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CONTENTS

	•	INTRODUCTION	1
	۰	OVERVIEW OF ACCOUNTABILITY AND TRANSPARENCY IN THE MANAGEMENT OF RECOVERED ASSETS	5
	۰	COMMON WEAKNESSES AND DIFFICULTIES IN THE MANAGEMENT OF RECOVERED ASSETS IN AFRICA	12
	٠	SUCCESS FACTORS AND DRIVERS OF CHANGE IN ESTABLISHING SYSTEMS FOR THE MANAGEMENT OF RECOVERED ASSETS	17
		THE ROLE OF CIVIL SOCIETY IN THE MANAGEMENT OF RECOVERED ASSETS	23
		CONCLUSIONS	34



INTRODUCTION



INTRODUCTION

THE MANAGEMENT OF RECOVERED ASSETS – AN OVERLOOKED FUNDAMENT TO AN ACCOUNTABLE UTILISATION OF REPATRIATED ASSETS

African leaders and activists have come to realise in the last decade the extent of the economic, political, and societal damage incurred on the continent due to the staggering volumes of illicit financial outflows. The former South African President Thabo Mbeki presented to the African Union in 2015 a report detailing how Africa loses at least \$50 billion annually through funds that:

I...I typically originate from three sources: commercial tax evasion, trade mis-invoicing and abusive transfer pricing; criminal activities, including the drug trade, human trafficking, illegal arms dealing, and smuggling of contraband; and bribery and theft by corrupt government officials.¹

Five years later, the Economic Development in Africa Report (2020) estimated the damage as being much higher, in the region of USD 88.6 billion, or 3.7 per cent of Africa's GDP annually in illicit financial flows.² Global Financial Integrity (GFI) claims that the average outflows reached 4.6–7.2% of the total volume of trade done by developing countries between 2005-2014.³

African leaders, policy makers and civil society activists have expressed increasing frustration in terms of the speed of cases and the volume of assets returned to Africa. The Organisation for Economic Co-operation and Development (OECD) reports that approximately USD 2.6 billion in global assets were frozen while only around USD 424 million were returned between 2006 and June 2012.4 Similarly, the Stolen Asset Recovery Initiative (StAR) estimates

that only USD 5 billion worth of stolen assets have been repatriated to countries of origin over the past 15 years.⁵ These figures underline the large gap between the volume of stolen assets, assets that have been frozen and funds that are finally repatriated.⁶

Mbeki's report has been hugely influential in Africa and beyond in providing the grounding framework for home-grown solutions and initiatives to reduce IFFs and, crucially, demand stolen asset repatriation. The research clearly articulates that African economies and their international enablers undermine African development by allowing or outright participating in capital outflows, which thwart the purposes of Oversees Development Assistance (ODA) and Foreign Direct Investments (FDI).7 The Under-Secretary-General and Special Adviser to the UN Secretary-General on Africa, Cristina Duarte, underscored the global responsibility while claiming that "[e]verybody knows that illicit financial flows are a shared problem between developed and developing countries, we are clear on the mutual accountability".8

The acknowledgment of the 'shared responsibility' is a central political foundation for the asset recovery effort in trying to bring at least some assets back to the countries of origin. Nevertheless, the volume of asset returns to and within the African continent from oversees jurisdictions amount to only a small portion of the total volume of proceeds of corruption and other crimes. Domestic recoveries have, on the other hand, been comparatively more successful in terms of the volume of recovered proceeds of corruption and related crimes. These have however attracted less attention and support internationally. In Nigeria, for example, the leading anti-corruption





agency claimed in 2017 to have recovered domestically USD 2.9 billion between 2015-2017.9 International recoveries were only a fraction of this amount in the reported period. In another example of a natural resources rich country stricken by decades of plundering of the national wealth, the attorney general of Angola claimed to have recovered an amount equivalent to USD 6.7 billion in the last three years, of which over half was recovered from within Angola.10 The two cases are outliers in terms of size of domestic recoveries in absolute terms, but many more African jurisdictions have been active in recovering assets within their borders. Kenya, Zambia, Uganda, or South Africa are further, but not the only, examples of African jurisdictions that have been engaged in a concerted effort to recover the proceeds of corruption and associated crimes domestically.11

These combined efforts put a greater emphasis on the management of recovered assets and their end-use, topics that have been frequently overlooked. This paper takes up this issue and focuses on the last stage of the asset recovery process and particularly on the Sub-Saharan region. The objective of this analysis is to observe and assess the frameworks, strategies and factors that determine the management of assets that are either frozen or seized temporarily, or finally confiscated and, when international, repatriated. The management of recovered assets and their end-use has been identified as one of the major challenges currently within the larger domestic and international asset recovery effort on the African continent. This paper aims at contributing to an understanding of this process for governmental and nongovernmental stakeholders, demonstrating how neglecting and misunderstanding of the last stage of asset recovery exasperates national and global efforts to reduce illicit financial flows, and suggesting what can be done about it.

A seminar held in Lausanne in Switzerland in 2006 analysed methods for the repatriation of large funds stolen by prominent autocrats, including Ferdinand Marcos of the Philippines, General Sani Abacha of Nigeria, Jean Claude Duvalier of Haiti, Sese Seko Mobutu of the Democratic Republic of Congo, and Vladimiro Montesinos of Peru. While there was in principal an agreement about the lack of legal argument not to repatriate assets to the countries of origin and while mentioning that it is highly unethical not to return these funds from where they had been stolen, there was a remarkable lack of trust that these funds would be managed to the benefit of the population, or that the funds would not be 're-looted' again. 12 As one senior US governmental official involved in asset recovery negotiations pointed out: at some point in case-specific negotiations, African envoys lament that 'Western' countries want to keep stolen assets where they are, while looking for excuses not to repatriate assets.13 For requesting countries, progress in the asset recovery process remains challenging during the pre-investigative and investigative phase, judicial phase, and the return phase. Political, technical, and operational constraints make the international asset recovery process extremely burdensome and lengthy for requesting countries that observe their resources lying idle, even if frozen or under the management of delegated authorities. Officials of countries requesting stolen assets argue that confiscated assets often remain in the possession of financial institutions, which continue to benefit from the assets. As reported by UNODC, UNCAC provisions on compensation to the victim states in foreign bribery cases are rarely used.14 In a sign of assertiveness and frustration about the protracted negotiations, which take on average 10 years between case opening and the return, African leaders have increasingly demanded the payment





of interest on the top of the sum of the frozen funds parked in foreign financial institutions. ¹⁵ Effective asset management can assist in bridging the gaps between these positions.

African jurisdictions that are involved in international and domestic recoveries have started acknowledging how underestimating or ignoring the management and the utilisation of repatriations torpedoes future asset returns and, more broadly, the entire illicit financial flows strategy. A leading Nigerian anti-corruption activist and lawyer Femi Falana has argued on the one hand about paternalism in the insistence by Western counties on third-party management of recovered assets, while on the other has acknowledged that vast sums of Nigerian domestic and internationally recovered assets cannot be accounted for due to the lack of capacity or intentional misconduct perpetuated by domestic courts, law enforcement agencies and others involved in the asset recovery process.¹⁶

Whereas most stakeholders have so far focused on the maximalisation of the volume of the recovered assets, three aspects of the asset recovery process have been neglected by policy makers, researchers, and civil society to a large extent:

- Policy responses and advocacy for an accountable management of domestically and internationally recovered assets;
- 2. The end-use of the recoveries and the compensation to the victims of the stolen assets;
- 3. The management of domestic recoveries.

With this challenging context in mind, this paper aims to fill some evidence

gaps by analysing the approaches and strategies to the management of domestically and internationally recovered assets as a frequently overlooked and underestimated stage of asset recovery. Focusing on the African continent and zooming on the civil society perspective, this paper discusses the challenges and opportunities in the promotion of the transparent and accountable management of recovered assets. Various national and international stakeholders' roles in respect to accountability and transparency in the management of recovered assets are further explored. Further, the paper suggests success factors and entry points in designing and setting up systems to manage recovered assets in the African context. Before concluding, the paper outlines specific entry points for civil society in the management of domestically and internationally recovered assets.



