



ASSET RECOVERY FRAMEWORKS, PRACTICE AND THE ROLE OF CIVIL SOCIETY IN EAST AND SOUTHERN AFRICA

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ASSET RECOVERY FRAMEWORKS, PRACTICE AND THE ROLE OF CIVIL SOCIETY IN EAST AND SOUTHERN AFRICA.

*Insights from Burundi, Ethiopia, Kenya, Mozambique, South Africa,
Uganda and Zambia*

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EXECUTIVE SUMMARY

Asset recovery is a fairly recent but growing practice, and countries across the world continue to expand their legislative and institutional infrastructure to facilitate tracing, freezing, confiscation and repatriation of stolen assets back to their public budgets. Especially for countries in the Global South, the recovery of stolen assets offers an opportunity to not only bring criminals and corrupt actors to justice but to also raise financial resources necessary for the strengthening of their essential services and towards sustainable development.

In recent years, both governments and civil society in several countries in Eastern and Southern African countries have also started giving more importance to and taken steps towards both the fight against endemic corruption and the recovery of stolen assets.

Notable examples are the strong CSO advocacy towards the recovery of funds stolen in the Hidden Debt scandal in Mozambique, large scale investigations into state capture and stolen assets in South Africa, or the activity of legislators, courts, and prosecutors in Kenya to utilise non-conviction-based forfeiture in the pursuit of the country's stolen assets.

Drawing on national studies conducted by CiFAR in seven countries in East and Southern Africa,¹ this report compiles information about asset recovery legislative and policy frameworks set out by governments, as well as civil society activity in this area and makes cross-country comparisons. This report looks at seven countries with a diverse level of asset

recovery activity across these two regions: Burundi, Ethiopia, Kenya, Mozambique, South Africa, Uganda and Zambia.

There is a considerable variation of the extent to which legislation governing domestic and international asset recovery in the seven countries analysed is in place. While most of the countries analysed use several laws adopted over time to pursue stolen assets, others with significant gaps in the asset recovery legislation, like Mozambique, have decided to adopt a single piece of legislation that deals with the many aspects of recovery.

Among new legislative developments that increase the opportunities to recover stolen assets in in East and Southern Africa are non-conviction-based forfeiture (NCBF) laws that facilitate asset recovery by making use of civil proceedings. A regular practice in South Africa, and increasingly used by Kenyan law enforcement agencies, Mozambique has recently adopted legislation allowing for non-conviction-based forfeiture in the pursuit of illicit assets. Areas of asset recovery frameworks and policies that require further improvements across countries are especially access to information about past and ongoing cases, and systems for managing recovered assets, which are often not tailored to the types of assets found in corruption cases.

While civil society has been increasingly engaged in asset recovery discussions across the region, collaboration between civil society and government is often challenging. For civil society, a lack of financial resources and cooperation with CSOs in other countries is a barrier to greater engagement.

Based on the desk-based research and interviews with civil society representatives, this report recommends concentrating the efforts of government and civil society wishing to strengthen the recovery of stolen asset on these policy areas:

- Adopt legislation on asset recovery in accordance with international standards.
- Increase access to information related to asset recovery, including past and ongoing cases. Strengthen the independence, resourcing, coordination, and transnational cooperation of asset recovery agencies
- Establish frameworks for the management of recovered assets that comply with international standards and best practice
- Establish national and regional laws and standards that provide for an enabling operating environment for CSOs.

Additionally, the study identifies areas where the role of civil society fighting the misappropriation of public funds can be strengthened and supported. This includes enabling civil society to:

- Conduct investigative and policy research on illicit finance and asset recovery
- Raise awareness on cross-border corruption and asset recovery
- Network and undertake regional cooperation with other CSOs, as well as in multi-stakeholder fora.
- Increase their capacity in this area, particularly in terms of personal and digital security.

INTRODUCTION

Recovering the proceeds of corruption nationally and across borders and using them for the public good is seen as an important step towards mobilising public resources for building the financial integrity of countries and assisting towards sustainable development.² The misappropriation of public funds by corrupt politicians and their associates drains budgets otherwise available for key services, such as health and education, and erodes trust in public institutions.

While corruption, bribery, tax evasion, and other forms of illicit finance burden every country around the world, the impact on developing countries is disproportionately higher. Of the UN's list of least developed countries (LDCs) - recognised as highly disadvantaged in their development process, for structural, historical and geographical reasons - 33 out of 46 are in sub-Saharan Africa.³ The flow of illicit finance from resource poor countries thus constitutes an additional financial burden on their budgets and widens the financing gap countries need to overcome to achieve the Sustainable Development Goals.

While the topic and practice of stolen asset recovery is quite new worldwide, as cross-border corruption cases continue to make headlines and put pressure on governments across the world to take action, civil society organisations are increasingly actively engaged on this issue. While previously it was often CSOs in the Global North who took the lead on large-scale corruption cases, in the past five years more and more civil society groups from the Global South have begun working on cases stemming from their own countries and engaging globally in discussions on illicit financial flows and asset recovery.

In sub-Saharan Africa, South Africa and Nigeria in particular have been at the forefront of recovering stolen assets that have been channelled to foreign jurisdictions. Their legislative frameworks, historical practice and the capacity of their law enforcement agencies have been prepared to engage in these often long and complex processes. As a result of these efforts, the Nigerian government was able to forfeit, freeze and recover large quantities of stolen assets in the past years, amounting to billions of US dollars.⁴

In recent years however, both governments and civil society in several countries in Eastern and Southern African countries have also started giving more importance to and taken steps towards both the fight against endemic corruption and the recovery of stolen assets. For example, after the extent of the Hidden Debt scandal was revealed in Mozambique, the government with the oversight and support of local civil society, as well as the international community, started to take steps towards tracing and recovering these corrupt assets, including adopting new legislation. In South Africa, where a tradition of asset recovery already exists, a new urgency to tackle corrupt networks and seize their assets emerged after a leaked information revealed the interconnected, flawed cooperation of public and private individuals in the country's procurement processes.⁵

In light of this increased activity, the aim of this report is to evaluate progress in asset recovery frameworks set out by the governments, as well as civil society activity in the area of stolen asset recovery in East and Southern Africa. This report looks at seven countries with a diverse level of asset recovery activity across these two regions: Burundi, Ethiopia, Kenya, Mozambique,

South Africa, Uganda and Zambia (see Figure 1 below). The report draws on national studies conducted by CiFAR in these countries,⁶ which collated information obtained via desk-based research and were complemented by interviews with civil society representatives from these countries.

This report first gives an overview of the current anti-corruption situation across the five countries, with references to the practical implementation of regulations and the wider political environment. The report then provides a comparison of legislative and practical efforts in asset recovery and

highlights cross-regional and sub-regional activities of governments. The report also tracks the activity of civil society in the area of asset recovery across countries and describes the diverse environment in which civil society operates in each country. Governmental and institutional cooperation channels at the sub-regional and regional level are explored and linked with accounts of engagement of civil society where available. In the final chapter, the report concludes and gives recommendations for policy reform and support to civil society engagement in stolen asset recovery at the national and regional levels.

Figure 1: Research case countries: Burundi, Ethiopia, Kenya, Mozambique, South Africa, Uganda, and Zambia (coloured in red).



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OVERVIEW OF EFFORTS TO CONTROL CORRUPTION

While countries in East and Southern Africa struggle to curtail corruption and illicit financial flows, the extent and nature of corruption across countries varies, as do the legislative and institutional frameworks implemented by countries to tackle them. While all seven countries criminalise corruption and related offences, most struggle with the implementation and enforcement of these legal provision.

The following section offers a brief overview of countries' efforts to control corruption domestically, with reference to the political environment, the extent of anti-corruption legislation, institutions which countries have in place to tackle corruption, investigation of grand corruption cases, as well as any attempts to recover stolen assets in relation to these cases.

Table 1 compliments this overview and provides a summary of scores awarded to the countries across several indexes, measuring the extent of corruption and related indicators, underperformance of which can greatly undermine the functioning of anti-corruption laws and institutions and affect efforts geared towards asset recovery. While information about domestic money laundering risks is highly relevant to the study of stolen assets, money laundering indexes currently do not offer sufficient country coverage to be included in this table. Similarly, no index assessing asset recovery efforts of countries exists.

