

The Asset Forfeiture Unit of the National Prosecuting Authority (NPA) of South Africa also keeps detailed electronic information on all assets frozen, seized, confiscated, recovered and returned. The information is regularly made public by the national competent authorities and is included in the Annual Report of the NPA.

China's competent authorities gather the information on the assets frozen, seized, confiscated, recovered and returned, and the National Commission of Supervision publicizes the annual amount of assets that has been recovered to China.

The Ministry of Justice and Public Security of Brazil also collects and updates the associated statistical information on a regular basis.

The Prosecutor General's Office of the Russian Federation analyses the performance in asset recovery from foreign jurisdictions on a regular basis also with the use of statistical data to undertake corrective action, but the relevant information is not formally published.

In Egypt, Article 140 of the Central Bank and Banking System Law promulgated by Law No. 194 of 2020 stipulates that all customer's data, accounts, deposits, trusts and treasuries in banks, and transactions related thereto shall be kept confidential and it is not permissible to view them or give information about them, directly or indirectly, except with a written consent from the owner of the account/deposit/trust/estate, or from one of his/her heirs, or from one of the legatees of all or some of these funds, or from his/her legal representative or agent, or based on a court judgment or arbitration ruling. A violation of this provision in the circumstances other than those stipulated by law is a crime punishable with imprisonment for a period of not less than one year and/or a fine. Article 232 of the Law stipulates that, without prejudice to the provisions of article 231 of the law, whoever among the officials charged with implementing the provisions of the Law or among those working in licensed entities divulges any information related to the affairs of the entities in which they work or any information they obtained because of their job shall be punished with imprisonment for a period of up to two years and/or a fine.

In spite of the fact that the countries have elaborate frameworks for managing and disposing of assets, as well as collecting, analysing and operationalizing associated data, some of them stress that there is still need to further improve domestic strategic and structural work in this area.

International cooperation: legal basis, interagency platforms and communication channels

BRICS countries use universal international treaties such as the United Nations Convention against Corruption, the United Nations Convention against Transnational Organised Crime and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions as the legal basis for international cooperation in asset recovery. A number of BRICS members are parties to such regional treaties as the Inter-American Convention against Corruption (Brazil) and the African Union Convention on Preventing and Combating Corruption (Ethiopia). Bilateral treaties also constitute a mechanism for requesting mutual legal assistance. For example, the Islamic Republic of Iran has concluded a number of bilateral agreements on international cooperation in criminal matters, including with BRICS members China and Russia.

The UNCAC is indicated as the most frequently used legal basis for requesting mutual legal assistance by the competent authorities of BRICS countries. For instance, 59.64 per cent of the requests sent by the Brazilian competent authorities to their foreign counterparts between 2016 and 2023 were based on the UNCAC.

Russia widely uses articles 43 and 48 of the Convention to request information on deposits, bank accounts, shares and real estate property of Russian public officials located in foreign jurisdictions to gather evidence to launch prosecution proceedings or to verify their compliance with the applicable anti-corruption legal provisions. In 2023, Russia made four such requests that were fully executed by the foreign competent authorities, and executed one similar request of a foreign jurisdiction.

With regard to the possibility of asset seizure, confiscation and recovery prior to prosecution, BRICS countries have different approaches. In Brazil, the seizure can be ordered during police investigation provided that there is a clue indicating that the assets involved are of criminal origin; in case of subsequent acquittal the seizure is released. In South Africa, the seizure of assets arising from non-criminal offences is not possible under the Prevention of Organised Crime Act, 121 of 1998. At the same time, should any unlawful activity be apparent from the content of the anti-corruption declarations of officials, such unlawful activity can be investigated and an asset forfeiture case may be developed. In China, a foreigner can file a civil lawsuit in a Chinese court as per article 5 of the Civil Procedure Law. Iran has addressed all issues concerning mutual legal assistance in civil, trade and criminal areas, including matters on proceeds of crime, in the Bill on International Judicial Cooperation.

The competent authorities of the BRICS countries use in their asset recovery and anti-money laundering activities such **channels of communication** as those provided by the International Criminal Police Organisation (INTERPOL), the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), and the Egmont Group.