OVERVIEW OF ACCOUNTABILITY AND TRANSPARENCY IN THE MANAGEMENT OF RECOVERED ASSETS



OVERVIEW OF ACCOUNTABILITY AND TRANSPARENCY IN THE MANAGEMENT OF RECOVERED ASSETS

To better understand the management of recovered assets, different legal, policy and guidance instruments have been adopted by the international community to create common understandings and coherent policies at the national level. Typically, there is very little specific guidance on the management and utilisation of recovered assets. Instead, the aspect is covered more generally under the last phase of the asset recovery process – the return phase.

The absence of legal and policy instruments is evident in Africa. The lack of legal frameworks has been a setback to asset recovery and anti-corruption efforts in general. The continent's core anticorruption document - the African Union's Convention on Preventing and Combatting Corruption (AUCPCC) - covers asset identification, tracing, confiscation, seizures and returns when it comes to the proceeds of crime. However, it falls short of providing coherent guidelines for the management or disposal of these assets.¹⁷ Even African countries that have been globally active in the asset recovery discourse, such as Nigeria and Kenya, still lack important legal frameworks to manage recovered assets.

Unlike the AUCPCC, the United Nations Convention on Corruption (UNCAC), ratified by all African UN Member States except Eritrea, goes further in providing guidelines for the disposal of assets. Article 57 (1) of the UNCAC stipulates that these assets should be returned to the legitimate owners. Paragraph 3c of this article urges including the victims of the corrupt crime in the discussion about the utilisation and enduse of recovered assets.¹⁸

When it comes to specific provisions on the management of recovered assets, there is no African-context specific guidance. Beyond the continent, in 2005, the G8 issued the "G8 Best Practices for the Administration of Seized Assets Guide". which set-out mainly administrative processes for the management of asset seizures, mainly from terrorism-related criminality.19 The Stolen Asset Recovery (StAR) initiative has also developed several research and policy guidelines mainly linked to international efforts to return stolen assets. Some research addresses specifically the management and disposal of seized and confiscated property. This includes A Good Practice Guide for Non-Conviction-Based Asset Forfeiture (2009); Towards a Global Architecture for Asset Recovery (2010); The Asset Recovery Handbook (2011); Barriers to Asset Recovery, (2011). Additionally, and most importantly in this context, The Management of Returned Assets (2009) addresses the recovery and return of illicit assets between jurisdictions. Specific non-binding guidelines on the management of frozen, seized, and confiscated assets (2017) was further issued by the UNCAC Conference of State Parties in Panama in 2018. Aspects of administration, legal and institutional capacity, and specific quidelines for different groups of assets were extensively elaborated due to the high demand by state parties.20





As in all aspects of international asset recovery and despite the existence of a plethora of treaties and agreements, the challenges of international cooperation between state parties in asset recovery has hampered the development of a common understanding about the importance of the management of recovered assets within the broader asset recovery discussion. Nevertheless, in recent years, specialised asset recovery forums led by smaller groups of active jurisdictions have provided more concrete and specialised policy guidance. Importantly, the United Kingdom, the United States, Nigeria, Tunisia, Sri Lanka, and Ukraine co-created the Global Forum on Asset Recovery.²¹ This conference reflected past experiences with asset returns and underscored the importance of the management of recovered assets to ensure that asset management provisions are included and that the assets return to their original owners whenever possible. As part of the Forum, 10 standards were developed, known as the GFAR principles.²² Four of these are particularly relevant for the management of recovered assets.

- Principle 4 is dedicated to standards on transparency and processes for accountability, including in the disposition of recovered assets;
- Principle 5 states that "[w]here possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct",²³ giving some guidance on the end-use of assets;
- Principle 9 states that "all steps should be taken to ensure that the disposition of confiscated proceeds of crime do not benefit persons involved in the commission of

- the offence(s)", providing some preclusions needed in asset management structures;
- Principle 10 urges the inclusion of civil society, including in areas linked to the management of recovered assets and their enduse, through participation in decisions leading to the return and disposition and in fostering transparency and accountability in the transfer and administration of recovered assets.

Despite clear focus on the international asset recovery, some of these principles have been also used for domestic recoveries, especially for civil society monitoring and advocacy purposes.²⁴

More specific African initiatives have culminated in the recent effort to establish a *Common African Position on Asset Recovery* (CAPAR) (2018).²⁵ This position was facilitated by President Muhammadu Buhari of Nigeria, the African Union Commission, the AU-Advisory Board on Corruption, the Consortium to Stem Illicit Financial Flows (IFFs) from Africa, and the Coalition for Dialogue on Africa (CoDA). Adopted in 2020, Pillar 3 contains provisions on the management of recovered assets. This includes:

 4.3.1: Creating and maintaining an agreed framework for management of recovered assets, that is designed to (a) contribute to the mobilization of domestic resources to meet Africa's development agenda; (b) preserve the value of seized and confiscated assets for the benefit of the source countries; (c) ensure accountability, transparency and boost public confidence in the asset recovery process; (d) ultimately contribute to the prevention and control of





corruption; (e) compensate source countries; and (f) assist the source country collate data of returned assets:

- 4.3.2: Enhancing or creating institutional, legal or policy frameworks, including (a) establishing a recovered asset management agency or designation of an existing entity for the management of returned assets with clear administrative powers and responsibilities for transparency and accountability, (b) creating or establishing a central returned assets account, and (c) codifying or adopting domestic and regional policies on use of returned assets for development, meeting sustainable development goals or implementing any other social investment projects;
- 4.3.3: Implementing strategies
 to enhance transparency in
 the management of recovered
 assets, including (a) permitting
 monitoring the use of recovered
 assets by interested and relevant
 stakeholders, and (b) maintaining
 a physical African asset register for
 transparency and accountability at
 a domestic and/or regional level.

It should be noted here though that these principles relate largely to international recoveries and are not particularly focussed on the context of domestic asset recovery.

Civil society-led advocacy has been indispensable in the African discussion around transparency and accountability of internationally and domestically recovered assets. For example, during the 2016 London Anti-Corruption Summit organized by Transparency International and the UK Government, some African countries such as Tunisia, Kenya or Nigeria

pledged concrete legal and policy reforms after advocacy by domestic civil society organisations on the lack of transparency and accountability in asset returns.²⁶ African civil society have also been advocating domestically for the important role civil society has to play in ensuring transparency and accountability in the management of recovered assets.²⁷

Some relatively recent examples of CSO participation in the asset recovery process have been hailed as an effective step to pursue transparent and accountable management of recovered assets. With CSOs improving their technical experience in asset recovery and a need for a more coordinated position, a group of eight civil society organizations, including CiFAR,28 submitted a joint submission of the Civil Society Principles for Accountable Asset Return at the first ever United Nations General Assembly Special Session against Corruption (UNGASS 2021). According to these CSOs, these principles are the "minimum, framework standards and are designed to be supplemented by country and case specific detail by civil society."29

The principles focus on four pillars: transparency and participation, integrity, accountability and victim restitution and other beneficiaries. Unlike the AUCPCC or UNCAC guidelines, these standards operationalise the engagement of independent civil society organisations in all stages of the asset recovery process, including the management of recovered assets and the end-use of repatriations to compensate the victims of corruption. The CSO principles go beyond international recoveries in highlighting the importance of transparency and accountability in both domestic and international recoveries. As





explained in the next chapter, the GFAR and CSO principles have, to some extent, guided the management provisions for recently returned assets to Africa.

CASE STUDIES

Nigeria, Equatorial Guinea, and Uzbekistan asset returns – blueprints for successful management of recovered assets?

NIGERIA

In 2017, The Federal Republic of Nigeria alongside the Swiss government signed a bilateral agreement for the repatriation of USD 322.5 million stolen by Nigeria's former military ruler Sani Abacha. After extensive consultations, including with Nigerian CSOs, it was agreed that repatriated funds would be channelled to some of the poorest households in Nigeria who were defined as the victims of corruption. Following the signing of the Memorandum of Understanding, a non-governmental organisation in Nigeria, the African Network for Environmental and Economic Justice (ANEEJ), with financial and technical support from the UK, launched a project entitled Monitoring of Recovered Asset Through Transparency and Accountability (MANTRA).30 The project's task was to monitor, with the help of a consortium of local CSOs, the cash transfers to the households.