METHODOLOGICAL NOTE

Table 1 was compiled and colour-coded by the author based on the country scores of the following indexes:

- Transparency International's Corruption Perception Index (CPI) 2020 scores. Colour categories are based on splitting the 0-100 scale of the index into five even parts.
- Judicial Independence indicator of the World Economic Forum's Global Competitiveness Index 2019. Colour categories is based on splitting the 0-100 scale of the index into five even parts
- Reporters Without Borders' World Press Freedom Index 2021. The colour categories are taken directly from the index, as follows: From 0 to 15 points: Good situation. From 15.01 to 25 points: Satisfactory situation. From 25.01 to 35 points: Problematic situation. From 35.01 to 55 points: Difficult situation. From 55.01 to 100 points: Very serious situation.
- CIVICUS' Monitor 2021. The colour categories are assigned as in the Index, as follows: Scale: 1 = Free, 2 = Narrowed, 3 = Obstructed, 4 = Repressed, 5 = Closed.

Table 1: Comparison of countries across index scores measuring control of corruption and civic freedoms

	Corruption Perception Index <i>(100 = least corrupt)</i>	Global Competitiveness Index - Judicial Independence <i>(100 = most independent)</i>	World Press Freedom Index <i>(100 = least free)</i>	CIVICUS CSO Monitor <i>(5 = least free)</i>
Burundi	19	41	48	5
Ethiopia	38	37	34	4
Kenya	31	47	34	3
Mozambique	25	22	35	3
South Africa	44	66	22	2
Uganda	27	37	41	4
Zambia	33	28	38	3

Colour categories, dark green (1) = best performers



BURUNDI

Of the countries considered in this study, Burundi has the lowest level of GDP, which, together with a recent violent conflict in the country spanning a number of years, made progress in fighting corruption extremely difficult. Unrest was sparked in 2015, after then President Nkurunziza announced he would stand for a third term, in breach of the country's Constitution and the 2000 Arusha Peace and Reconciliation Agreement – a peacebuilding platform ending civil war in the country.⁷

Burundi sits towards the bottom of the 2020 CPI with a score of 19 points, sitting in 46th place out of 49 assessed in the sub-Saharan Africa region. While the assessment of the country's judicial independence in the Global Competitiveness Index has considerably improved, a similar assessment conducted by the World Bank's Governance Indicators places Burundi in the bottom 6th percentile of the worst performers worldwide.⁸

No cases of high-level public officials prosecuted for corruption exist, despite a number of institutions being focused on the prevention and fight against corruption.⁹ While Burundi has ratified the United Nations Convention against Corruption¹⁰ and the African Union Convention on Prevention and Fight against Corruption,¹¹ it has no consistent and updated national anti-corruption strategy and only fragmented anti-corruption laws and political commitments to fight corruption. Asset recovery provisions are scattered across various laws, and there is currently no provision that would provide for the confiscation of proceeds of crime of foreign origin or allow for the execution of foreign confiscation orders.

After the 2020 general election, the new political leadership promised to open Burundi economically and politically

up, and renewed a commitment to fight corruption,¹² however, many measures implemented to date have been received with a scepticism. This includes the in April 2021 abolishing of the Anti-Corruption Court in favour of reassigning cases to the regular court system and the assigning of the Special Anti-Corruption Brigade's investigative mandate to a specialized anti-corruption unit created within the judicial police.¹³

ETHIOPIA

The anti-corruption legislative framework in Ethiopia is strong,¹⁴ although the government's implementation of anti-corruption laws is questionable. Corruption, extortion, passive bribery and money laundering in the public and private sectors are criminalised in Ethiopia, government officials and their relatives are obliged to register their assets and properties, and whistle-blower protection is established in law.¹⁵ However, corruption is seen as an issue in most of the economic sectors, including energy, construction, telecommunications, and mining,¹⁶ as well as in tax collection, customs, and land administration.¹⁷

In the years following the coming of Prime Minister Abiy Ahmed to power, the country has witnessed an unprecedented crackdown against grand corruption, resulting in the arrests of hundreds of public officials, as well as investigations into assets that might have been deposited in foreign banks.¹⁸ While efforts to step up anti-corruption action have been widely applauded, the arrests were also seen as selective, disproportionately targeting the members of the Tigray People Liberation Front party (TPLF).¹⁹ This is of a particular risk in a situation when country's judicial independence cannot be guaranteed, as indicated by a low score in the 2019 Global Competitiveness Index compiled by the

World Economic Forum.

Although there are institutions set up by the government to deal with the recovery of stolen assets, most of which are under the umbrella of the Corruption and Organized Crimes Department of the Attorney General's Office, very little information exists to assess the performance of law enforcement institutions to recover public assets.

KENYA

Kenya is perceived, at least partially, as a successful case of anti-corruption reforms by the international community and Kenyans themselves. This is registered also in an upward score trend of the CPI, and until recently also in judicial independence scores. The country has registered a series of corruption scandals, some which led to arrests and indictments in past years.²⁰ While this might signal action towards high-level political figures, the risk of corruption and money laundering in Kenya, a regional economic and a financial centre, remains high and further reforms are still needed.

The country has a relatively well-developed anti-corruption legislative framework, and recently progress has been made in asset recovery legislation and practice. The leading anti-corruption agency, the Ethics and Anti-Corruption Commission (EACC), which was established in 2011 is a well-respected African anti-corruption institution, despite repeated attacks on its operational independence.²¹

Kenya's law enforcement agencies have in recent years shifted their strategy from pursuing corruption prosecutions and convictions to also tracing and locating the proceeds of corruption. This strategy brought some success in the recovery of assets domestically, in terms of money and land. Similarly to South Africa and Mozambique, Kenya, has been part of

international multistakeholder efforts to recover proceeds of corruption hidden in other jurisdictions. Kenya is a signatory of the 2018 Framework for the Return of Assets from Corruption and Crime (FRACCK), together with the governments of Jersey, Switzerland and the UK, which strives for a transparency and accountability in asset return.²²

While there has been some success in prosecuting high level corruption, many cases still remain without convictions and returns, and are waiting to be resolved, despite Kenyan law enforcement agencies having received technical, financial and also political assistance from international partners. Many therefore fear that a number of public officials behind the numerous scandals of the past will not be brought to justice and assets misappropriated by them never returned to benefit the country.²³

MOZAMBIQUE

While Mozambique has several anti-corruption laws in place, these laws are not implemented effectively and do not cover all areas needed to reduce corruption risks and provide checks and balances over institutions of government, making high-level corruption a particular concern.²⁴ Although Mozambique has a right to information law, for example, expenditure and budgetary information as well as law enforcement data is difficult to access by civil society and other stakeholders.²⁵

The fragile and much needed economic progress of Mozambique was put on halt when the Hidden Debt scandal, the biggest corruption scandal in the country's history, was revealed in 2016. This came about after the country failed to report more than USD 2 billion, approximately 10% of the country's GDP, worth of state loans backed by international banks and had to default on its sovereign debt. Despite initially intended for the purchase of fishing and military

equipment, most of these loans ended up as kickbacks paid to the political elite and implicated financial providers across several jurisdictions.²⁶

Since 2016, the country has been trying to investigate, trace and recover some of the assets stolen via these loans. Pressure and support from other countries and institutions helped to make some progress in the investigations. Several people implicated in the case were charged and arrested, and 19 people are currently standing trial in the biggest corruption hearings in the country's history, including a son of former President Armando Guebuza.²⁷ Similarly, progress and reform has progressed since then in Mozambican legislation, with hopes that this will facilitate the stolen asset recovery process in the near future.²⁸

SOUTH AFRICA

While not the best performer in the sub-Saharan Africa region overall, with a 2020 CPI score of 44 points, South Africa has the least amount of perceived corruption in the intersection of the public and private sector from the countries studied. This is complemented by the relatively low percentage of people (although still nearly 20 %) who claim to have experienced bribery when accessing basic services, according to Transparency International's Global Corruption Barometer, especially in comparison with other countries in the region.²⁹

The extent and workings of corruption in the country were recently made visible via the GuptaLeaks, which triggered investigations into grand corruption on an unrepresented scale. The Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector is currently holding public hearings to investigate allegations of misappropriation of public assets by a small group of

businessmen and public officials, including former President Zuma. Whether and which high-level politicians will end up being convicted of crimes remains to be seen.³⁰

South Africa's anti-corruption and asset recovery legislation has historically been very strong, and the law enforcement has substantial experience in recovering stolen assets domestically, as well as from foreign jurisdictions. The application of non-conviction-based asset forfeiture has enabled authorities to initiate asset forfeiture proceedings against the Gupta family and their business associates, with the value of the assets in South Africa estimated at USD 36.5 million.³¹ However, weak access to beneficial ownership information domestically and internationally makes it difficult for the law enforcement and civil society to track potential assets hidden abroad.³²

UGANDA

Even though Uganda became the first country in the East Africa, and among the earliest in Africa, to enact an anti-corruption law in 1988,³³ it still grapples with high levels of corruption. While the Inspectorate of Government (IG) is established as the major anti-corruption agency, it is complemented by numerous other institutions, units, and commissions of inquiry that have been established in the past to inquire into specific corruption scandals. Twenty different anti-corruption member institutions are coordinating their efforts within the framework of the Inter-Agency Forum against Corruption (IAF).³⁴

The Anti-Corruption Act of 2009³⁵ is the main law under which corruption is criminalized in Uganda. This law covers the investigation, prosecution, and punishment of corruption and other related offences, including bribery, embezzlement, illicit enrichment, conflict of interest, and others. The Act was specifically amended in 2015

to allow for asset recovery in respect to corruption and its related offences and empowers the law enforcement to confiscate property belonging to a person convicted of an offence under the law.³⁶

While some reform efforts have been made by the National Resistance Movement (NRM) government, which has ruled Uganda since 1986, the lack of convictions for corruption-related offences points to inadequate resourcing and independence of anti-corruption institutions.³⁷

Inadequate resourcing and independence of anti-corruption institutions have manifested in the lack of convictions for corruption-related offences.³⁸ While the rate of convictions has increased in the last ten years, this has largely been in respect to cases involving mid-level officials.

