Recovering stolen assets: A problem of scope and dimension

Assets stolen through corruption constitute a severe leakage of state funds. These monetary losses undermine good governance, weaken a state’s accountability to citizens and drain development resources. Global efforts to improve asset recovery have tended to focus on tracing the funds, outlining the legal obstacles to their return and negotiating how to give back the money. Both developed and developing nations are responsible for stealing assets and sidelining initiatives to repatriate them to the countries from which they were taken. When banks in the North and South give stolen assets a safe haven, they profit from corruption. Ending this complicity is urgent and will help to address the finance and governance gap increasingly highlighted by the current economic crisis.
UNCAC, Chapter III and Criminalising Corruption

UNCAC’s eight chapters establish government obligations and standards for preventing and punishing corruption, international cooperation, technical assistance and asset recovery. As of June 2009, UNCAC has 140 signatory states and been ratified by 136 countries.

Chapter III lists the offences that countries are required or recommended to criminalise for both public and private sector actors. These include:
- bribery;
- embezzlement;
- trading in influence;
- illicit enrichment; and
- money laundering.

In addition, Chapter III covers related criminal proceedings, for instances such as concealing information or obstructing justice in corruption cases.

1. The scope of the problem

What is a stolen asset?

The United Nations Convention against Corruption (UNCAC) provides the first global framework to address the issue of asset recovery in both developed and developing countries. Chapter V of UNCAC, which covers the recovery of stolen assets, declares that states should take measures in accordance with their national laws to initiate cases to recover ‘property’ that has been acquired through corruption (Article 53(a)).¹ Property is broadly defined and includes a range of assets such as money held in bank accounts, stocks and bonds, houses, cars, and ownership of companies and properties.²

Current work on asset recovery has focussed on pursuing large-scale cases of political and grand corruption to get back these monies, investments and property. The Stolen Asset Recovery Initiative (StAR), launched by the World Bank and UN Office on Drugs and Crime (UNODC) in 2007, has been one of the leaders in these efforts to stop and recover the ‘thefts of public assets’ by corrupt public officials.³

As the UNCAC Working Group on Asset Recovery noted, however, the scope of asset recovery is not necessarily limited to grand corruption and can also include smaller cases.⁴ Any asset could be recovered as long as it were derived from one of the corruption offences included in the convention.

Yet UNCAC has not completely resolved the issue regarding which assets are the result of corrupt acts. For example, countries that have ratified the convention are not required to pass laws to criminalise some offences included in UNCAC. This loophole opens the door for legal manoeuvring and for countries to refuse to return assets when national laws and international agreements do not match up.

It has been particularly an issue of concern for waging cases against public officials who are suspected of corruption based upon a sizable increase in their wealth relative to their income (i.e. illicit enrichment).⁵ Many developing countries use illicit enrichment as a proxy for charging individuals with receiving bribes or other undue advantages. Pursuing such cases in Europe or the United States is usually impossible, however, as it would require reversing the burden of proof to begin an investigation, an action prohibited under their legal systems.⁶ As a result, illicit enrichment cases are rarely successful in getting stolen assets back when they are held abroad.

Some figures on asset recovery

Due to the sophisticated nature of money laundering, it is very difficult to determine the total global amount of stolen assets, both in terms of stock and flow.
Recovering stolen assets: A problem of scope and dimension

This difficulty is further compounded by the fact that stolen assets are included in estimates for the total illicit flow of resources being generated worldwide. It is hard to quantify which portion of this flow is from money laundering and tax evasion, and the share that is being driven by corruption. Moreover, there is no consensus among the techniques being used to calculate the funds in question.7

As a result, there is a wide range of figures being publicly debated around the flow of stolen assets. The World Bank estimates that the total cross-border flow of proceeds from criminal activities, corruption and tax evasion occurring in all countries may reach US$ 1.6 trillion per year, nearly half of which comes from developing nations.8 On the other hand, a recent study by Global Financial Integrity (GFI) found that the losses from illicit flows for developing countries was nearly double that amount — an estimated US$ 858.6 billion to US$ 1.06 trillion annually.9 When compared to the nearly US$ 120 billion given in aid in 2008, illicit flows represent an enormous reverse drain, siphoning off vital national resources for building schools, stocking health clinics with medicine and meeting other development needs.10

Looking at the total stock of stolen assets gives us yet another set of figures. The French Catholic Committee against Hunger and for Development (CCFD) has estimated that dictators in the last few decades have stolen between US$ 100 and US$ 180 billion. In the Democratic Republic of Congo, the notoriously corrupt former leader, Mobutu Sese Seko, is thought to have taken the equivalent to the annual gross domestic product (GDP).11 Such stock numbers still fall short, however, since they do not include the plundering carried out by corrupt leaders’ faithful cadre of associates and relatives.12

Asset recovery experts have argued that if legal barriers could be lowered, then thousands of other cases would become viable, including smaller claims in the realm of US$ 100,000 to US$ 5 million.13 This would mean that much larger aggregate sums could be recovered, which would increase the effectiveness of efforts to stem illicit flows and elevate the role of recovered assets in providing additional development resources (see side bar).