The MANTRA project consisted of about 40 civil society organisations with over 500 monitors across Nigeria. Their objective was to verify that the payments were made to the citizens and to collect data about the disbursement to the households. While the implementation of the Abacha II funds has had its challenges,³¹ it has been seen by domestic and international observers as largely successful so far.³²

From the perspective of the management

of recovered assets, a few important policy factors stand out. CSOs were extensively and informally consulted on the management arrangement by the Swiss authorities and other international stakeholders prior signing of the Memorandum of Understanding. The funds were channelled outside of the Nigeria Government budget to allow better monitoring of procurement and other financial performance. CSO engagement in monitoring was made possible through a separate development assistance budget. Some CSO leaders had been involved at the stage of the design of the modalities for asset repatriation, much before the memorandum of understanding was signed between Switzerland and Nigeria. Lastly, the end-use of funds was extensively discussed amongst the Swiss authorities on the side of the country repatriating assets, the Nigerian government as a receiving country and international and national CSOs.

EQUATORIAL GUINEA

In another important case of international asset recovery, the US Department of Justice in a civil forfeiture announced in 2021 that it was going to use USD 26.6 million of confiscated assets to buy Covid-19 vaccines and other medical supplies for Equatorial Guinea.³³ The assets have been part of proceeds seized from Teodorin Nguema Obiang³⁴ in 2011 when he was the Minister of Agriculture of Equatorial Guinea.³⁵ This return was a fraction of the wealth allegedly stolen by Teodorin Obiang, which is estimated to be about USD 300 million.

In 2017, a Paris court convicted Teodorin Obiang of embezzling USD 174 million and confiscated all his assets held in France.³⁶ In pronouncing judgement on Teodorin Obiang in 2017, the Correctional Court of Paris stated that "it would be





morally reprehensible for the state imposing the confiscation to profit from it without considering the consequences of the offense in question".37 In terms of the management of the return, it has been agreed to channel the funds to the French general state budget, and then to a dedicated budget line of the Agence Française de Dévéloppement (AFD), the French development agency. Importantly, the case has triggered a new law adopted by the French National Assembly providing for the restitution of confiscated stolen assets to the people in the countries of origin. The legal framework establishes a specific budget program within the French Treasury, hosting the proceeds from the sale of the confiscated assets before their allocation to cooperation and development programmes in the countries of origin. This management mechanism distinguishes the confiscated stolen assets from development assistance funds in order to ensure the traceability of funds during the initial stages of the restitution process.38 However, it is not clear if the funds add to the French overall ODA budget, which would effectively lower the budget committment of the French government to the development assistance.

The above case is remarkable as it exposes the start position characterised by the absence of any concrete legal framework to manage recovered assets in the country of origin of stolen assets and in the country harbouring the assets. The Obiang example highlights that successful return is possible despite the absence of political will and legal frameworks in the recovery and management of assets. Unlike the Abacha II case, where there was substantial political will within the Nigerian government to reach a deal and include civil society in its management, the government of Equatorial Guinea has constantly defended Mr Obiang and argued that the case is an attack on the sovereignty of the people of

Equatorial Guinea.³⁹ This recovery and the management provisions are remarkable as they show that management of recovered assets can be agreed even in challenging circumstances. Moreover, the case has enabled a new legal framework in France, a destination country of large sums of illgotten gains. The provisions of this return are also largely within the international frameworks as the UNCAC, GFAR and the Civil Society principles, which precludes these assets from returning to the hands of those who looted them in the first place.

UZBEKISTAN

Going outside the African continent, a similar modality was used in Uzbekistan's Gulnara Karimova case, with the Swiss government and the government of Uzbekistan agreeing to repatriate about CHF 131 million stolen by Gulnara Karimova, the daughter of the former president of Uzbekistan.⁴⁰ This repatriation agreement is following the decision of the Swiss government to confiscate these assets in 2020 after they were frozen in 2012. The agreement will set up a multi-party trust fund to be managed by the United Nations Sustainable Development Cooperation Framework for Uzbekistan (UNSDCF).

However, since the decision to confiscate these assets and the development of plans for reparation and disposal, numerous human rights groups have expressed concerns about the absence of transparency and accountability in Uzbekistan with fears that these proceeds risk being re-looted if adequate management and monitoring framework is not carried out.41 It is notable in this case that international, and Uzbek CSOs have been calling for conditional asset recovery and asset distribution only after anticorruption and human rights reforms are conducted.⁴² The aspect of human rights has so far not played significant role in





the negotiations about asset repatriations to Africa. The UN Office of the High Commissioner for Human Rights (OHCHR) recently published Recommended Principles on Human Rights and Asset Recovery (2022) noting the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the human rights. African-based CSOs have so far not linked human rights to the management of stolen assets.

COMMON WEAKNESSES & DIFFICULTIES IN THE MANAGEMENT OF RECOVERED ASSETS IN AFRICA



COMMON WEAKNESSES AND DIFFICULTIES IN THE MANAGEMENT OF RECOVERED ASSETS IN AFRICA

The majority of African jurisdictions only in recent years began establishing asset recovery systems. Big economic powerhouses on the continent such as Nigeria and South Africa have had some head start, having profited from longstanding legal, institutional, and operational infrastructure set up to fight international organised crime. This is evident especially in the institutional mechanisms in these countries tasked with the management of domestically recovered assets. Most other African jurisdictions face a similar set of weaknesses and challenges when managing recovered assets.

A) ABSENCE OF LEGAL AND POLICY FRAMEWORKS

The absence of legal and policy frameworks to guide the management of recovered assets is a major challenge to asset recovery efforts for different jurisdictions. As seen in the above case studies, many jurisdictions in sub-Saharan Africa, as well as across the world, do not have clearly defined frameworks guiding the disposal of confiscated assets.⁴³ In cases of international recoveries, jurisdictions have been adopting case-by-case bilateral measures to define the management and monitoring frameworks. As these negotiations are technically complicated and politically cumbersome due to the sensitivity of the imposed conditions from countries of asset destination onto the African jurisdictions, successful negotiations take on average a decade to be completed.44

The absence of legal frameworks is glaring when it comes to domestic recoveries.

Steps to disburse these assets are often discretional, mismanaged, and prone to political and criminal abuse. Expensive assets such as ships, livestock, gas stations, commercial businesses, private jets, etc. often depreciate during interim forfeiture phases, thereby reducing their value. Only a few countries have a detailed legal provision on how to handle final and interim forfeitures. In Tanzania, for example, interim forfeiture procedures are outlined by the Proceeds of Crime Act (1991). Most African jurisdictions do not have any detailed legal or policy provisions when and how frozen and confiscated assets are managed. For example, in Nigeria there is no legal framework guiding the management of these assets. African cities such as Lagos and Abuja are dotted by ruins of previously expensive real estates that have been seized on interim forfeitures for years. Seized businesses are simply closed and bankrupted before the final court decision is reached. Before the asset is either confiscated or returned to the defendants. these assets substantially lose value due to mismanagement and issues with capacity, speed and corruption in the judicial system.45

To illustrate the challenges originating from the absence of legal and policy frameworks, the case of the head of Nigeria's largest anti-corruption agency is symptomatic. Mr. Ibrahim Magu, the suspended chairman of the Economic and Financial Crimes Commission (EFCC) was arrested in 2020 on allegations of corruption. One of the allegations against him claimed that he mismanaged domestically recovered assets.⁴⁶ Until today there has been no





evidence presented by the panel set up to investigate Mr. Magu. However, he has been removed from his position on the pretext of the mismanagement of a system that confiscates billions of dollars of assets annually but has de facto no legal, policy or operational rules. In this environment, basic records on which assets are stolen, transferred to victims or government or depreciated are not available. Mr. Magu's case shows how challenging it can be to understand the dynamics of corruption when asset management systems are not well established.