ZAMBIA

While Zambia's Anti-Corruption Act No.3 of 2012 prohibits corruption, extortion, bribery of a foreign public official, abuse of office and money laundering, the country lacks a regulation on facilitation payments and financial disclosure of public officials.³⁹ Citizens' access to governance data is limited by the lack of an access to information law,⁴⁰ and even though a legal framework to protect whistle-blowers exists, criminal liability can be imposed on persons whose public interest disclosure is seen as malicious, or made in bad faith.⁴¹ The threat of a fine or an imprisonment thus discourages whistleblowing in practice,⁴² and makes fighting corruption more challenging.

Currently with a score of 33/100,⁴³ Zambia's CPI score has dropped 5 points since 2013, signalling increasing levels of corruption and an insufficient system of measures in place to curb it. Many prosecutions and court decisions in Zambia are perceived to be politically motivated,⁴⁴ which is also

reflected in the low scores for judicial independence. The Zambian judiciary is often seen as manipulated by the executive, with a lack of an independent process for the selection of constitutional court judges, and with recent appointments accused of failing to meet the defined eligibility requirements, with some candidates seen to be close to the former President Lungu.⁴⁵ Moreover, Transparency International Zambia (TIZ) estimates that the average conviction rate for the prosecution of corruption is between 10% to 20%.⁴⁶

A couple of high-profile corruption cases made headlines in Zambia in the recent years. For example, in 2020, Zambian journalists revealed that the Ministry of Health awarded a USD 17 million contract for the supply of health centre kits to a non-existing company, Honeybee Pharmacy Limited, which were later found to be unsafe to use.⁴⁷ The case Anti-Corruption Commission has been reviewing the case and is expected to submit a file to the National Prosecutions Authority for further action soon.⁴⁸

As pressure mounted on the government to investigate corruption allegations in the run-up to the national elections in August 2021, authorities attempted to increase the rate of prosecutions and recover a growing number of assets.⁴⁹ However, rushed prosecutions pose a risk of being subject to political pressure and used for political purposes. The failure to address corruption in light of increasing fiscal debt was the main campaign message,⁵⁰ which brought victory to an opposition party led by Hakainde Hichilema. The newly elected President expressed the desire to get to the bottom of budget irregularities and the "illicit movement of funds", announced "a zero-tolerance policy on corruption in all its forms," and promised to strengthen investigative agencies, as well as to create special anti-corruption courts.⁵¹ How this

will improve the country's weak judicial system, slow asset recovery procedures and a backlog of cases remains to be seen.

Cooperation in the countries of East and Southern Africa is channelled via cross-continental initiatives, sub-regional economic and thematic clusters, as well as bilateral dialogue. While the division of countries which are included in the East or in Southern African sub-regions varies according to different classifications, the African Union includes 24 countries into these two regions together.⁵² Some of these countries are also part of the Common Market for Eastern and Southern Africa (COMESA) but also a number of other regional organisations organised around thematic areas, such as peace and security or energy.⁵³

COMPARISON OF EFFORTS TO RECOVER STOLEN ASSETS

The process of identifying, seizing and returning public assets stolen through corruption domestically, and even more so internationally, when the assets are transferred to another jurisdiction, is incredibly complex, with cases often taking years to complete. Many countries are still in the process of developing appropriate legal frameworks, building capacity of anti-corruption agencies and gaining practical experience in asset recovery. The following section describes the efforts of the seven

focus countries to return stolen assets in four areas: the adoption of legislation supporting the recovery of stolen assets, publication of information about pursued and completed recoveries, the use of non-conviction-based forfeiture laws, as well as legislation and the practice of managing frozen, confiscated and recovered assets. Table 2 makes an overview of the legislative and institutional aspects of asset recovery frameworks across the countries considered here.

Table 2: Legislative and institutional aspects of asset recovery frameworks across countries

	Burundi	Ethiopia	Kenya	Mozambique	South Africa	Uganda	Zambia
Are asset recovery statistics published annually?	–	–	Yes	–	Yes	Yes	–
Is there a unified asset recovery law?	–	–	–	Yes	–	–	Yes
Does law allow for international cooperation in asset recovery?	–	Yes	Yes	Yes	Yes	Yes	Yes
Does law allow for non-conviction-based forfeiture?	–	Yes	Yes	Yes	Yes	–	–
Does an asset management office and account exist?	–	–	–	Yes	Yes	–	–
Are there any known cases of successful cross-border recovery?	–	Yes	Yes	Yes	Yes	–	Yes

LEGISLATION ALLOWING FOR THE RECOVERY OF STOLEN ASSETS

Legal frameworks supporting law enforcement authorities in their pursuit of illicit assets vary greatly across countries. Different mechanisms are used depending on whether assets are pursued in domestic or cross-border cases. While the rules supporting recovery are usually found across several laws, some countries find the adoption of single legislation focused on asset recovery to be helpful. This has recently been the case in Mozambique and has also been debated in Uganda and to some extent in Kenya.

In **Burundi**, no specific asset recovery legislation exists. While it may be possible to use other legislation, including the Criminal Code and Criminal Procedure Code to achieve some of these aims, no specific law exists for the execution of foreign confiscation orders for assets located in Burundi, nor for the confiscation of the proceeds of crime of foreign origin linked to money laundering offenses and other offenses established by the UNCAC.⁵⁴

While **Ethiopia's** anti-corruption legal framework is rather strong, legislation concerning asset recovery less so. The anti-corruption legislative framework fails to directly address the issue of the recovery of stolen assets, although several legal provisions are applicable and employed in cases of asset recovery. Particularly relevant legislation is the Assets Disclosure and Registration Proclamation No. 668/2010 and Proclamation No. 780-2013 on Prevention and Suppression of Money Laundering and Financing of Terrorism, which help in the seizure and forfeiture of stolen assets. They also give a mandate to the institutions tasked to recover these assets.⁵⁵

Relevant asset recovery provisions in **Kenya** are established in the Proceeds

of Crime and Anti-Money Laundering Act (POCAMLA). The law was specifically amended in 2017 in reaction to shortcomings identified in the Financial Action Task Force (FATF) review process. Relevant for asset recovery, it established the Financial Reporting Centre (FRC) to track the proceeds of corruption and crime domestically and in foreign jurisdictions, and allowed the confiscation of any such assets.⁵⁶ Furthermore, the Anti-Corruption and Economic Crimes Act (ACECA) establishes a basis for the forfeiture of unexplained assets, commonly known as unexplained wealth orders,⁵⁷ which are becoming a success for the recovery of stolen assets in the country. Section 55 (2) (a) allows the Ethics and Anti-Corruption Commission (EACC) to start proceedings if the investigation cannot satisfactorily explain an individual's assets.

In order to make progress in pursuing the proceeds of crime and corruption domestically and abroad, especially those linked to a Hidden Debt case, **Mozambique** recently adopted a special Asset Recovery Bill (Regime Jurídico Especial de Perda Alargada de Bens e Recuperação de Activos). The law introduces several new legal tools aiming to improve the capability of government to recover illicit assets.⁵⁸ For example, the law establishes a new Asset Recovery, as well as Asset Management, Office, allows for non-conviction based confiscation, a distinction between traditional and extended confiscation, and exceptions for gathering evidence in instances when banking secrecy rules apply.