2. Who is involved?

Discussions on stolen assets frequently lead to fingers being pointed at corrupt leaders in Southern countries. What is often forgotten, however, is that the theft of public funds is only made possible by the involvement and sometimes active encouragement of financial services firms in the North and South. Individuals hiding stolen assets use the same secretive legal instruments and loopholes employed by multinational corporations for tax-dodging and money launderers to make their funds ‘clean’.

Stolen assets are often legally managed by major global players in private and offshore banking centres around the world. A recent report by Global Witness found that despite numerous laws that are meant to require banks to perform due diligence on their customers, especially in the case of politically exposed

www.transparency.org
Recovering stolen assets: A problem of scope and dimension

persons, some of the best known banks in the world have acted as repositories for stolen assets. According to Global Witness, the son of the president of Equatorial Guinea, who has allegedly committed various counts of corruption like his father, had a personal bank account with Barclays Bank of London. The American financial conglomerate Citibank has also been alleged by Global Witness to have allowed the former corrupt president of Liberia, Charles Taylor, to earn revenues from illegal timber sales by conducting the transactions through correspondent banks. Even when corrupt funds are located and frozen, banks continue to benefit from the interest the capital provides as protracted asset recovery procedures take place.

The trail of transactions that channels stolen assets into bank accounts in Northern and Southern financial centres is helped by the actions of different actors along the way. The sophisticated methods employed to circumvent laws and hide the proceeds of corruption require the skills of hired lawyers, accountants and financial services experts. While many of these professional groups regulate themselves to protect against such complicity, lack of oversight and monitoring mechanisms often undercut preventive measures.

Offshore financial centres (OFCs) are the preferred destination for stolen funds and their names can often be found among the global list of tax havens (see sidebar). OFCs are characterised by opaque financial structures, such as strict bank secrecy laws and legal instruments that facilitate hiding the identity of who actually owns the assets. Given that some of these centres derive a large portion of their GDP from providing confidential financial services to non-residents, it is not surprising that they are often reluctant to break their code of secrecy and share information.

Offshore financial centres, however, are not the only ones to blame. Major ‘on-shore’ financial centres often have lax banking and corporate regulation to attract capital inflows, which in the process can enable the concealment of stolen assets. For example, countries such as Switzerland, Andorra, Monaco, Liechtenstein, Luxembourg and Cyprus have traditionally offered a high level of bank secrecy and low tax regimes — features that facilitate the stashing of stolen assets.

Major financial centres can exacerbate problems that begin in offshore centres as a result of their own legal regimes. Many countries, such as the United Kingdom, do not require that the real owners (i.e. the ‘beneficial owners’) of a company be named in public registers. This allows for companies incorporated in one country to be owned by a shell corporation set up in another where the law does not require information disclosure about the owners. As a result, a corrupt leader who acquires a shell corporation in an offshore centre can hide his or her identity and use it to channel funds to an ‘on-shore’ centre like London, making the illicit origin of the money extremely hard to trace.
While Northern centres house the largest share of the proceeds from corruption that are deposited beyond home country borders, new developing world financial nodes from Botswana to Dubai are increasingly providing a safety blanket to cover up corruption. Money stolen in Angola may be deposited in Lagos and then transferred to Johannesburg to be ‘cleaned’ of its origin before being re-routed to London or New York. The profitability of these routes has stimulated the emergence of new centres. According to the US government, Afghanistan, Bosnia and Herzegovina, Cambodia, Guatemala, Lebanon and Kenya are among the top 59 countries of concern that are laundering illicit funds. Recent decisions by countries like Ghana to target banking services to non-residents through low tax rates and limited oversight will only worsen the problem.24

3. What are the challenges?
The practical work of asset recovery is immensely complex and the challenges are numerous. One of the greatest obstacles has been locating the stolen funds. As highlighted above, paper trails do not usually exist once funds are scrubbed of all traces of the original offence that generated them.

Even when the money is found, many barriers prevent or delay its return. Sovereignty issues and inconsistent legal requirements have spread a protective umbrella over the activities of corrupt bureaucrats, money launderers and other actors benefiting from corruption. Lack of coordination between national and international agencies that deal with asset recovery processes and their limited capacity are also practical problems that must be overcome.25

Low levels of legal expertise in many requesting countries and the patchy provision of mutual legal assistance between requesting and requested states mean that asset recovery cases face difficulty in getting off the ground.26 The prohibitive cost of retaining skilled forensic accountants and lawyers — who are often based in Northern countries and in places where the money is hidden — is also a sizable obstacle. Even when cases are initiated, the accused parties may manipulate legal protections, shielding themselves behind claims of respecting personal property, privacy and human rights. These manoeuvres prolong legal proceedings and can undermine cases on the part of requesting countries where financial resources are limited.