B) OPERATIONAL OBSTACLES

Another set of challenges is linked to operational obstacles. Throughout the asset recovery process, 'transaction costs' refer to the costs incurred from the beginning of the asset recovery process (identification of the assets) to the end (disposal stage).47 From the perspective of developing countries, the international asset recovery process is extraordinarily expensive.48 On the side of state actors, the negotiation process is usually lengthy, involving significant expenditures for logistics, legal fees, etc. incurred over many years. The same applies to domestic recoveries, with the additional difficulty of operating in contexts where the rule of law, security and institutional capacity can be severely limited.

The management of recovered assets is a specialised thematic area and most developing countries in sub-Saharan Africa do not have historical experience and the technical capacity to manage different types of assets with the objective to compensate the victims of corruption or other crimes. Even countries that have engaged in domestic asset recovery extensively such as Kenya, Nigeria, South Africa, or Zambia, demonstrate common problems with elementary operational conditions such as technical capacity, institutional coordination, or insufficient funding. Financing of recovered assets

management is either non-existent or inadequate. An exception seems to be the South African Recovered Assets Management Agency, which operates with a somewhat adequate and transparent funding mechanism.⁴⁹

C) NETWORKING AND COORDINATION CHALLENGES

A separate and distinct set of challenges relates to networking and coordination challenges when managing recovered assets. Throughout the entire asset recovery process, the management of international and domestic asset recoveries requires extensive horizontal and vertical networking. In the case of international recoveries, this is hampered frequently by a lack of trust on the side of the countries repatriating assets, with fears expressed over whether countries of origin will manage and distribute the assets to the benefit of the citizens. On the other hand, African jurisdictions perceive the discussion about the end-use of returned assets as an unfair conditionality and an infringement on national sovereignty, with governmental officials resistant to instruction from overseas, often the ex-colonial powers, on how their assets should be managed and monitored within their own jurisdiction.50 This makes conversations on asset management highly sensitive and at risk of politisation.

Similar challenges apply to cooperation between civil society and law enforcement within one jurisdiction, who may have to cooperate to manage and oversee the management of recovered assets. There is frequently a culture of mistrust and a belief, amongst law enforcement in some jurisdictions, that civil society representatives are not accountable and do not represent national interests. Cooperation on international and domestic asset recovery management frameworks can therefore be challenging, with a reluctance to supply to data and





information to civil society on the one hand, and a lack of trust in independent civil society on the other.

CSO-to-CSO cooperation on asset management within one jurisdiction can also be challenging. The competitive field of development funding disables effective cooperation in many national settings. Especially in the field of monitoring and advocacy for accountable management frameworks, a 'distribution of labour' is important as some CSO stakeholders are needed to work with the government on monitoring, sharing of data, etc., whereas others need to work on legal or policy advocacy.

The same challenge applies to national law enforcement agencies and other governmental agencies in some cases. Especially domestic asset recovery systems are often subject to competition between law enforcement agencies, which translates into competition of responsibilities and control over lucrative stocks of interim and final forfeitures. Political hostility, corruption, scarce funding, or unclear mandates are only some challenges that make asset management extremely challenging. Research has indicated that in larger countries like Nigeria and South Africa, a plethora of specialised anti-corruption agencies mandated to seize assets has led to a struggle to coordinate domestic asset recovery, to the detriment of the effective end-use of these resources.51 Networking and cooperation are made more challenging in the context of potentially lucrative sums obtained from the mismanagement of recovered assets and the penetration of organised crime into law enforcement in several African iurisdictions.

D) POLITICAL INTERFERENCE

An extraordinarily damaging challenge relates to political interference in the management of international and domestic

assets. The absence of political will by some governments in international and domestic forfeitures is well documented. As seen in the Obiang case, negotiations about asset returns and their management are extraordinarily difficult. The same can be said about the management of domestic recoveries. Frequently, there is a lack of desire by governments to push for reforms in the management of domestically recovered assets as the status quo usually profits the ruling establishment.

The volume of domestically and internationally confiscated assets is much below the potential, largely due to political interference and conflict of interests in many African countries. Several governments and their heads of states have not changed for decades. As the US-based Council of Foreign Relations points out, five sitting African heads of state had been in power for more than three decades.52 As the recent Pandora papers leaks again confirm, African politically exposed persons are prominent clients of tax heavens with sources of wealth that they are unable to explain. The International Consortium of Investigative Journalists (ICIJ) has implicated 49 current and former African politicians in these practices.53 In the context of public administration characterised by subordination to the executive, political interference in the management of recovered assets, both international and domestic, is a large and highly probable risk.

While international asset recoveries and their transparent and accountable management include the preclusion of the benefit of offenders, confiscated assets are frequently requested by governments, which include individuals who enabled or directly profited from the proceeds of corruption and illicit financial outflows. For example, in Nigeria, the most significant returns of recovered assets to Nigeria include those stolen by Sani Abacha. Close





associates of his, suspected of having helped to launder billions of US dollars into the international financial system, nevertheless retained important positions as returns began.⁵⁴ This further risks that returned assets will be subject to political and criminal interference.



SUCCESS FACTORS & DRIVERS OF **CHANGE IN ESTABLISHING SYSTEMS** FOR THE MANAGEMENT OF RECOVERED **ASSETS**



SUCCESS FACTORS AND DRIVERS OF CHANGE IN ESTABLISHING SYSTEMS FOR THE MANAGEMENT OF RECOVERED ASSETS

Taking the above factors into account, this section is designed to provide some insight into the success factors that lead to the establishment of systems for accountable and transparent management of asset recovery, with a particular focus on the African context.

Asset management cuts across both interim forfeitures and final forfeitures.

Interim forfeitures such as freezing of accounts and seizures of properties are taken to ensure that the asset is available upon conclusion of the final forfeiture order. This ensures that these assets are neither taken out of reach of relevant law enforcement agencies nor are they used to further perpetrate crimes.55 While litigation processes are ongoing, these assets should be operationally managed, meaning that processes ensure that assets continue to generate economic value and can pay employees, taxes, etc. and that they maintain their value. In the absence of clear guidelines, capacities and responsibilities, these assets are difficult to manage. Accountable and transparent management of these assets is important to ensure that assets preserve their original value after the final court judgement.

Final forfeitures are comparatively easier to manage as confiscated assets should be converted to cash, and disposed of as soon as possible to the victims of the perpetuated crimes. Nevertheless, these assets still need to be managed pre-sale and processes should be in place to ensure that sales are carried out according to

international standards. It may also, in some cases, be prudent to delay conversion of other forms of property to cash, in order to maximise their value.

Unfortunately, there are few good examples of sound management of domestic asset recoveries within African jurisdictions. In some countries like Nigeria and South Africa, there has been progress in the freezing and confiscation of assets, especially in crimes linked to corruption and organised criminality. New approaches, including non-conviction based (NCB) seizures, have been successfully piloted in several African countries, despite constitutional and legal challenges.⁵⁶ Nigeria, Tanzania, Somalia, and Zambia are examples of countries that have progressed in the volume of seized assets, largely through these NCB approaches.57 However, legal, policy and institutional arrangements on how to manage these assets have not followed suit. In other words, African governments are getting better in confiscating the suspected proceeds of crime, but they face challenges in repatriating them to the victims of these crimes. Despite this, success factors or drivers of change that establish elements of successful asset management systems can be identified from the experience of African countries.

INSTITUTIONAL DRIVERS: SPECIALISED ORGANISATIONAL ENTITIES TO MANAGE RECOVERED ASSETS

Evidence shows that the existence of a specialised institution or an organisational





entity to manage recovered assets is crucial for transparent and accountable management. The Asset Forfeiture Unit of South Africa is an example of a dedicated body that has been created for the management of recovered assets. Zambia also has a dedicated Asset Forfeiture Unit,⁵⁸ as do Kenya⁵⁹ and Mozambique,⁶⁰ which has recently set up a dedicated asset recovery unit. Uganda has an asset recovery unit under the Inspector General Office.⁶¹

These specialised units gain expertise on asset management especially when it comes to complex cases or assets that need special attention, such as perishable assets. Success factors in these institutions are:

- a. the existence of clear relationships with other institutions; and
- b. transparent oversight of these specialized units.