The considerable practice of asset recovery within **South Africa** and outside its borders is underpinned by its established legislation. Two key pieces of legislation are specifically dedicated to asset recovery: The Prevention of Organised Crime Act (POCA), 1998, and the International Co-operation in Criminal

Matters Act (ICCMA), 1996. The POCA establishes that property obtained through criminal activity may be forfeited to the State in the fight against organised crime, money laundering and criminal activities. The Act also provides for the establishment of a Criminal Assets Recovery Account (CARA).⁵⁹

Even though previously debated, **Uganda** does not currently have a dedicated legal regime on the recovery of the proceeds of crime, forfeiture of assets and management of recovered assets. Asset recovery provisions are scattered in various pieces of legislation, such as the Anti-Corruption Act of 2009,⁶⁰ which was specifically amended to introduce an asset recovery regime in respect to corruption and its related offences. Additionally, the Anti-Money Laundering Act of 2013 and its subsequent amendments provides for the recovery of property obtained through crime.⁶¹

Similarly, **Zambia** also does not have specific legislation governing the recovery of assets. In 2010, Zambia enacted the Forfeiture of Proceeds of Crime Act No.19 to implement the United Nations Convention against Corruption with regards to domestic asset forfeiture.⁶² The Act provides for the confiscation of the proceeds of crime; deprivation of any person of any proceeds, benefits, or property derived from the commission of any serious offence; facilitation of the tracing of any proceeds, benefit, and property derived from the commission of any serious offence. In 2012, the National Prosecutions Authority (NPA), with its Asset Forfeiture Department (AFD) were established to enforce the provisions of this act.

AVAILABILITY OF INFORMATION ABOUT ASSET RECOVERY

In order to establish the level of government activity in the area of stolen asset recovery and analyse its successes,

basic data about the amounts of assets frozen, seized and recovered is needed. The lack of information about recovered assets, past and ongoing cases makes the oversight, and analyses of successes, as well as potential shortcomings, difficult. Authorities in Kenya, South Africa, and Uganda tasked with recovering assets provide detailed information in their annual reports, whereas statistics about Zambia's efforts is available in media reports. Only very top level, irregular information is available in Burundi, Mozambique and Ethiopia. The absence of information about ongoing and completed asset recovery cases does not mean the absence of grand corruption and money laundering, but that it might not be investigated and dealt with in practice. Moreover, the lack of transparency makes it harder to hold officials to account for their work in this area.

There is very little information available on the cases of misappropriation of public assets and the efforts of **Burundian** authorities to recover them. For example, in the first half of 2018, the joint efforts of the Anti-Corruption Court and the General Prosecutor's Office have been said to have led to the recovery of over BIF 980 million (approx. USD 500,000) as reported by the Court.⁶³ However, only isolated instances of aggregate data publicised in the media exist and there are no consistent, regularly published statistics available online via government institutions in the country.

Similarly, only piecemeal information is available on the activities of law enforcement agencies in the area of asset recovery in **Ethiopia**. While the Ahmed government in Ethiopia assumes more than ETB 130 billion is located in foreign jurisdictions, it claims to have recovered ETB 700 million (about USD 5.2 million) from these assets so far. 582 corruption charges were pursued and from these 466 completed by the country's attorney

general in 2019.⁶⁴

In **South Africa**, the Department of Justice and Constitutional Development makes detailed information available. For example, the 2019/2020 Annual Report shows that over the past few years, the AFU has obtained freezing orders to the value of ZAR 1.6 billion relating to corruption and ZAR 190 million (approximately USD 13.4 million) was eventually recovered.⁶⁵

Similarly, the Ethics and Anti-Corruption Commission (EACC), which is the main body responsible for gathering information on corruption and undertaking investigations in **Kenya**, publishes very detailed statistics on its activities. As listed in the report from 2019, it recovered more than 3 billion KES in property assets (approx. USD 27 million) and additional over 300 million in cash, an increase from previous year.⁶⁶

In **Uganda**, two different institutions report asset recovery statistics in respect to cases they prosecute: the Inspectorate of Government (IG), and the Office of the Director of Public Prosecutions (ODPP). The IG publishes regular information about its activities in the form of reports to the parliament every six months. For example, the IG's asset recovery unit (ARU) confiscated UGX 593,261,770 (approximately USD 168,000) between July and December 2019.⁶⁷ While the ODPP has previously published recovery information with supporting tables on its website news section, the performance data for 2019/2020 are now also available in the form of a downloadable annual report with a lot of detail about assets pursued and recovered, including land, motor vehicles and bank accounts.⁶⁸

While no annual reports are published by the authorities in **Zambia**, information is provided via media briefings. The Anti-Corruption Commission is reported to have received a total of 539 reports of suspected

corruption in 2020. Of these reported cases, 253 were eventually regarded as corruption-related by the Commission, with 182 of the reports authorized for investigation, adding to a backlog of cases that had still been under investigation from previous years. Therefore, 913 cases are reported to have been carried forward for investigations in 2021. Between 2018 and 2020, more than ZMW 63 million (approximately USD 3 million) was reportedly recovered from cases arising from the Auditor-General's reports, however, most of the related cases seem to be ongoing.⁶⁹

NON-CONVICTION-BASED FORFEITURE LAWS

A specific type of asset recovery law increasingly adopted in jurisdictions across the world is non-conviction-based forfeiture (NCBF), which allows for the civil pursuit of illicit assets rather than securing a criminal conviction against the accused person. While extra caution should be made not to lower the standards of due process, this tool is especially useful in cases when the accused individual has died, fled the country or is immune from prosecution.⁷⁰ Even though the adoption of such legislation has been discussed in the majority of countries, Burundi, Zambia and Uganda do not have a non-conviction-based forfeiture law at the moment. While Mozambique's new asset recovery law allows for the use of NCBF, it remains to be seen how it will be utilised in practice.

The Asset Recovery Directorate General in **Ethiopia** has a mandate to recover the proceeds of corruption both following a criminal conviction (conviction-based forfeiture) and without the need for a criminal conviction (non-conviction-based forfeiture).⁷¹ Closer accounts of how this legislation is used in Ethiopia in practice are not publicly available.

In **South Africa**, both a conviction, as well as non-conviction-based system for asset forfeiture has been established by the Prevention of Organised Crime Act, 1998 (POCA).⁷² Most recently, the application of the non-conviction-based asset forfeiture element of the POCA has enabled the National Prosecution Authority to initiate asset forfeiture proceedings against the Gupta family and their business associates, who are implicated in several high-profile cases in corruption in the country. The value of the assets in South Africa relating to this case are estimated at ZAR 520 million (approximately USD 38 million).⁷³ South African law enforcement agencies used NCBF also when assisting the Nigerian government in its asset recovery efforts against former state governor Diepreye Alamieyeseigha. The tool was used to confiscate the governor's luxury penthouse in Cape Town, which was then sold, and money returned to Nigeria.⁷⁴ Even though the utility and application of NCBF in the country has faced some critique and was at times contested, the country's courts have justified its need and demonstrated enough safeguards to guarantee due process.⁷⁵

Kenya's NCBF is established mainly by the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). However, despite being established already in 2010, it has since then not been utilised often by Kenyan law enforcement. A number of challenges might be behind the infrequent use of the tool, such as a short time limit in place for the institution of a case, the lack of a central investigatory agency in Kenya, as well as insufficient capacity of institutions involved.⁷⁶ The Ethics and Anti-Corruption Commission (EACC) has recently been successful in targeting unexplained wealth via the Anti-Corruption and Economic Crimes Act (ACECA).⁷⁷ Specifically, section 55(2)(b) allows the Ethics and Anti-Corruption Commission (EACC) to start civil proceedings if the investigation

cannot satisfactorily explain an individual's assets. Section 55(2)(b) also requires that a person who is under investigation be given a reasonable opportunity to explain the discrepancy between the assets concerned and their known legitimate sources of income. Kenyan courts have so far found these measures compliant with due process rights.⁷⁸ ACECA provisions were successfully used for example in the proceedings against Patrick Ochieno Abachi – the Chief Accountant at the Kenyan Treasury at the time of the Anglo Leasing scandal.⁷⁹

Another innovative tool outside of the NCBF practice that Kenyan law enforcement authorities began to use are mechanisms to achieve conviction without a trial, such as plea bargaining. Plea bargaining seem to be especially useful in cases of land grabs that are still a common practice and often linked to high-ranking government officials and businessmen.⁸⁰

THE MANAGEMENT OF FROZEN, CONFISCATED AND RECOVERED ASSETS

Assets that have been frozen during court proceedings or recovered after conviction by domestic authorities or successful cooperation of international law enforcement agencies often need to be placed in a specific management regime to retain and maximise their value and to prevent their re-looting. For this reason, specialised asset management offices are often formed within the government, as in the case of South Africa and Mozambique. However, these are still not commonplace. Zambia does not currently have a standalone management office, and to our knowledge neither does Burundi and Ethiopia.

