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Working Paper

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the global coalition against corruption

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.

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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 April 2011, UNCAC has 140 signatory states and been ratified by 150 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 instance, 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]

Work on asset recovery thus far 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.

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 average annual illicit outflows from developing countries averaged between $725 and $810 billion, per year, over the 2000-2008 time period.[9] When compared to the nearly US$ 120 billion given in aid in 2009, 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

Illicit Flows: Lost Funds for Development

The outflow of the proceeds of corruption is an integral part of a complex mechanism — a phenomenon known as *illicit financial flows* — which leads to drainage of resources that could be used for development.

Illicit financial flows include the proceeds from illegal activities such as corruption (bribery and the embezzlement of national wealth), criminal dealings and illicit commercial activities. Experts have argued that the first two categories represent around 35 per cent of the outflows while the last category consists of the largest share of capital drain from the developing world.[14]

Tax avoidance is considered part of illicit commercial activities. A recent Oxfam report found that at least US$ 6.2 trillion of developing country wealth is held offshore by individuals, depriving developing countries of annual tax receipts of between US$ 64 and 124 billion.[15]

The issue of tax avoidance has taken on new force as a result of a converging international consensus on the topic. In recent years the G20 has taken a strong stance against tax havens. At the urging of the G20, a peer-review process is currently underway as part of the OECD's Global Forum on transparency and information exchange. The review involves all G20, OECD and offshore jurisdictions. It will examine both legal and regulatory frameworks, and subsequently the actual implementation.

The current approach of targeting dictators as part of asset recovery efforts have yielded unsatisfactory results, with only US$ 4 billion returned and US$ 2.7 billion worth of assets frozen worldwide.[16]

Understanding Off-shore Financial Centres and Tax Havens

Off-shore financial centres (OFCs) are considered jurisdictions that have relatively large numbers of financial institutions engaged primarily in business with non-residents.

The ability to attract such international capital flows is done by offering services that include low or zero taxation, light financial regulation, and banking secrecy or anonymity. Of the 54 jurisdictions classified by the International Monetary Fund as OFCs, only 22 have ratified UNCAC to date.

An OFC or any financial centre becomes a tax haven when they meet the following conditions developed by the Organisation for Economic Cooperation and Development (OECD):[21]

- the jurisdiction imposes no or only nominal taxes;
- there is a lack of transparency; and
- there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments on taxpayers benefiting from zero or nominal taxation.

The OECD maintains a list of jurisdictions considered to be uncooperative tax havens. As of May 2009, there has been no jurisdiction listed as an uncooperative tax haven on the OECD list. This contrasts with other findings that suggest eight jurisdictions (including Panama, Vanuatu and Guatemala, among others) have insufficiently implemented internationally agreed tax standards.[22]

Organisations such as the Tax Justice Network and EURODAD favour an expanded list of tax havens which includes financial centres in developed countries, such as London and New York.[23]

persons,[17] 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.[18] 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 side bar). 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.[19] However, changes in the industry standard of secrecy are beginning due to court cases logged against these financial centres by governments wanting to find out whether their citizens and companies are storing their money elsewhere to evade taxes.

Despite these advances, major financial centres continue to 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.[20] 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 and Singapore 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, Brazil, Cambodia, Guatemala, Lebanon and Kenya are among the top 60 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. Complex political contexts in the requesting country, such as Egypt or Tunisia, may hinder the return of funds. 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

Seeking Justice in France for Stolen Assets from Africa

In 2007, a report by the French civil society organisation, Catholic Committee against Hunger and for Development (CCFD), identified châteaux, apartments and other assets that had been purchased in France by a series of African leaders, their families and close associates.[28]

CSOs have since used these findings to petition for a formal investigation against three presidents: Denis Sasssou N'Guesso (Congo-Brazzaville), Omar Bongo-Ondimba (Gabon) and Teodoro Obiango Mbasogo (Equatorial Guinea).