Studies have shown that in countries like Nigeria, where the management of recovered assets is vested with numerous institutions and where there is a lack of a political steering committee, this contributes to failures in transparent asset recovery management systems, due to coordination challenges, a lack of resources, capacity difficulties, and issues with operational independence.⁶²

AVAILABILITY OF A CENTRAL DATABASE OF INTERIM AND FINAL FORFEITURES

The availability of data regarding international and domestic recoveries are indispensable for a transparent asset recovery management. International recoveries tend to have basic data available in regard to the volume of recovered assets per jurisdiction. Some data on the utilisation of the end-use is also often available in relation to newer recoveries. In this regard, countries harbouring confiscated assets

with a track record of asset repatriations often have better statistics. For example, the USA, UK, and Switzerland maintain basic statistics on asset repatriations to countries, including African jurisdictions. Intra-African statistics of repatriations are much weaker, despite growing evidence of cooperation between African jurisdictions on asset freezing and confiscation. For example, South Africa and Mozambique have been cooperating on asset seizures in South Africa as part of the \$2.2 billion hidden debt / "tuna boat" scandal.63 Intra-African cooperation also does not always appear in international statistics. For example, the recent StAR mapping of international recoveries and returns of stolen assets under UNCAC reports only South Africa, Tunisia and Nigeria as having been involved in asset returns and only Nigeria and South Africa are reported to be involved in the involvement of asset confiscations. As witnessed by the recent StAR questionnaire, even basic data on international recoveries, seizures and confiscations are difficult to obtain from African jurisdictions. They lack specialised focal points, responsibilities are distributed over several institutions and self-reporting to UNODC without a tangible policy objective results in a lack of incentives for African jurisdictions to maintain proper records and engage with the process.64

The availability of asset recovery data is even more limited for domestic recoveries. Basic statistics of the total volume of final and interim forfeitures are in most jurisdictions not available or are published only sporadically. Exceptions include South Africa's Asset Forfeiture Unit, which operates a central database with basic information on seized assets and their ownership and Kenya's Ethics and Anti-Corruption Commission, which reports on convictions and assets recovered by the agency. After many years of implementation and support from international bodies such as StAR.





the Nigerian Ministry of Justice launched in 2020 a Central Database under the Asset Tracing, Recovery and Management Regulations (ARTM) and the Central Criminal Justice Information System (CCJIS). However, public access is not possible and even law enforcement institutions complain about dysfunctional or limited access. In addition, a common misconception present in African jurisdictions, as well as jurisdictions elsewhere, is that this information should not be collected, due to the perceived sensitivity of this data.

South American jurisdictions may provide good examples in how to improve this. They have relatively developed data collection systems due to long-standing experience in assets confiscated from drug-related organized crime. For example, Colombia, Brazil, Costa Rica and Peru collect a variety of data about domestically frozen, seized, and confiscated assets. European jurisdictions, including the Netherlands, Belgium, Italy, and Ukraine also have centralized systems with a varying level of detail, 66 which could be of use for African jurisdictions.

Collecting and publishing at the very least basic data on domestic recoveries, which includes disaggregation of final and interim forfeitures, types of frozen assets such as cash in bank accounts, movable property (cars, boats, planes), income generating immovable property and real estate, perishable assets, businesses and shares and other securities, is essential for effective management and effective civil society and media oversight. This can be done without the need to identify individuals involved and therefore privacy protections can be maintained.

ADEQUATE FUNDING ARRANGEMENTS

Asset management is expensive, especially when administering high value assets, interim forfeitures, and some types of perishable assets. A proper funding plan

is necessary for the institution tasked with the managing of recovered assets. This will ensure that the state is not liable for damages or depreciation when assets are mismanaged.

In relation to this, much discussed as a topic in some African jurisdictions are arrangements that would allow asset management institutions to self-fund themselves from the proportion of seized, frozen, and confiscated proceeds. There is multiple precedence in relation to this from European and North American jurisdictions, which contain provisions clauses allowing percentages of disposed assets to be used to manage domestic assets.⁶⁷ The UK's Framework for transparent and accountable asset return,68 for example, includes provisions for the reasonable deduction of expenses for institutions involved from any recovery.

However, in the African context where law enforcement agencies frequently trace, seize, and confiscate and manage assets at the same time, the danger of unlawful 'entrepreneurship' in seizing and confiscating unlawfully assets is very high.⁶⁹

Funding these institutions adequately is important for both liability reasons should the defendant be found not guilty and for maximising the value of any confiscated assets. However, arrangements where the institution retains a portion of the assets must be considered carefully against realistic checks and balances in a given context.

OVERSIGHT OF THE ASSET RECOVERY MANAGEMENT SYSTEM

Given the sensitive nature of asset recovery and the high propensity for its misuse for political objectives, the oversight function of the management of frozen and recovered assets is also important. In the context of weak institutions and lack of political independence, asset recovery can be an extremely powerful weapon to use





against the political opposition, business competitors, foreign direct investors, or any other legal entity. For example, the much-celebrated Non-Conviction Approaches to asset seizures in many African jurisdictions confer extensive powers on law enforcement due to the lower burden of proof. This may be worrying in situations where there are no systems to oversee such a tool.⁷⁰ In this context, it is important to note that a fair and independent judiciary is also not a given in countries confiscating and receiving returned stolen assets.

The dangers, and importance of oversight, is important even in international recoveries. Particularly where there are special management arrangements that take incurred expenditures out of approved fiscal and budgetary rules and do not allow parliamentary or any other national oversight, there is a risk of mismanagement of recovered assets. While, in theory, parliaments should ensure that asset recovery provisions are integrated into national laws and enforced as such, in practice there is only limited or no leverage for African parliamentarians to influence modalities of international asset recoveries. The same applies to Supreme Audit Institutions (SAI), who may also not be involved in international recoveries.

There are some exceptions, in particular in regard to domestic recovery oversight. In Uganda, the Auditor General queried recently 24.73 billion Ugandan Shillings outstanding as a result of nonimplementation of court decisions to refund the proceeds of corrupt practices.71 In Nigeria, lawmakers have been calling for an audit of domestically recovered assets against the public statements made by anti-corruption agencies seizing assets on anti-corruption charges and their inability to explain how these assets are disposed of or where they are. In relation to this opacity, the Nigerian Presidency, frustrated with the lack of concrete evidence around

recovered assets, constituted in 2018
Presidential Audit Committee on Recovered
Assets. Despite the submission of a report
to the Presidency, no conclusions have
been presented to the public to date.⁷²

International and domestic asset recoveries should not operate outside or in parallel to national fiduciary and expenditure systems. In contexts where institutional weaknesses exist in law enforcement or the judiciary, or where there are overlapping mandates and a lack of political independence, civil society, the media, parliamentarians, and supreme audit institutions must be provided with entry points to ensure accountability and transparency in the management of recoveries. Continental and regional multilateral arrangements can also and should be considered.

LEGAL FRAMEWORKS FOR ASSET MANAGEMENT

To ensure the legality of operations and to incorporate the previously highlighted drivers of change, there needs to be an efficient legal framework for the management of recovered assets. These frameworks can be embedded in existing legislation, as has been the case of the South Africa's Prevention of Organized Crime Act.73 The South African POCA has been constantly amended and evolved into its current form, based on the need to add specific rules for the management of different asset categories. Crucially, it clearly defines different institutional responsibilities at different stages of the asset recovery process. For example, it establishes the Criminal Assets Recovery Account to receive all money derived from the fulfilment of confiscation orders. Significantly, POCA provides for the establishment of a high-level Criminal Assets Recovery Committee (CARC) consisting of the ministers of justice, safety and security, and finance and the national director of public prosecutions to advise the Cabinet in connection with all aspects





relating to the forfeiture of property to the State. The Committee, which combines political and technical capacities, makes recommendations regarding policies to be adopted concerning the end-use of forfeited assets and the transfer of these assets to the Criminal Assets Recovery Account. Crucially, final forfeitures are allocated to specific law enforcement agencies or to a special fund supporting victims of crime. When allocating funds to a specific law enforcement agency or to an institution, organisation or fund supporting victims of crime, the CARC must indicate the purpose for which that property or money is to be used. Political oversight is also ensured: POCA (1998) clearly states that the minister of justice must explain these allocations to the Parliamentary oversight committee upon request.74

In the absence of related legal provisions, as is the case in many African jurisdictions, stand-alone legislation like Mozambique's Special Legal Regime of Confiscation and Recovery of Assets 2020 needs to be passed and enacted to manage recovered assets. As discussed in the previous chapter, these frameworks not only help to manage domestic recoveries, but they also as help in international recoveries by showing that there is an established procedure guiding the use of these assets. These legal frameworks should include the asset recovery principles of relevant international frameworks, such as the Specific Non-Binding Guideline on the Management of Frozen, Seized and Confiscated Assets,75 produced by the Conference of the States Parties to the United Nations Convention against Corruption, which provides detailed guidance for managing recovered assets. The legal framework should also explicitly explain the roles of different entities in the management of recovered assets including managerial responsibility for assets at different stages of the interim and final forfeiture. Case studies across the continent show that the absence of detailed provisions causes intentional or negligenceinduced depreciation or destruction of assets before they can be returned or meaningfully used to compensate the victims.