New legislation overseeing the management and utilisation of recovered assets, prepared with the inputs of and after pressure from civil society has

been drafted by the National Treasury in **Kenya**. The proposed Proceeds of Crime and Anti-Money Laundering Regulations (2019), seeks to establish a Criminal Assets Recovery Fund and Administration, that would receive, manage, and transfer all money and property derived from criminal confiscation and forfeiture orders. This in turn should prevent assets recovered from abroad and domestically from not being utilised appropriately. While the regulation was initially proposed in 2019, it has not been adopted yet.

Even though **Mozambique**'s Criminal Procedure Code contains provisions regarding the sale and destruction of certain objects in the possession of the state,⁸¹ until recently it did not have legislation setting rules for the management of seized assets. The Asset Recovery Bill (Regime Jurídico Especial de Perda Alargada de Bens e Recuperação de Activos), adopted in 2019, created the Asset Management Office within the department responsible for managing state property.⁸² This will make it compliant with international standards and prevent depreciation of assets which are foreseen to be confiscated in relation to the Hidden Debt case and others.

In **South Africa**, the Criminal Assets Recovery Account (CARA) has been the receiver for confiscated assets for a number of years. Money and property derived from criminal activity, which is deposited into the CARA, which then funds projects or directly compensates victims of economic crime. In the past, ZAR 150 million (approx. USD 10 million) was for example allocated to establish the Anti-Corruption Task Team and ZAR 20 million towards funding civil society organisations rendering assistance to victims of crime. Funding allocations are made when available, not on an annual basis. The decision over the distribution of CAR's funds lies with the Cabinet, which

follows recommendations of the Criminal Assets Recovery Committee and in line with the disbursement model set out in the Grant Management Policy.⁸³

In **Zambia**, each law enforcement agency is responsible for managing assets forfeited through their activities. There is no single account for the forfeited proceeds of crime and asset management after seizure, confiscation or forfeiture. For example, the Drug Enforcement Commission has a forfeiture account, at the disposal of the Commission. However, the lack of transparency and oversight of these accounts creates a risk that they will be subject to re-looting, a concern based also on past reports of mismanagement.⁸⁴

The absence of a property management and administration system has been causing issues also in **Uganda**. It has made it difficult to preserve assets belonging to persons on trial and ensure that such assets remain going concerns up until the time when the court makes its final judgement.⁸⁵ Movable assets are currently stored with the police but sometimes also on court premises, where their value greatly deteriorates to the extent that some have very little value by the time the conviction is achieved. There is evidence that amidst the absence of an asset management system, courts have become reluctant to issue restraining orders. Moreover, prosecution agencies are also increasingly reluctant to apply for such orders out of fear that if the accused person is eventually acquitted, they would be required to compensate them for any lost earnings.⁸⁶

REGIONAL COOPERATION IN ANTI-CORRUPTION AND ASSET RECOVERY

Cooperation in the countries of East and Southern Africa is channelled via cross-continental initiatives, sub-regional economic and thematic clusters, as well as bilateral dialogue. While the division of countries which are included in the East or in Southern African sub-regions varies according to different classifications, the African Union includes 24 countries into these two regions together.⁸⁷ Some of these countries are also part of the Common Market for Eastern and Southern Africa (COMESA) but also a number of other regional organisations organised around thematic areas, such as peace and security or energy.⁸⁸

MULTILATERAL LEGISLATIVE COOPERATION

Several treaties and cooperation mechanisms in the area of anti-corruption and asset recovery exist within these two regional blocks and cross-regionally. There is the African Union Convention on Preventing and Combating Corruption, ratified by a vast majority of the members of the African Union (AU),⁸⁹ which offers guidance on implementing governance and anti-corruption policies on a national and regional level. The convention introduces a number of recommendations, for example on fighting money laundering, good governance of political funding, and also on creating an enabling environment for civil society and media to hold governments to account in the management of public affairs. However, past assessments have shown that while most of countries legislative frameworks are broadly aligned with the Convention, the biggest challenge is the effective enforcement of these laws and little information exists on how well the convention is implemented in practice.⁹⁰

The African Union recently developed a Common African Position on Asset Recovery (CAPAR), which describes in detail priorities for asset recovery in Africa across four areas: detection and identification; recovery and return of assets; management of recovered assets; and cooperation and partnerships.⁹¹ While the framework seems to be currently lacking a concrete action plan, the general framework standards put forward are specific and enforceable. The CAPAR, together with the GFAR Principles, were put forward as a model for a suggested new multilateral agreement on asset recovery with the UN.⁹²

The African Parliamentarians Network Against Corruption (APNAC), set up as a regional chapter of the Global Organization of Parliamentarians Against Corruption (GOPAC), has played a positive role in coordinating, and strengthening the capacity of parliamentarians to fight corruption and promote good governance across a number of African countries. For example, in Uganda, it helped to raise awareness of anti-corruption and held consultative workshops with MPs and civil society.⁹³ In Kenya, APNAC members have been recently pushing for the adoption of a Whistle-Blowers' Protection bill and amendments to the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA).⁹⁴

The East African Community's (EAC) legislative organ, the East Africa Legislative Assembly (EALA), has in the past considered enacting and debated several anti-corruption bills,⁹⁵ most recently the Integrity and Anti Corruption Bill of 2019.⁹⁶ None of these have been adopted yet, and neither has been the long-debated draft East African Community (EAC) Protocol on Preventing and Combating Corruption.⁹⁷

While challenging, civil society from countries where the government is not so open to public consultation are seeing cooperation within EALA as a window of opportunity to make progress on anti-corruption legislation in their countries. For example, Burundian civil society is currently working with the Association of Parliamentarians in East Africa (APNAC), which facilitates the cooperation of civil society with the EALA, despite not having a chapter in Burundi, to work with the other APNAC members to adopt legislation on asset declarations of public officials.⁹⁸

The SADC Protocol against Corruption of 2001, the first anti-corruption treaty adopted in Africa, includes an annual internal review process, tracking the progress achieved in the implementation of the protocol.⁹⁹ The SADC Parliamentary Forum is not so much legislative as a consultative body responsible for monitoring the implementation of various SADC Protocols.¹⁰⁰

COOPERATION OF LAW ENFORCEMENT AGENCIES

Africa has the highest density of networks of anti-corruption authorities globally. For example, Kenya, and Uganda, are members of at least four networks: the Southern African Forum against Corruption (SAFAC), the African Association of Anti-Corruption

Authorities (AAACA), the East African Association of Anti-Corruption Authorities (EAAACA), and the Association of Anti-Corruption Agencies in Commonwealth Africa.¹⁰¹

Two asset recovery networks support the training and exchange of information between law enforcement agencies regionally and internationally. The Asset Recovery Inter-Agency Network for Eastern Africa (ARIN-EA) has eight member countries and was launched with the support of the Stolen Asset Recovery Initiative (StAR) in 2013 and the East African Association of Anti-Corruption Authorities (EAAACA).¹⁰² Some of its members, like Kenya and Uganda, are also members of the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). Even though Burundi and Ethiopia are not members of ARINSA, they have benefited from capacity building opportunities the network offers in the past.¹⁰³

Most countries in East and Southern Africa are also part of the Eastern Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body implementing the FATF Forty Recommendations. Of the countries looked at here, Burundi is the only one not a full member of the network but is an observer jurisdiction.¹⁰⁴ ESAAMLG members are represented by senior government officials from legal departments, as well as

Table 3: Legislative and institutional aspects of asset recovery frameworks across countries

	ESAAMLG member	Member of ARINEA	Member of ARINSA
Burundi	X (Observer)	Yes	X (Observer)
Ethiopia	Yes	Yes	X
Kenya	Yes	Yes	Yes
Mozambique	Yes	X	Yes
South Africa	Yes	X	Yes
Uganda	Yes	Yes	Yes
Zambia	Yes	X	Yes

financial and law enforcement agencies responsible for money laundering matters, and meet twice a year to discuss mutual evaluation reports, training and assistance, as well as general trends in the field.

BILATERAL COOPERATION OF COUNTRIES AND INTERNATIONAL INSTITUTIONS

While regional and institutional bodies can be very useful mechanisms for information sharing and coordination, many countries have also benefited from bilateral support from other jurisdictions or international institutions.