Another line of cooperation goes through the anti-money laundering regional groups. Brazil in particular, is active in the Financial Action Task Force of Latin America, and South Africa is engaged in the Eastern and Southern Africa Anti-Money Laundering Group. South Africa also collaborates with the International Anti-Corruption Coordination Centre and the Basel Institute of Governance. Russia, China and India are members of the Eurasian Group on Combating Money Laundering and Financing of Terrorism.

Most BRICS countries actively employ the capabilities provided by other mechanisms of regional cooperation such as the Iberoamerican Network of International Legal Cooperation (Brazil), Arab Association for Prosecutors and the African Prosecutors Association (Egypt), the Asset Recovery Inter-Agency Network (ARIN) for Eastern Africa (Ethiopia), ARIN for Asia Pacific (India), ARIN for West and Central Asia (Iran, held the position of its President in 2023), ARIN for South Africa (South Africa), and Council of Heads of the Financial Intelligence Units of the Commonwealth of Independent States (CIS). In 2023, in the framework of cooperation of financial intelligence units of the CIS member countries, Russia joined an agreement on the establishment of the CIS International Money Laundering/Terrorism Financing Risk Assessment Center, which is also open to participation of the countries that are not CIS members.

In spite of the fact that, in general the channels of communication are considered as effective, BRICS countries stress that the willingness of a specific country to cooperate in every single case is a major factor for practical asset recovery. Another important prerequisite is technical character of cooperation on criminal matters free from any political reasoning.

Some BRICS countries also highlight that the proposed establishment of an informal asset recovery multi-agency network of BRICS members might be an initial step in the improvement of sharing of open-source information between BRICS. Several countries that responded to the questionnaire supported the promotion of the **BRICS Expert Network on Asset Recovery**, finding it instrumental to enhancing the members' capacities in the field. Some countries also made specific suggestions with regard to the representation of domestic agencies, the tasks to be addressed and hence the mandate of the Network, as well as the steps to making it operational.

China stresses that the format may bring together relevant authorities with asset recovery responsibilities. In India's opinion, there should be greater flexibility with respect to the domestic institutions and agencies that are encouraged to participate in the Network, as the representation may differ depending on the domestic legal systems and procedures of each country. India also points out that there has to be greater clarity on the operational modalities of the structure with regard to the expected roles of nominated agencies/institutions. At the same time, India highlights that identification and nomination of asset recovery focal points by BRICS countries as a part of the Network would be a step forward in demonstrating the commitment of BRICS countries, where applicable, in practically and expeditiously implementing the G20 High-Level Principles for strengthening Asset Recovery Mechanisms for Combating Corruption. Brazil highlights that a list of focal points to facilitate cooperation in asset recovery should be compiled, whereas the scope and modalities of the Network, if eventually established, could be defined based on the experience of practical cooperation between the countries.

In China's view, the activities of the Network can be focused on ensuring efficient and effective communication, enhancing experience-sharing and coordination on asset recovery among BRICS, as well as making the voice of the BRICS countries heard to the international community. Russia also supports the idea that the structure should be centered on information-sharing among practitioners, underlining that the issue of secure channels for this purpose is to be addressed. That was actually a key point of the 2023 proposal to establish a BRICS Public-Private Partnership on Asset Recovery promoted by South Africa, as stressed by the latter in its return to the questionnaire. In this context, South Africa underlines that the issue of rapid information-sharing to expedite asset recovery is to be explored. Egypt suggests including the process of recovery of antiquities and cultural properties smuggled

abroad and not registered in the country of origin in the agenda of the topics that the Network could address to explore the steps to be taken in this field.

A number of BRICS countries assigned their focal points to the Network and provided their contact details that follow.

For China:
Ms Amanda LUO, Division Chief, International Cooperation Department, National Commission of Supervision – tel. 86-10-59592677, amandamos@163.com.

For Egypt:
International Cooperation Sector, Administrative Control Authority;
Department of International Cooperation and Enforcement of Judgments, Public Prosecutor's Office – icooperation@ppo.gov.eg.