CONTEXTUAL DRIVERS: INDEPENDENCE OF LAW ENFORCEMENT, EFFECTIVE CRIMINAL JUSTICE SYSTEM AND ACCESS TO INFORMATION

Finally, the overall governance and rule of law context matters when considering the management of both international and domestic recoveries. Law enforcement agencies need to be independent from political interference of any sort and there needs to be an effective criminal justice system and independent judiciary for many of these elements to work effectively in practice. When these are not in place, consideration needs to be given of how other elements of the effective management of recovered assets can be achieved.

Many law enforcement agencies in Africa, including Nigeria and South Africa, for example engage in short-term media showcasing of interim forfeitures instead of securing final forfeitures and a meaningful end-use of confiscated assets. This also applies to prosecutors who are frequently under political influence and unable to tackle criminal entities linked to the ruling elite. The overall context in being able to engage with shortcomings needs to be assessed.



THE ROLE OF CIVIL SOCIETY IN THE MANAGEMENT OF RECOVERED ASSETS



THE ROLE OF CIVIL SOCIETY IN THE MANAGEMENT OF RECOVERED ASSETS

Civil society has become an indispensable part of the asset recovery process. While States must lead the asset recovery process, including the management of final and interim forfeitures, civil society has a crucial role to play. Particularly in contexts where public officials and public institutions are poorly resourced, where there are organisational failures, or where there are challenges in delivering basic services, "civil society action can achieve incremental, and possibly transformational, success in addressing accountability failures".76

At least since the establishment of the UNCAC, civil society organisations have been heavily involved in efforts to prevent and combat corruption. The UNCAC explicitly states in Article 13 that State Parties shall promote the active participation of groups outside the public sector, such as civil society, nongovernmental and community-based organisations, in the prevention of and the fight against corruption. With the availability of more open data, investigative journalists and specialised CSOs have established considerable capacities in highly specialised areas such as asset tracing, revealing beneficial ownership and many other aspects linked to IFFs and money laundering. In the context of the African jurisdictions, international and domestic CSOs have and can in many national contexts provide high levels of access to actionable intelligence in relation to governmental law enforcement agencies.77

In 2014, the Basel Institute of Governance published a Guide to the role of civil society organisations in asset recovery (2014)⁷⁸

outlining how CSOs can participate in the four stages of the asset recovery process through awareness raising and research, advocacy for asset recovery, casework and legal analysis, and return of confiscated assets. Although the guide is theoretical and does not specifically elaborate on the role of the civil society in the management of domestically or internationally returned assets, it does argue that CSOs are well placed to represent the victims of corruption at the stage of the utilisation of returned assets.

In the African continent, CSOs had been sporadically active in the field of asset recovery until the Global Forum for Asset Recovery, which took place in Washington in 2017. Despite the opposition of some state parties, CSO representatives from Ukraine, Tunisia, Sri Lanka, Nigeria, Egypt and the UK were present amongst the 300 representatives from 26 jurisdictions. International NGOs such as the UNCAC Coalition, Transparency International, CiFAR, Global Witness and Global Financial Integrity were also part of the conference. Despite restricted access and exclusion from the main proceedings of the conference, this forum was a turning point for many African-based CSOs in engaging with the asset recovery process as part of their long-standing anti-corruption work.

It has to be pointed out that the forum did not elaborate on the management of recovered assets. Work streams discussed international asset recovery coordination, striking the right balance between the policy and technical expertise in asset tracing or using innovative tools for asset





tracing. Management of recovered assets was largely absent from the contents of the main proceedings of the conference. One exception was the Nigerian delegation, which acknowledged that law enforcement agencies face substantial problems with the management of domestically recovered assets, hampering international and domestic asset recovery efforts.⁷⁹

The topic of the management of recovered assets has been discussed at various points in international anti-corruption gatherings. UNODC presented in 2017 a paper on the Effective Management, Use, and Disposition of Seized and Confiscated Assets (2017) that was launched at the Conference of the States Parties (COSP) to UNCAC in November 2017. The role of civil society was however only envisioned in connection to identifying the possible beneficiaries during the seizure and after final confiscation. At the 2021 COSP, CISLAC Nigeria, ANEEJ Nigeria, Transparency International Kenya, and CIFAR, supported by the Government of Nigeria, GIZ, Transparency International and UNODC, presented a panel on asset management in Africa including recommendations for CSO participation, transparency and accountability.

Governance context matters

The overall context matters for effective CSO engagement in the management of recovered assets. Contextual factors such as:

- the rule of law;
- physical security; and
- access to information

are essential for CSOs to be able to engage with the asset recovery process, including in the management of assets.

According to the Mo Ibrahim Index of Governance, since the early 2000s, the space for civil society organisations, media and activists has shrunk considerably in Africa. This trend has been accelerated by the Covid 19 pandemic. Between March 2020 and June 2021, 40 African countries applied major restrictions to CSOs and the media. Based on the classification of the Democracy Index, which categorises countries as full democracies, flawed democracies, hybrid regimes and authoritarian regimes, most countries in Africa are hybrid or authoritarian regimes with no or limited meaningful civil society activity taking place.

In countries ranked in 2021 as authoritarian regimes, ⁸¹ CSOs may be limited to service delivery on behalf of, or instead of, governmental institutions. Meaningful advocacy, especially in areas such as anti-corruption or fiscal oversight can be challenging.

There are a few exceptions to this however. For example, in **Mozambique**, while civil society activists have faced intimidation, harassment, death threats and assassinations after the 'hidden debt' scandal, ⁸² with the political and logistical aid of development partners and likeminded diplomatic missions, civil society has been advocating for a transparent legal and instituional framework, especially for domestic recoveries including their management. ⁸³

In the Democratic Republic of Congo, a country with high penetration of organised criminal actors and severe challenges with respect to the rule of law, civil society has been persistently vocal in advocating for asset tracing domestically and internationally and a transparent return of the assets linked to the Mobuto dictatorship. This is despite considerable safety concerns and a history of forced disappearances and violance against civil society activists. Needless to say, monitoring the management of recovered





assets is associated with significant personal safety risks as it requires working and holding to account law enforcement agencies and powerful individuals with almost limitless resources at their disposal and near-complete impunity.

Outsourcing this watchdog role to international civil society and media is effective only to a limited extent. Asset recovery cases involving past or current rulers have been covered by international civil society and exile groups but their focus has been limited to international illicit asset tracing originating in these countries. Domestic and international recoveries involving past dictators such as Mobuto in Congo, Abacha in Nigeria, or the recent cases of Obiang in Equatorial Guinea and Karimova in Uzbekistan show how the overall governance context shapes the modalities of the management of recovered assets. These lessons underscore that the more a country is authoritarian, the less likely are asset recovery efforts to be effective in terms of advocacy and in leading to policy changes in the asset recovery regime. In terms of the management of recovered assets, the consequences are that it takes much longer to agree modalities for the end-use of recovered assets in internationtal cases. with the disbursement more conditional in an effort to exclude governmental authorities. A side effect of this is that the management system is much less sustainable and impactful in terms of the redistribution of assets to the victims due to high transaction costs and many third parties involved.