For example, the Kenyan authorities have greatly profited in terms on intelligence sharing and capacity building from the cooperation with the US Federal Bureau of Investigation (FBI)¹⁰⁵ and the UK National Crown Agency.¹⁰⁶ The Basel Institute of Governance have been also supporting Kenyan law enforcement authorities, especially the Ethics and Anti-Corruption Commission (EACC) and the Office of the Director of Public Prosecutions.¹⁰⁷ Other anti-corruption institutions in the country and the wider region, including Burundi, Ethiopia and Uganda, also received support from the Institute via the ARIN-EA network.¹⁰⁸

Mozambican prosecutors, judges and other anti-corruption practitioners have also benefited from the training provided by the Basel Institute of Governance.¹⁰⁹ Moreover, the recently reformed Central Office for Fighting Corruption/ Gabinete Central de Combate à Corrupção (GCCC), established within the Office of the Attorney General (Procuradoria-Geral da República, PGR) in Mozambique, has bilateral cooperation agreements with counterparts from the UK, several Portuguese-speaking countries, and neighbouring countries.¹¹⁰

Ethiopia has also made a use of bilateral cooperation and to this end has concluded

a number of treaties with partner jurisdictions. The country has bilateral treaties on international judicial cooperation and mutual legal assistance (MLA) with Sudan, and has attempted to negotiate further treaties with Botswana, South Africa, the United Arab Emirates, India and China.¹¹¹ Some government bodies in the country have also established information sharing mechanisms related to criminal and corruption cases, such as the Memoranda of Understanding (MOUs) of the Customs and Revenue Authority¹¹² or the Financial Intelligence Centre (FIC),¹¹³ with its counterparts in other African and European partners. MLA cooperation with Djibouti was used in the past, when the Federal Supreme Court ordered the now abolished Ministry of Justice to request money from the government of Djibouti, based on the judicial assistance agreement between the governments, however, the outcome of the proceeding has not been made public.¹¹⁴

THE ROLE OF CIVIL SOCIETY IN THE AREA OF ASSET RECOVERY: ACTIVITIES, CHALLENGES AND OPPORTUNITIES

Active engagement of civil society actors, including NGOs, journalists, academia and think tanks is key to successfully fight against corruption and illicit financial flows. Civil society can and should be involved in all stages of asset recovery, from helping to uncover cases of misappropriation to encouraging discussion on how returned money can be used for the benefit of the citizens. However, civil society frequently faces many challenges in this field, not least the diminishing space to act, repression and violence, as well as issues of resources and capacity.

Civil society faces some level of restriction in all seven countries analysed in this study. The level of their capacity, activity, and ability to work in coalitions, and together with the government varies greatly depending on the possibility to do so. This section first considers the different operational challenges facing civil society wishing to engage in supporting the asset recovery process, and then describes some examples where CSOs were able to mobilise themselves in support of asset recovery despite the many obstacles they face.

OPERATIONAL FRAMEWORKS FOR CIVIL SOCIETY

While civil society globally has been increasingly involved in shaping policies and making their voices heard in the fight against domestic, as well as cross-border corruption, the operating space in many countries in East and Southern Africa

restricts such efforts considerably. This applies to a direct cooperation with the government to support its fight against corruption, as well as raising awareness of the issue among citizens.

While **South Africa's** civil society organisations (CSOs) are able to operate freely and are not restricted in their rights to organise themselves in varied interest groups, they sometimes face pressure from elites, harassment or assault, and the civic space is thus considered to be narrowed.¹¹⁵ Cooperation between government and civil society in South Africa has been set up within the National Anti-Corruption Strategy (NACS) (2020-2030) Implementation Framework, which was developed by the government in collaboration with civil society and other partners. The National Anti-Corruption Forum (NACF) created within this framework, as a coalition formed by the government, business and civil society sectors, should share information and best practice on anti-corruption work, and advise government on national policy initiatives in implementing anti-corruption strategies. In practice, however, cooperation between government and civil society in this forum has stalled.¹¹⁶ The lack of cooperation channels in support of South Africa's anti-corruption strategy has been also emphasised by a number of CSOs.¹¹⁷

The operational space of **Zambia, Kenya** and **Mozambique** is regarded by CIVICUS as obstructed, number 3 on their 1-5 scale.¹¹⁸ This means that even though citizens can organize and form NGOs,

they are being regularly constrained, both legally and politically, and at times may be subject to violence. Such a volatile environment encourages self-censorship, which, according to our interviews with civil society activists in **Zambia**, is said to have increased in the years prior to elections. In Zambia, civil society voices have been constrained under the previous regime for example by charges of conduct likely to cause a breach of peace imposed on them for protesting against corruption. These charges were usually dropped and act as a tool for intimidation. As an illustration, a small anti-corruption protest which aimed to draw attention to an infamous corruption allegation of the government, in which 42 (visibly substandard) fire trucks were procured for USD 42 million, ended with several anti-corruption activists arrested and detained.¹¹⁹

Kenya's civil society is also sometimes met with hostility and force from the side of the government, especially during protests. This has been the case for example when students and activists protested against their playground being illegally grabbed and fenced off or during anti-corruption protests in 2019, when the police used teargas and brutal force.¹²⁰ A number of anti-corruption activists and critics of government were murdered in the recent past in **Mozambique** or decided to leave the country.¹²¹

Great challenges face CSOs in **Uganda** and **Ethiopia**, where CIVICUS assessed the civic space as repressed, its second worse rating on a five-point scale.¹²² In Ethiopia, CSOs were prohibited from working in several areas, including human rights and good governance, until repeal of a restrictive law by the new Civil Society Organizations Agency Proclamation No. 1113/2019 was introduced. Even though CSOs are still regulated by the government, for example by a ceiling on administrative expenses,

the improved legislative framework means that more organisations have started new project activities, which previously had been prohibited. It has also meant the return of international organisations, which have resumed their funding and support to local CSOs.¹²³ However, these considerable improvements after the administration of Abiy Ahmed took power in 2018 started to deteriorate at the end of 2020, due to the armed conflict in the Tigray region of Ethiopia. This led the government to impose internet shutdowns and communication blackouts, making it difficult for people to obtain information and organisations to operate. Furthermore, political opponents, journalists and media organisations have been threatened, arrested and injured for alleged spread of "false propaganda" and information that incites violence.¹²⁴ In Uganda, prosecution and violence against civil society, political opponents and journalists heightened in relation to political pressure surrounding 2021 general elections.¹²⁵ The government also temporarily suspended a significant amount of funding from international donors directed for good governance and anti-corruption organisations in the country.¹²⁶

In **Burundi** civic space is considered closed,¹²⁷ and prosecutions and accusations of involvement in anti-government activities have forced many activists to flee for the fear of their lives and operate from outside the country. After the political and economic crises in 2015 following election disputes, this has been especially acute, with a number of organisations banned and some of their members imprisoned.¹²⁸ Since then, Burundian civil society, academia and journalists have faced stark opposition from their own government and rely heavily on support and resources from international partners. However, as international NGOs have also experienced restrictions on their activities in the past¹²⁹ and many of the international and multilateral organisations

present focus their attention primarily towards the government,¹³⁰ civil society is currently receiving only limited support from international partners to engage in conversations with the government. Moreover, the lack of a law on access to information makes any anti-corruption and investigative work more challenging. Importantly, even though the new administration has been less hostile to the media, stark surveillance and monitoring of media activities still make independent investigative work impossible. Therefore, investigative and independent journalists tend to operate outside of the country.¹³¹

EXPERT ANALYSIS, ADVOCACY AND CAMPAIGNING

Because of the operational and security challenges faced by CSOs in East and Southern Africa, civic activity in asset recovery has been very limited. In countries with narrowed, oppressed and closed civic space, CSOs most of the time focus their activities downwards to citizens, rather than upwards to policy makers to create a wider understanding about pressing governance issues and make a conversation about fighting corruption possible.

Burundi

While the civil society offers some critical views on the government activities from time to time,¹³² including on asset recovery,¹³³ cooperation between civil society and lawmakers on establishing new laws to curtail corruption and illicit financial flows has been almost completely absent. An extremely difficult operational environment and the low capacity of NGOs to act in this field stand in the way of further dialogue. Regional channels of engagement, such as via the African Parliamentarian's Network Against Corruption (APNAC), show promise in moving forward some proposed anti-corruption laws in the country.¹³⁴ However,

even though legislative framework in the country should still be improved, it is mainly the implementation and enforcement of current laws that is lacking and where civil society requires additional support.

Ethiopia

Since any work on good governance and anti-corruption at the policy level has been almost impossible until recently, there has been very little civic activity in this area until now. However, civil society follows the developments around asset recovery in the country that have been made public and has previously tried to obtain more information from the authorities around stolen assets and illicit financial flows. Since access to information has recently improved, there might be an opportunity to follow up on this activity and obtain asset recovery-related information scattered through law enforcement agencies.