Political will on both sides can also pose significant problems for asset recovery. For example, banks may not want to return assets because of self-driven financial interests or out of a concern that they will be stolen again.27 Political ties between leaders of Northern and Southern nations can also enable the safe storage of stolen assets. In 2007, an investigation into the French holdings of allegedly corrupt African leaders was halted in France in an action that civil society organisations (CSOs) claim may have been motivated by political pressure from the French government. After being re-filed by the TI national chapter in France, the case has since been accepted by the French courts, who are investigating whether the assets in question are the wealthy by-product of the leaders’ corrupt acts (see side bar).
Recovering stolen assets: A problem of scope and dimension

4. Current efforts

Current initiatives have focused on overcoming and mitigating the numerous obstacles that stop the outflow and return of the proceeds of corruption. These have taken the form of standards, regulations, technical assistance and capacity building, and advocacy.

Standards

The principles set forth by the Financial Action Taskforce (FATF) are useful for preventing the proceeds of corruption from ever entering the banking system. The FATF is an inter-governmental body established to develop and promote national and international policies to combat money laundering and terrorist financing, which both rely on the same banking system features that are used to give stolen assets a safe passage out of countries. However, the FATF recommendations have not been successfully implemented. A recent report by Global Witness found that none of the 24 FATF member states are fully compliant with their own recommendation (number six) to require banks within their countries to perform thorough due diligence on politically-exposed persons.

Regulation and legislation

Another collective set of preventative and criminalisation measures for stolen assets can be drawn from UNCAC. While UNCAC is a relatively new instrument, it has seen some success in assisting the recovery of stolen assets. UNCAC has been credited with facilitating the prosecution of recent claims of corruption against former government leaders in Bangladesh. The country signed and ratified the convention in 2008, a move which has helped to trigger the recovery of US$ 200 million stored in offshore accounts linked to a former prime minister’s son and government bureaucrats.

Technical assistance and capacity building

Basing its mandate on UNCAC, the Stolen Asset Recovery Initiative (StAR), under the auspices of the World Bank and UNODC, assists countries in lowering the barriers to asset recovery through capacity building and providing advice and assistance to requesting and requested states. StAR, however, does not investigate cases although it has served as an intermediary to help return assets.

Individual governments have also launched proactive efforts to facilitate the recovery of stolen assets through technical assistance. For example, the UK, Liechtenstein and Switzerland fund training programmes for Southern law enforcement agencies on formulating formal requests to recover stolen assets.

In addition, law enforcement bodies in the European Union have informally organised themselves as the Camden Asset Recovery Inter-Agency Network to improve international cooperation to track and repatriate the proceeds of crime.
From the non-governmental side, the International Centre for Asset Recovery (ICAR), located in Switzerland and launched by the Basel Institute for Governance in 2008, is assisting developing countries to build capacity through training and information sharing to trace, confiscate and repatriate the proceeds of corruption.

Advocacy

Civil society organisations (CSOs) like Global Witness have been active in publishing investigative reports tracing stolen assets from governments to the banks where they are stored. The reports have helped to build public awareness of banking practices, as well as those of other financial institutions and intermediaries that provide services that are complicit in sheltering the proceeds of corruption. At times, these findings are used by CSOs and other parties to facilitate cases and claims against banks and governments, as is currently happening in France. Additional advocacy work has revolved around the use of lobbying and engagement, to reform policies and governance frameworks, such as operating guidelines for banks. Other outreach, by organisations such as Christian Aid and EURODAD, has publicised how stolen assets inflict severe financial losses on governments, which if prevented could provide funding for countries to better deliver key basic services for citizens.

5. Conclusion

When stolen funds are deposited beyond a nation’s borders, it takes a network of complicit actors to hide them. Even when the funds are found, too often there is a failure to repatriate them due to limited political will, lack of capacity and high costs.

Preventing the flow of stolen assets and returning them to their country of origin means overcoming these obstacles, which can only be accomplished through simultaneous efforts by both Northern and Southern countries. More transparent and accountable legal and financial governance is required in the world’s financial centres to stop the outflow of stolen assets.

At the same time, a well-integrated international asset recovery regime in both requesting and requested states is required to successfully locate and repatriate the billions of dollars that have been stolen through corruption. Such a system would help to bring corrupt leaders who steal their nations’ wealth to justice.

An effective international asset recovery regime, guided by UNCAC, and backed by political will, would be a strong deterrent to corruption. It would help to build a governance framework to deny the corrupt a safe haven for their stolen funds and prevent the losses of financial resources needed for development. 
Recovering stolen assets: A problem of scope and dimension

References:
20. OECD Tax Haven Criteria: www.oecd.org/document/63/0,3343,en_2649_33745_3057547_1_1_1_1_1,00.html.
21. The OECD maintains a list of 38 cooperative jurisdictions that are ‘committed to internationally agreed tax standard, but have not yet substantially implemented’. See: www.oecd.org/document/63/0,3343,en_2649_33745_3057547_1_1_1_1_1,00.html.
31. See: www.faff.com/page/3417_en.32250379.32236836.1_1_1.00.html.
34. These three governments are supporting efforts through the International Centre for Asset Recovery (ICAR).
37. Guillermo Jorge, Notes on Asset Recovery in the UN Convention against Corruption.
39. The Wolfsberg Global Anti-Money Laundering Guidelines define politically exposed persons as ‘individuals holding or having held positions of public trust, such as government officials, senior executives of government corporations, politicians, ‘important political party officials, etc., as well as their families and close associates.’