In countries considered flawed democracies or hybrid regimes, civil society action on the management of recovered assets can be more extensive. In these jurisdictions, domestic civil society is more able to advocate and campaign, and in some cases very effective and highly

organised around anti-corruption topics and increasingly also asset recovery. The management of recovered assets can be effectively monitored and co-steered by domestic civil society in hybrid or flawed democracy governance contexts. Domestic CSOs-led efforts are able to be more sustainable, effective and efficient. While the focus on asset recovery varies widely from country to country, since the GFAR forum in 2017, there has been considerably increased focus of African-based civil society organisations on international asset recovery, including the aspects of transparency and accountability of the management of recovered assets. As explained earlier, domestic recoveries and the management of domesic interim and final forfeitures is much less of a focus for African CSOs, despite domestic recoveries being an issue that concerns nearly all African jurisdictions.

A) MONITORING OF RECOVERED ASSET END-USE

One of the most obvious functions for the civil society in the management of recovered assets is monitoring how recovered assets are utilised and disbursed. After negative experiences with transferring repatriated assets into general budgets, most international recoveries have some provision that provides domestic CSOs with a monitoring or dispersal mandate in specifically designed projects. Technically, this function is not unique for CSOs in Africa, as civil society organisations have acquired decades of experiences in supporting fiscal transparency, especially in monitoring public expenditures. For example, CSOs from Kenya, Ghana, Zambia, Nigeria, and South Africa have a long tradition in being involved in large state budget expenditure exercises at the policy level and through case-specific field monitoring.84

Nigerian CSOs stand out in the





monitoring of international asset recovery disbursement as they have been involved in the oversight of international asset recovery since 2004, during the first Abacha return. As an after-thought and after much pressure by local CSOs, Nigerian and Swiss authorities jointly agreed for the World Bank to monitor the proper utilization of the returned funds of this first return through a coalition of local CSOs. The World Bank contracted a Nigerian CSO called Integrity to coordinate the CSOs and participate in 51 project sites for field monitoring.85 Importantly, the funds were returned directly from Switzerland to the Nigerian Government and were directly channelled into the national budget. The World Bank highlighted in the evaluation report that significant weaknesses in the funded projects were observed despite the CSO engagement. Implementing state institutions were not able to provide a list of contractors, specific timing on project execution or how much money contractors actually received. In addition, 98% of the project beneficiaries were not aware that they benefited from Abacha looted funds, which was considered as a significant handicap in terms of closing the impunity circle of the stolen wealth.86 Some CSOs went much further and, in a parallel shadow report, accused the World Bank and the implementing ministries of corruption and mismanagement.87

A decade later, during the return of second significant Abacha loot of USD 321 million in 2017, a direct cash transfer scheme under a special, off-budget programme under the Nigerian National Social Safety Net Project (NSSNP) was established, which included monitoring through a group of Nigerian CSOs. The CSOs were this time involved not only in the monitoring visits but also in the selection of beneficiaries and spot check visits to the implementing authorities. As of May 2019, progress has been reported with USD 37 million of stolen funds disbursed to

over 300,000 households in a transparent and accountable manner.⁸⁸ It is to be noted that the CSO activities were funded and organised through a special project "Monitoring of Recovered Asset through Transparency and Accountability (MANTRA) funded by the British DFID, which significantly increased the transaction costs of the return.⁸⁹

Other African countries have not experienced significant monitoring functions of disbursed funds conducted by civil society. Domestic recoveries have been left aside by the asset recovery international community, due to the lack of existing legal and policy frameworks, which do not enable effective oversight of final confiscations and interim forfeitures. Domestic cases do not have the cross-border element and are usually smaller in scope and extent. Furthermore, domestic asset recovery is more likely to be weaponised against opposition or business adversaries.⁹⁰

Civil society oversight of the management and the end-use of domestically recovered assets by national law enforcement and other authorities is, however, not only prudent for accountability and transparency purposes but it also in sending a convincing signal that governments tackle the impunity linked to corruption.

B) LEGAL DRAFTING AND REVIEW OF LEGAL FRAMEWORK ENABLING THE MANAGEMENT OF RECOVERED ASSETS

One of the crucial engagements of African CSOs has been in support to legislative processes, legal drafting and legislative analysis in the governance, service delivery and human rights fields. Legal frameworks for the management of recovered assets have been mostly absent in African jurisdictions. When available, legal provisions that support and manage asset recovery are usually fragmented under





various anti-corruption legal frameworks. Civil society has been active in pushing for changes to these frameworks and in advocating for effective asset management systems.

For example, in Kenya, Nigeria or Uganda, CSOs have pushed for the adoption of brand-new legislation focusing on the management of domestically recovered assets or a consolidation of existing and fragmented laws.91 In Mozambique, a coalition of civil society organisations has been instrumental in the legal drafting, review and subsequent passage of a decree regulating the Central Bureau for Asset Recovery, which administers the forfeiture of assets and their appropriation by the State.92 Since 2018, Mozambique has built a dedicated asset management unit, which is also a by-product of successful CSO advocacy⁹³ and for the successful implementation of which CSOs have been working.

In Nigeria, numerous CSOs have been involved in two decades of advocacy for the Proceeds of Crime Act (POCA), which would ultimately regulate the much-criticised domestic asset management system. Nigerian CSOs committed considerable resources for legal drafting and attended dozens of parliamentary hearings to reflect their comments and recommendations, with the legislation ultimately failing. This case has been exemplary, in that generations of CSOs worked on this issue though technical legal work and advocacy over close to 20 years, and it failed. The Nigerian POCA experience highlights the fact that CSO engagement is not a guarantee of a successful outcome, and that the unregulated management of recovered assets can benefit political interests.

When it comes to the specialised

frameworks established under international recoveries, these have been criticized in some African countries. In Nigeria, some state government officials and parliamentarians sued the Federal Government for diverting internationally recovered funds into the federation account instead of the consolidated revenue account of the federal government, which would then have been remitted according to a re-distribution formula to state governments as is the constitutional requirement for Nigerian governmental revenues.94 Engaging internationally and considering whether such frameworks make sense in the domestic context is another important role for civil society.

C) RESEARCH AND ANALYSIS INTO THE MANAGEMENT OF RECOVERED ASSETS

Research and analytical data about the management of recovered assets and their end-use is scarce globally. While at least some data about international recoveries is available, records about domestic recoveries are almost never published. Aggregated data is not collected. Even information about legal and policy frameworks and their enforcement is scarce. In Africa, the situation is exacerbated by the general lack of data linked to law enforcement and insufficient research capacity, especially research funding.

Most research and analytical input into the African asset recovery management comes from international development partners, global think tanks and academia. As mentioned earlier, the World Bank/UNODC StAR initiative has produced useful global level research. The very comprehensive Effective Management and Disposal of Seized and Confiscated Assets⁹⁶ focuses mostly operational aspects of asset recovery management. More dated and more targeted national studies have





been produced by the Basel Institute of Governance⁹⁷ about the management of returned assets in Peru, Nigeria, Philippines, and Kazakhstan. However, research conducted at the global level can lack the insider perspective and a detailed overview of the national contexts including the political, economic, and technical specifics needed for understanding the asset recovery landscape. This is especially important in relation to political factors that could be detrimental to the management of recovered assets. The Nigerian POCA experience is a case in point.

African based CSOs, with some exceptions, have not yet engaged sufficiently in the analytical work, which would provide the 'insider' perspective into national management recovery systems and could strengthen their role here in contextualise international standards and operationalising these on the national level. More CSO-led research into the management of national asset recovery systems and the end-use would benefit national discussions about more transparent and accountable asset recovery regimes.

Examples of where this has taken place include a policy brief published by CISLAC Nigeria on the *Management of Recovered Assets* (2018), focusing on modalities of the management of international assets. Nigerian based research points at the lack of accountability and possible criminal diversion of recovered assets by Nigerian law enforcement. Yakubu (2021)⁹⁸ analyses the legal gaps in the existing legal framework including political factors that impact the transparency and accountability of management systems.