Several government-CSO cooperation initiatives exist, such as the Federal Ethics and Anti-Corruption Commission's multi-stakeholder National Anti-Corruption Coalition conference or Construction Sector Transparency Initiative, and the Ethiopian Extractive Industries Transparency Initiative, where the Ministry of Mines works in collaboration with CSOs.¹³⁵ The increased willingness of government agencies to work together with both domestic and international civil society actors in tackling corruption can be seen in the increased acknowledgment of CSO efforts in this area, as well as in participation in public workshops.¹³⁶

International inter-agency cooperation and funding of Ethiopian CSOs has increased in the past two years, manifested for example by a training for CSOs on the UNCAC followed by a grant disbursement by the UNODC.¹³⁷ However, during our interviews, civil society expressed the need for a further capacity building of their staff in

order to engage in conversation with the government around fighting illicit financial flows. Government officials also lack the capabilities and capacity to devote to fighting corruption and recovering stolen assets.

Kenya

Kenya has a well-developed and independent media and, together with Kenyan civil society, is instrumental in reporting and investigating corruption cases and is well linked with global investigative organisations and other foreign partners. Civil society in Kenya follows corruption scandals and campaigns for their thorough investigation, but only very few organisations are working on the level of advocacy and government support in this area. The reasons behind the lack of collaboration seem to be due to a lack of sufficient coordination and capacity to engage in the consultative processes on both sides rather than unwillingness to do so.¹³⁸ Previously, CSO representatives were, for example, part of the National Steering Committee on the review of the Implementation of the United Nations Convention against Corruption (UNCAC),¹³⁹ and the review of the legal, policy and institutional framework for fighting corruption in Kenya in 2015.¹⁴⁰

Fearing that assets recovered domestically or from abroad may not be being utilised appropriately,¹⁴¹ Kenyan civil society has also played a key role in pushing for a reform to regulate the management and utilisation of recovered assets via the proposed Criminal Assets Recovery Fund and Administration in the Proceeds of Crime and Anti-Money Laundering Regulation (2019).¹⁴² The fund would create a central deposit for the government to receive, manage, and transfer all money and property derived from confiscation and forfeiture orders that is recovered.¹⁴³

Overall, civil society in the country has been essential in highlighting the need to regroup the anti-corruption agenda towards asset recovery but acknowledges lacking the necessary understanding and skills to be more effective in asset recovery processes. While, there is a concern that the generation of politicians and public servants responsible for the enormous corruption scandals in the past will never be punished and the stolen assets totalling billions of dollars will never be returned to the Kenyan treasury,¹⁴⁴ several recent court proceedings and asset recovery successes offer a positive outlook.¹⁴⁵

Mozambique

Mozambique's Hidden Debt case scandal, when Mozambique defaulted on its

debt after the country had failed to report around USD 2.2 billion worth of state loans backed by foreign banks, constituted an important but also extremely challenging case for civil society in the country. Beyond capacity issues, due to the novelty of the case, civil society was also working in an unsafe and insecure environment, where journalists have been targeted and violently attacked for working on this case.¹⁴⁶ In addition to security risks, language barriers play a role in the ability of journalists interested in these topics to exchange with and discuss investigations within Southern Africa and beyond.

Civil society has been increasingly well organised in advocating for investigations into the Hidden-Debt case, in particularly to trace at least some of the stolen assets. It has also been instrumental in analysing, researching and keeping the momentum in the Hidden-Debt scandal, and some other smaller corruption cases. Some organisations, have been very vocal in calling for a comprehensive asset recovery strategy for the stolen wealth and for avoiding the repayment of the debt to

international creditors, who are themselves accused of corruption in this case.¹⁴⁷

Together with international partners, local CSOs have supported the government through the establishment of legal and institutional tools to recover stolen assets. The recently adopted Asset Loss and Recovery Law¹⁴⁸ is a concrete example of such collaboration. The law was submitted to the Assembly of the Republic in June 2020 with substantial contribution to the drafting process by the Forum de Monitoria do Orcamento/Budget Monitoring Forum (FMO), comprising of 22 civil society organisations. CSO-initiated analytical reports outlining the damage to state assets and introducing potential asset recovery strategies are another example of a broader cooperation of government and civil society in enhancing asset recovery in Mozambique.¹⁴⁹

South Africa

In South Africa, the recovery of assets stolen due to corruption has become one of the recommendations of the Civil Society Working Group on State Capture, a coalition of more than 20 CSOs established in 2018. The coalition has been actively engaged in making joint submissions to the Judicial Commission of Inquiry into Allegations of State Capture (Zondo Commission) in order to assist the Commission in its fact-finding mission and to ensure accountability for economic crimes committed by both members of the political elite and private businesses linked to state capture.¹⁵⁰

The CSOs involved put forward a number of recommendations to address the past as well prevent the future capture of state-owned entities and public asset theft. Among others, they called for the state to act on its obligation to recover stolen money and encourage civil proceedings to facilitate this recovery. Moreover, they recommended that those convicted of

receiving bribes must return it with full interest. Lastly, they recommended that the Commission must insist on the creation of a public fund that can be used to cover the costs of the legal pursuit of funds siphoned off as a result of state capture.¹⁵¹

The activities of media and especially investigative journalists in South Africa highlight the key role they can play of in uncovering grand corruption and the methods used to hide public money. After investigative journalists and anonymous whistle-blowers made the email communication between the Gupta brothers and the former president Zuma public, their analysis revealed the exact workings of the network behind many allegedly corrupt deals in South Africa, pointing to individuals who were until then operating with impunity and unidentified. Besides exposing the faces of corruption in South Africa via dozens of stories, the media sector in the country also emerged energised and in a more positive light.¹⁵² Alongside investigative media, several NGOs also conduct investigations and have teams of staff focusing on tracing stolen money and alerting local authorities to their findings.

This all points to a great amount of civic activity around investigating corruption in the country, and while our interviews with local CSOs showed that there are plans to create a more concentrated cross-organisational effort in the area of asset recovery, knowledge gaps, as well as coordination shortcomings might need to be improved in order to utilise the full potential of these activities.

Uganda

In Uganda, there are several active anti-corruption NGOs which act as coalitions for indigenous CSOs, individual activists, faith- and community-based organisations and which focus their activities on particular

regions or districts. The anti-corruption activities of such sub-national organisations are mostly centred on sensitising and mobilising the public in the oversight of local service delivery. They often act as facilitators in the investigation of small cases of misappropriated assets in the context of community schools or other services. In this process, they usually work with local law enforcement agencies, especially if their own research, interviews and facilitation process does not lead to a successful resolution of such a case, and after their attempts to identify culprits behind mismanagement of local funds have failed. Some civil society organisations follow corruption cases from the stages of police investigation to courts and work with the district law enforcement agencies to monitor judicial proceedings or refer cases to the national anti-corruption court.

Sub-national anti-corruption coalitions and other corruption-fighting organisations coordinate their efforts via the national Anti-Corruption Coalition Uganda and several other national coalitions focused on concrete areas of good governance, such as political finance and budget monitoring. Our interviews, as well as mapping of civil society in Uganda by other organisations,¹⁵³ indicates that civil space is very active, concentrated especially on facilitating and monitoring local service delivery and less on lobbying or sustained advocacy efforts.

In a similar manner, the advocacy activities of civil society in the area of asset recovery have been very limited, mirroring the low level of activity by the responsible Ugandan institutions. In 2020, several national¹⁵⁴ as well as regional¹⁵⁵ anti-corruption organisations called for the adoption of a non-conviction-based forfeiture law to allow for easier recovery of stolen assets. Dialogue with government anti-corruption agencies showed promise for this law being adopted but this has not materialised

yet. Even though tensions and restrictions brought around the elections in early 2021 are slowly decreasing, including the restarting of a suspended anti-corruption donor fund,¹⁵⁶ it is unclear whether there will be a shift in the approach to the issue and dialogue of government with civil society.¹⁵⁷

Zambia

Despite a difficult operating environment and the existence of only a handful of organisations active in the anti-corruption and good governance field, civil society has undertaken a host of activities, including election monitoring, research, legal aid, engagement of citizens and to a certain extent also engagement with policy makers. Programmes empowering citizens focus on enhancing understanding of the link between budgetary choices, corruption and services citizen can access and the promotion of whistleblowing.¹⁵⁸ Some organisations engage policy makers directly in their attempts to advocate on certain topics. Others set up platforms to create a space for citizens to meet with policy makers and discuss and influence policies publicly. No public discussions, however, have been centred around the recovery of stolen assets so far. This is the case both for discussions initiated by civil society and the government.