For India:
Joint Secretary, Internal Security-II Division, Ministry of Home Affairs, Government of India - North Block, New Delhi - 110001, tel.: +91 11 23092123, js-is2@mha.gov.in.
Deputy Legal Advisor, Ministry of Home Affairs, Legal Cell, Internal Security-II Division - 2nd Floor, Major Dhyan Chand National Stadium, Near India Gate, New Delhi - 110001 – tel. +91 11 2307 5289, piyush7041@bsf.nic.in.

For the Islamic Republic of Iran:
Secretariat of the National Focal Point of the United Nations Convention against Corruption, Ministry of Justice - Asset_Recovery_UNCAC@MoJ.GoV.ir.

For Russia:
Mr. Sergey Plokhov, Deputy Head, Directorate-General for International Legal Cooperation, Prosecutor-General's Office of the Russian Federation – s.plokhov@genproc.gov.ru.

For South Africa:
Investigator - Ms Coleen Brown, Chief Financial Investigator, National Prosecuting Authority: Asset Forfeiture Unit – tel. + 27 12 845 6754, clbrown@npa.gov.za (preferred method of contact);
Litigator – Mr. Pieter Bezuidenhout, Senior State Advocate, National Prosecuting Authority: Asset Forfeiture Unit, tel. + 27 12 845 6400, pbezuidenhout@npa.gov.za (preferred method of contact).

Based on the suggestions provided by countries, the 2024 Russian BRICS Presidency drafted and submitted to the attention of the Anti-Corruption Working Group a Guiding Framework for the BRICS Expert Network on Asset Recovery for consideration of the member countries, their input and subsequent discussion. The document is aimed at stimulating the practical work on the project and further suggestions and improvements without prejudice to the priorities of the rotating BRICS Presidencies.

The analysis provided above demonstrates that BRICS countries use a wide range of different treaties, both multilateral and bilateral, as a legal basis for international cooperation. The UNCAC is referred to as one of the most frequently used for this purpose. BRICS countries' agencies are also actively engaged in multiple global and regional networks and units, which are generally considered as effective. At the same time, it is stressed that the outcome of each case largely depends on the counterparts' readiness to cooperate. In this context, the possibility of putting a dedicated BRICS interagency network in place with the aim of strengthening their practical interaction has been explored.

Use of advanced technologies and databases

Competent authorities of a number of BRICS countries actively employ information and communication technologies (ICTs), advanced technologies and artificial intelligence (AI) in tracing proceeds of crime and returning assets. They also have their national databases in place for these purposes. For example, the law enforcement agencies and the financial intelligence unit of India use ICTs in the form of dedicated applications to identify criminal assets, as well as various databases, including open-source ones, and social networks. In some criminal cases, the Indian competent authorities used satellite images for management of seized or confiscated assets. South Africa uses data from the Reserve Bank of South Africa and a number of public authorities to trace cross-border movement of funds throughout financial investigations. In China, under the Regulations for the Implementation of the Supervision Law, supervisory commissions can use, normally with the assistance of the police, certain technical measures in investigation upon strict approval.

The Federal Service for Financial Monitoring of Russia uses the Unified Information System to process big amounts of data through automated analysis and integration with other databases. This allows the agency to conduct strategic and tactical information analysis. The Service also introduces advanced technologies to ensure a high level of automation of processes to define priorities, initiate, as well as provide assistance to law enforcement agencies in investigations. AI is used for proactive search of information in open sources. In addition, software products and dedicated guidance have been developed in Russia to trace transactions with the use of virtual assets. For instance, if the use of a specific transaction address (wallet) by the persons involved in a financial investigation is flagged by the initiators of the request or other sources, the capacities of a dedicated service entitled Transparent Blockchain should be employed to trace and analyze the transaction.

Open-source information is generally retrieved from registries of legal entities, beneficial owners and real estate, as well as commercial databases. The databases of international organizations, in particular, those managed by Interpol, as well as the GlobE Directory of Open-Source Registries constitute another important source of information and are widely used by the competent agencies across BRICS countries. At the same time, BRICS stress that the use of databases even with considerable amount of information does not solve the problem of misuse of complex corporate arrangements and trusts for criminal purposes, as it is challenging to identify their beneficial owners. Another problem is the need to verify and duly prove the information retrieved from open sources if it is to be subsequently employed in formal requests addressed to foreign competent authorities.