The police investigation has uncovered a trail of possessions. For example, relatives of the president of Gabon own 39 apartments (most of which are located in the wealthiest district of Paris), possess 70 bank accounts and hold the titles to nine cars (valued at roughly 1.5 million euros).[29]

Despite the evidence gathered, the first case was dismissed by the public prosecutor's office. In response, TI France, in collaboration with other CSOs, filed a civil complaint in 2008 to re-open the case.[30] In May 2009, the petition was accepted by the court. However, this decision was appealed by the Public Prosecutor and in October 2009 the decision was overturned. TI France counter appealed and in November 2010 the highest court in France accepted that an NGO could bring a suit for recovery of stolen money, creating a historic precedence.

As the case goes forward, the government will investigate how such a large amount of pricey real estate and other assets were acquired in France and whether corruption provided the funding source. The investigation is also expected to reveal the identities of the various intermediaries who worked with the banks that have been identified in the case of allegedly handling these stolen funds.

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).

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,[31] 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.[32]

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.[33]

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.[34]

The StAR Initiative – Recovering Assets from Grand Corruption

The World Bank and UNODC jointly oversee the Stolen Asset Recovery (StAR) initiative, which aims to ensure that there are no safe havens for political officials who steal from the poor.

The initiative has focused its work on lowering the barriers to asset recovery through policy research, knowledge sharing, technical assistance and training. This has mainly been done by developing the capacity of requesting and requested states to effectively pursue cases.[35] During its first year, over 150 participants from 13 different countries participated in introductory workshops and 190 participants from 9 countries participated in training courses hosted by StAR. [36]

StAR has produced an Asset Recovery Handbook, which aims to help practitioners with the strategic, organisational, investigative and legal challenges of international asset recovery. They have also developed tools and guidance on politically exposed persons and for asset and income declaration, among others. For more information, see: www.worldbank.org/star.

The Swiss Example

National anti-money laundering laws provided the legal impetus for quick cooperation in 2001 between Swiss banks and the country's prosecutor to freeze the assets of Vladimiro Montesinos, former chief of intelligence in the Peruvian government. This allowed for US$ 77 million to be speedily returned to the National Bank of Peru in less than one year.[37]

In February 2011, Switzerland enacted the "Duvalier Law" which eased the rules on the confiscation of dictators' illegal assets. This legislation would allow countries to obtain restitution of funds without producing a domestic court conviction. [38]

Moreover, the European Union has established Asset Recovery Offices in 20 EU countries to allow better information flows and aims to have effective asset recovery offices across the Union by 2014.[39]

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. [40] In addition, ICAR has set up an experts network on asset recovery: the Asset Recovery Experts Network (AREN). The network aims to provide an informal, online forum of professionals to enable networking and exchange information. [41]

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. The Bangkok Declaration, issued by TI in 2010, calls for greater action from the international community to tighten money laundering laws (see side bar).

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.

The 'know your customer' standard that requires banks to vet actual and potential depositors has great potential to prevent the stashing of stolen assets in financial centres.

For more than 10 years, TI has been calling for the enforcement of this measure, which is one of the Wolfsberg Principles, a set of recommendations adopted by eleven leading private banks — from Banco Santander to UBS (www.wolfsberg-principles.com).[42]

The Bangkok Declaration – TI takes action on asset recovery

The Bangkok Declaration, issued in November 2010 by the TI movement, calls for changes in a variety of areas to prevent and stem the flow of stolen assets.

It demands greater transparency across the board and in cross-border wires, the beneficial ownership of trusts and other financial vehicles, customer due-diligence, and due diligence of politically exposed persons (all of which are already FATF standards).

The declaration also urges countries in which the stolen assets are located to respond swiftly to requests for mutual legal assistance and enforce laws and regulations that prevent frozen assets from staying within the same institutions that accepted the asset before their freezing.

It also demands that financial institutions be held more accountable for their actions. When they do not release frozen assets to the legally declared owner after an order has been issued by the competent jurisdiction, they should be made legally liable. Moreover, it is necessary to ensure that the benefit from assets, once they are located and frozen, go to the people of the country from which they were stolen and not the financial institutions that hold them. [43]

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To learn more about TI's work on asset recovery and the UN Convention against Corruption, visit: www.transparency.org/global_priorities/international_conventions.

For more information about this working paper and others in the series, please contact Craig Fagan at the TI-Secretariat: plres [at] transparency.org.

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Transparency International (TI) is the civil society organisation leading the global fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption, and works with partners in government, business and civil society to develop and implement effective measures to tackle it. For more information go to: www.transparency.org.

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