CSOs in Zambia have also been trying to pressure the government to amend the restrictive NGO Act 2009, which imposed registration fees and disclosure requirements that have led to the dissolution of some existing NGOs.¹⁵⁹ The contentious parts have been suspended and are being revised at the moment.¹⁶⁰ Civil society organisations have also come together to criticise the planned Constitution Amendment Bill of 2019, which proposed to increase the powers of the executive branch and allow for the creation of a coalition government.¹⁶¹ After

pressure from local and regional actors, the amendment was withdrawn at the end of 2020.¹⁶² There are no known recent activities of Zambian civil society in the area of stolen asset recovery.

Despite the difficult operating environment, and little internal support, a number of investigative outlets are active in the country, with some participating as members in the Global Investigative Journalism Network. The outlets report on a variety of issues from poaching to corruption in procurement and electoral processes. Trainings for young journalists in the area of investigations also exist and are supported by international organizations as well as national institutions.¹⁶³

CONCLUSIONS

More and more countries worldwide, including Southern and East Africa are attempting to recover public assets stolen via corruption and reuse them for domestic priorities and the welfare of their citizens. To this end, new laws are being enacted and agencies formed, as has recently been seen within the Southern and East Africa region. However, progress is often slow, many laws are debated for years until they are adopted, and civil society is not always consulted in the process.

Most countries in East and Southern Africa analysed here have experience in particular with domestic asset recovery. The notable exception is South Africa with a long tradition of international cooperation, Kenya with several international cases in recent years and Mozambique, which is currently working with international partners to establish its legal framework and law enforcement capacity to allow for the investigation and recovery of assets linked to the Hidden Debt scandal. There is no public information on any ongoing international cooperation in recovering assets to Burundi, and even though records of completed or ongoing returns to Ethiopia, Uganda and Zambia exist, very little information is made public. Moreover, information available regarding investigations and domestic recovery is also very scant in these countries.

There is a considerable variation of the extent to which legislation governing domestic and international asset recovery in the seven countries analysed is in place. While several countries use several laws to pursue stolen assets, others with significant gaps in the asset recovery legislation, like Mozambique, have decided to adopt a single piece of legislation that deals with the many aspects of recovery, including the creation of a central fund for confiscated and forfeited assets. The adoption of non-conviction-based forfeiture laws that facilitate asset recovery by making use of civil proceedings are also being increasingly debated in East and Southern Africa. Mozambique has recently joined South Africa, Ethiopia

and Kenya in allowing for non-conviction-based forfeiture in the pursuit of illicit assets. Systems for managing recovered assets also vary across the countries assessed, with processes in place in South Africa, but limited or scattered processes elsewhere.

In East and Southern Africa, collaboration between civil society and government is often made difficult by antagonistic rhetoric and restrictive laws governing the operations of CSOs and the media. This is especially true for Burundi and Ethiopia, but also to some extent for Zambia and Uganda, where there has been only very limited cooperation with the authorities around asset recovery policies, and where anti-corruption activists are at risk of harassment and physical harm. The high level of secrecy governing public budgets, procurement processes and the lack of laws allowing access to information for activists also make it extremely difficult to monitor public spending. Coupled with high levels of corruption in the police, judiciary and within some anti-corruption institutions, this poses a large obstacle to the investigation and prosecution process, which could in turn trigger the recovery of stolen assets and hold public officials to account.

Beyond the lack of laws on asset recovery, and corruption within anti-corruption institutions, a lack of transparency and company beneficial information leads to difficulties to ascertain who owns what in the country, as well as issues in accessing information and asset declarations of politicians, are key challenges. These issues are common across all analysed countries but their manifestations vary, with civil society in some countries facing additional operational challenges and therefore additional obstacles to freely and publicly hold politicians to account.

Despite all these challenges, anti-corruption civil society shares an understanding of the issues that impede the fight against corruption and advancement of asset recovery in each country.

However, bearing in mind that civil society in each country is working on fighting corruption in ways that are domestically possible, there is currently no civic activity in monitoring cross-border corruption or advocating for the recovery of stolen assets in Burundi, Zambia, and Ethiopia. Very few examples exist from Uganda, while more legislative cooperation and advocacy took place in Kenya. Continued coordinated efforts are currently being exerted by civil society in Mozambique and South Africa, after cases of cross-border corruption were exposed and drove momentum for action. To advance asset recovery, this needs to change and civil society needs to be engaged as a partner in the process.

RECOMMENDATIONS

Building on this research, we have identified several policy areas where the efforts of government and civil society wishing to strengthen the recovery of stolen asset should be concentrated. A wealth of additional country-specific suggestions can be found in the separate country studies.

1. Adopt legislation on asset recovery in accordance with international standards.

The United Nations Convention Against Corruption contains several recommendations with regards to the best practice related to the recovery of stolen assets. Where this does not yet exist, countries should strive to fulfil their commitments and adopt legislation, including on non-conviction-based forfeiture and the management of seized and confiscated assets. Countries with significant gaps in legislation should consider undertaking a more substantial reform and adopting a single piece of legislation overseeing the recovery of stolen assets.

2. Increase access to information related to asset recovery, including past and ongoing cases.

Lack of access to information regarding past and ongoing cases makes the oversight of and help to promote activities of government in this area difficult. If more basic data about the amounts of assets frozen, seized and recovered is made available, civil society can not only help analyse the shortcomings but also help in promoting the successes of law enforcement in

prosecuting and recovering the proceeds of corruption and crime.

3. Strengthen the independence, resourcing, coordination, and transnational cooperation asset recovery agencies

Dedicated anti-corruption agencies should continue in their efforts to strengthen their resourcing, coordination, and transnational cooperation, as well as their engagement with civil society throughout the asset recovery process, from the investigation to the re-use of assets. Making sure that these institutions can operate freely and are independent of political pressures is also paramount.

4. Establish national and regional laws and standards that provide for an enabling operating environment for CSOs.

From the countries analysed, only South African civil society is largely free to carry out their role in the asset recovery process. National and regional efforts should aim to safeguard anti-corruption civil society activists and facilitate a productive conversation between government and public and the private sectors.

Based on the findings of our desk-based research and interviews with CSO representatives conducted by CiFAR and bearing in mind the current operational environment across the seven countries analysed, we have also identified several areas where the role of civil society fighting

the misappropriation of public funds can be strengthened and supported.

1. Conduct research on illicit finance and asset recovery

While still only limited information about corruption cases and asset recovery proceedings is published by governments, research and analysis of this information could also be greatly improved. In countries, where governments make asset recovery data available and cases exist, civil society can conduct research on the asset recovery processes to inform policy dialogue and any planned or ongoing reforms in the area of asset recovery.

Moreover, countries where little information and investigation into illicit proceeds exists, research into illicit financial flows is particularly important to establish the weak points and extent of the issue. This is especially the case in Burundi, Ethiopia and Zambia, where there is only very little information and sometimes also little activity regarding asset recovery cases despite systematic issues with illicit capital.

More financial investigations, identifying asset owners domestically and abroad as a basis for further advocacy work is also important.

2. Raise awareness on cross-border corruption and asset recovery

While citizens in most countries are aware of the negative political and economic impacts of corruption, they may not be aware of the possibility to recover

stolen assets both domestically and internationally. Raising levels of awareness on asset recovery and the importance of fighting corruption in general can thus create more demand for activity in this area from the population.

3. Support capacity building around asset recovery

While the level of capacity across CSOs varies, and CSOs in some countries have previously been engaged in researching or advocating for asset return, the knowledge of practices and successful strategies from other countries is low. Deeper knowledge of the steps of asset recovery and how is it done in practice is needed by civil society in several countries. Civil society in all countries raised the issue of lack of knowledge in this area as an obstacle to effectively engage the government. Training could thus significantly increase the involvement of civil society in this area.

4. Support networking and regional cooperation

Few organisations in the countries assessed have the capacity to engage the government in a sustained manner or have the opportunity to network with CSOs with other countries more experienced in the recovery of stolen assets. Therefore, the exchange of successful advocacy examples and a broader possibility to network should be facilitated, alongside more technical capacity building support. Moreover, CSOs, especially those working in countries with governments less receptive to reforms, could

increase their leverage by working with partner organisations and coalitions, including with other CSOs and regional parliamentary and multi-stakeholder fora. These initiatives should be sensitive to the socio-political realities across countries and implement a “do no harm” principle to avoid placing anti-corruption activists under unnecessary risks.

5. Support CSOs to increase their security

As anti-corruption work continues to be unstable and risky, with activists facing organisational obstacles and personal security risks, as well as the increased time civil society spends communicating online, it is important to work on improving security processes and digital security for civil society fighting corruption. This can be done by making sure that CSOs and journalists have the knowledge of and the skills to use tools for different contexts, depending on the nature of the security risk.

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