Analysis of the input provided by BRICS countries shows that their competent agencies actively employ ICTs and other advanced technologies in asset recovery processes, which is subject to relevant domestic regulations and may be restricted in certain cases. They also consider the existing databases, including international ones, as a valuable source of information for tracing assets and determining their owners. At the same BRICS point out that it is necessary to provide access to the widest range of databases possible, including open-source ones, both at the bilateral and multilateral basis. In terms of data, it is highlighted that those related to housing, companies and change of owners can be particularly useful. BRICS countries are also interested in using more exhaustive compilations of different open-source databases, encouraging countries to make information with respect to a wide range of assets publicly available, where possible and in accordance with domestic law, as well as raising awareness about the databases that can be used for law enforcement purposes while clearly defining the threshold for sharing information contained therein with competent foreign authorities.

Challenges in asset recovery and ways to address them

In spite of the fact that the UN Convention against Corruption was adopted over 20 years ago, countries face persistent challenges in asset recovery. In their responses to the questionnaire, BRICS highlight the following difficulties.

Brazil states that corruption is considered predominantly or even exclusively from the perspective of criminal law, this is why direct recovery of assets to address the harm caused by corruption remains widely underexplored. However, guaranteeing States affected by corruption the right to litigate and seek remedies before foreign courts as provided for by Article 53 of the UNCAC, which includes compensation for damages suffered, establishment of ownership, and acting as *partie civile*, is an essential part of the anti-corruption toolbox. At the same time, civil lawsuits remain a little-used resource, and awareness of countries about the possibility, procedural requirements, and strengths of litigation as an alternative approach to mutual legal assistance remain limited. Navigating foreign legal systems and depending on expensive foreign counsel also brings significant challenges that do not occur with mutual legal assistance.

China notes the lack of cooperation from some requested countries, as well as low response efficiency and difficulties in obtaining information, for example, bank records from the private sector in other jurisdictions. Furthermore, there are such challenges as insufficient communication and difficulties in identifying the right focal point in foreign jurisdictions.

India lists a number of main challenges it faces in the area. These include asset identification (i.e. getting information on all assets of an entity/person in a jurisdiction), asset tracing (meaning the information about the owner and the source of acquisition of an asset of an accused which is located in a foreign jurisdiction), as well as establishing the nexus of an asset with criminal proceeds, particularly in light of inadequate law enforcement cooperation in sharing banking information for tracing the flow of illicit funds. India stresses that due to the deficient sharing of such information and law-enforcement cooperation at the pre-MLA stage, requests are found to be "deficient" by requested countries. India also indicates that the variation in domestic laws related to the provisional measures (e.g. requirement of a court order) and confiscation and return (such as the requirement of a "final" order) is among the obstacles to asset recovery.

In Egypt's view, countries face many challenges in recovering assets with the differences in national legal systems being the most important barrier. Another major challenge for Egypt consists in the fact that the international legal framework does not include procedures regulating the process of recovery of antiquities and cultural properties smuggled abroad and not registered in the country of origin.

In Iran's view, there are several challenges that seriously hinder the asset recovery efforts. These include, in particular, the insufficient cooperation from requested countries on requests to identify, trace, freeze, seize and confiscate assets and proceeds of corruption. In spite of the fact that chapter V of the UNCAC constitutes the legal basis for asset recovery efforts, the diversity of national legal mechanisms for asset recovery complicates international cooperation in this field.

In order to address these challenges, Iran suggests establishing international cooperation mechanisms through multilateral agreements, including mutual legal assistance and extradition, among the BRICS countries, and adopting required arrangements to increase

efficiency and effectiveness of relevant measures by utilizing new and emerging mechanisms and asset recovery networks, such as the StAR Initiative, Camden Asset Recovery Interagency Network and regional ARINs, and GlobE Network.

Russia highlights that it has no difficulties in cooperating with the BRICS countries in asset recovery, whereas it experiences refusals to cooperate from countries in specific regions. It therefore stresses the need to ensure the technical character of interaction between the law enforcement authorities and financial intelligence units. Russia and South Africa also indicate that delays in responses and unresponsiveness along with the differences in domestic legal frameworks regulating asset recovery are among the barriers they encounter. South Africa also stresses that the language barriers requiring the time- and resource-consuming translations hamper the efficiency of asset recovery processes. South Africa further points out that in certain cases requested States opt for proceeding with domestic asset recovery after the request is received with the proceeds not being returned to the requesting jurisdiction.

BRICS demonstrate their openness to discussing how to enhance the effectiveness of the international asset recovery framework, including the possibility to develop an additional protocol to the UNCAC. This position is stated by Brazil and China. Brazil indicates that such a protocol can be particularly useful to bolster up judicial cooperation in non-criminal procedures, without disregarding the importance of any other instruments under the UNCAC which have shown to be reasonably effective so far. China states that it is necessary to explore how an additional protocol would relate to the Convention and could be instrumental in terms of giving it a full play in asset recovery, before actually deciding on whether this instrument needs to be adopted.

In Russia's opinion, an additional protocol could be a useful instrument, because the existing international legal mechanisms for asset recovery having a framework nature or a limited scope of application do not allow for effectively addressing the existing problems such as the lack of comprehensive regulation of mutual rights and obligations of States in repatriation of proceeds of crime, uniform safeguards, common institutional basis for cooperation and a single mechanism for managing confiscated assets. A dedicated international legal instrument could contain provisions on the need to reduce timeframes for implementing requests of mutual legal assistance also by sharing information in a digital form through secure communication channels, implementation of provisions regulating temporary freezing of property based on the requests of foreign competent authorities in international agreements, and improvement of the mechanisms for freezing, seizing and confiscating virtual assets, including cryptocurrencies. Furthermore, Russia states that a comprehensive international legal instrument, such as a convention on recovery of criminal assets can also be considered. It could cover a wide range of income-generating crimes concerning multiple jurisdictions and regulate all stages of international cooperation in tracing, seizing, confiscating and recovering assets.

As indicated above, BRICS countries encounter challenges of legal, operational and political character in recovering assets from abroad. They demonstrate an interest in improving the existing international frameworks to overcome the persistent barriers, highlighting that it is necessary to explore how any possible new steps could effectively complement the UNCAC.

Conclusion

The present analytical paper shows that BRICS countries have elaborate legal frameworks and institutional systems in place to counter money-laundering, including proceeds of corruption, and recovering and returning assets, and constantly work on their improvement. These frameworks and systems differ being largely determined by each country's domestic context, which proves the need to better know and learn from each other.

BRICS joint initiatives on capacity-building and knowledge-sharing can also be considered instrumental in this regard. Throughout the years the BRICS countries have implemented a wide range of educational and awareness-raising projects targeted at their anti-corruption practitioners and educators. BRICS also welcome the proposal of the 2024 Russian Presidency to develop a new online self-paced certified course on asset recovery and mutual legal assistance with their specific needs to be addressed in its curriculum.

Another opportunity to make joint progress in anti-corruption cooperation and asset recovery is to further explore the establishment of an informal asset recovery multi-agency network of BRICS members. This dedicated track under the ACWG could have a wide representation of interested domestic agencies and explore different issues as per the mandate of the latter, for instance, the ways of sharing open-source information for the purposes of asset recovery.

BRICS countries also recognise that they continue to face considerable challenges in asset tracing, seizure, confiscation, return and repatriation due to different reasons of legal, operational and political nature. BRICS are therefore open to exploring the possibilities to address these problems more efficiently and effectively also by improving the existing international legal framework.

Against this background, the BRICS ACWG can further serve as a platform for substantial discussions of the aforementioned challenges, elaboration of BRICS common vision and determination of joint action on the most acute topics on the international anti-corruption agenda, including asset recovery. It should also continue promoting the sharing of knowledge and exchange of best practices on relevant issues among BRICS practitioners, as well as the implementation of capacity-building initiatives. These efforts would be supportive of the domestic action of BRICS countries and their collective progress in the field.