Academic research into the management of recovered assets in South Africa also discusses the legal and operational challenges in the management of interim forfeitures and how to avoid asset depreciation, including in returning assets to the legitimate owner. Montesh (2009)⁹⁹ has further analysed the legal aspects of the civil procedure to recover assets by the Asset Forefeiture Unit under the South African National Prosecuring Agency.

D) ASSET RECOVERY DATA MANAGEMENT

CSOs can play an enormous role in data collection and data supervision in relation to frozen and confiscated assets.

On the African continent, primarily it has been Nigerian based CSOs and media that have been involved in national advocacy and discussion about unified data management of frozen and confiscated assets in domestic processes. After many years of advocacy, this led to the Nigeria Ministry of Finance to embark on the unification and standardisation process for recovered asset data management. Despite robust support from the StAR initiative and pressure from sections of the government, CSOs and the media, the process has nevertheless been extremaly slow, in part due to the unwillingness or capacity gaps on the part of law enforcement agencies to share data about domestically confiscated assets. Despite the official 'launch' of the database, the public or civil society do not have access to the information, nor do some of the many law enforcement agencies that are supposed to feed the data into the database.100

International recoveries usually contain a provision about the mechanism for managing recovered assets, including how data is collected and verified. The newly published Framework for transparent and accountable asset return (2022) by the UK Home Office stipulates that "[a]ny agreement must detail the steps that the recipient government will take to ensure the funds are put to their intended use". 101 This means in practice that a Memorandum of Understanding is established that





requests that CSOs monitor and collect data about the end-use of the asset return. How this provision is implemented in asset recoveries to countries where CSOs cannot or will not perform this function, remains to be seen.

A good example of robust construction of a nationally-led data collection system for an international recovery is the Nigerian Sani Abacha II return, where a civil society coalition implemented a sophisticated system of household-level monitoring of cash transfers stemming from the asset return.¹⁰²

Another example of successful results in terms of data is the Swiss return of USD 115 million to Kazakhstan in 2008. Due to the context, the Swiss government and the World Bank insisted on a return through international civil society organisations and a CSO-led close monitoring and data collection process. The BOTA Foundation was the largest child and youth welfare foundation in Kazakhstan during the time of its operation from 2009 to 2014 and was able to collect detailed evidence about tanglible improvements in the health and poverty status of over 208,000 poor Kazakhi children and youth through conditional cash transfers, scholarships to attend higher education institutions, and grants to support innovative social service provision. Despite minor corruption-risk problems in expenditures and long-term sustainability challenges to the schemes, CSOs proved to be comparatively effective in data collection and oversight despite the challenging government context.103 A valuable lesson in terms of the management of recovered assets has been that CSOs need to be part of the decision-making from the onset of negotiations about the management modalities and the end-use of the funds and that they are effective in data collection without 'bureaucratic overkill'. 104

Another good example is presented by the CSOs in Ukraine that have been working with a specialised Asset Recovery and Management Agency (ARMA) that administers a detailed database of interim and final forfeitures. ARMA enables large aggregated and case-specific data. The asset recovery management legal framework is defined by the "National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes". It defines relatively simple conditions of management of the seized property. ARMA manages the assets seized in criminal proceedings with a prohibition on disposal and the interim use of such assets. Asset management is carried out along parameters of efficiency, preservation and increase in value. The manager has the right to pay as well as to reimburse necessary expenses incurred in connection with asset management, deducted directly from the proceeds obtained from the use of assets taken into management. ARMA provides access to large data sets, including information about the case manager, the value of interim and final forfeitures, and the enduse of confiscated assets. Ukrainian anticorruption activists have learnt to use and feed these datasets for asset tracing, advocacy, and a whole range of other asset recovery activities.105

While African law enforcement agencies frequently decline disclosure of even basic aggregated asset recovery management information on the grounds of case sensitivity and security, CISLAC research in Nigeria has shown that the inability of the Government and law enforcement agencies to provide any asset recovery management data rather points at a complete lack of information about frozen, seized, and confiscated assets in the domestic asset recovery effort.¹⁰⁶





E) INFORMAL DIALOGUE WITH STATE PARTIES ABOUT THE MANAGEMENT OF RECOVERED ASSETS

One of the most powerful entry points for CSOs in the management of recovered assets, both international and domestic, is to have informal consultations. In particular, the modalities of internationally returned assets depend on informal discussions between CSOs and representatives of the countries of destination that return the assets. The knowledge of the political context and the assessment of CSOs has been recognized by international partners as a distinct added value in the asset recovery process. According to the GFAR principles, the involvement of CSOs at all stages of asset return is a crucial factor.

Asset returns to Nigeria in recent years have preceded intensive informal consultations with CSOs before the final MOUs were signed. In instances where the political context is such that CSOs are unable to perform this role or where it would be too dangerous for them to be directly involved, foreign CSOs can play this role. This has been, for example, the approach taken in the recent French return to Equatorial Guinea, where Transparency International France, a French NGO Sherpa and other international CSOs pushed for the confiscated assets of over EUR 150 million to the French general state budget, and then to a dedicated budget line of the Agence Française de Dévéloppement (AFD), the French development agency, which will allocate these funds for development projects in Equatorial Guinea without any governmental involvement in the disbursement and monitoring of the expenditures.107

Informal involvement in the management of domestically confiscated assets is also important, although often less formalised. Many CSOs working in the anti-corruption context work closely with domestic law enforcement agencies and other institutions that oversee managing confiscated assets. In the absence of workable checks and balances within governmental institutions, whistleblowing, corruption-related issues, or cross-institutional communication is frequently taken over by trusted CSOs or individual activists. Informal communication about operational, legal, coordination and political problems are frequently addressed by domestic CSOs, which are the only players that can constructively channel these grievances into systemic changes.

For example, informal communication between Nigerian CSOs and law enforcement agencies in charge of the management of domestically confiscated assets has been important in drawing attention to serious in interim forfeitures and the management of perishable assets in Nigeria. This has led to the issuing of the Asset Tracing, Recovery and Management Regulations (2020), policy guidelines by the Nigerian Attorney General with the primary objective of prescribing procedures for Nigerian law enforcement to ensure effective coordination in the investigation. tracing and attachment, seizure, management, and disposal of the proceeds of crime within and outside Nigeria.108

Informal discussions regarding the transparency and accountability of returned and confiscated assets are especially paramount in cases where alleged political interference in the management of confiscated assets is suspected. CSOs are uniquely positioned to formally or informally question political interference in the asset recovery process. For example, CSOs in Mozambique have been an important actor in the newly created Asset Recovery Management Agency.¹⁰⁹ In Nigeria, informal exchanges between trusted CSOs and international partners led to detailed provisions regarding the management of





recovered assets in returns from Ireland $^{\mbox{\tiny 110}}$ and the UK. $^{\mbox{\tiny 111}}$

Another informal way of highlighting individual and systemic transparency and accountability failures in asset recovery management is through cooperation with the media, especially investigative journalists. Exchange of information and close informal collaboration between the media and civil society is of high importance, especially in contexts where domestic law enforcement is too weak or too political to address mismanagement and corruption-risk. While investigative journalists in Africa have traditionally concentrated on the asset tracking and beneficial ownership of illicit assets, political and operational problems with asset recovery management have traditionally been overlooked.¹¹² However, Nigerianbased CSOs have been working with investigative journalists on the political problems impeding proper legal and operational guidelines of domestically confiscated assets¹¹³ and CSOs such have CiFAR have trained journalists to also look at asset management.

F) OVERSIGHT OF ASSET MANAGEMENT INSTITUTIONS

An untapped potential of systemic CSO oversight of recovered assets has been institutional oversight of agencies that are tasked with the management of recovered assets. More and more African jurisdictions have or are in the process of creating specialized agencies, such as the one in Mozambique that have the sole responsibility for domestically recovered asset management. Alternatively, specialized units under Ministries of Justice like in Nigeria¹¹⁴ or the public prosecutors' office of Uganda administer mostly domestically recovered assets.¹¹⁵

In Nigeria, CSOs have been advocating for gaining a seat in statutory bodies that

oversee the management of recovered assets, so that the CSO perspective is represented and the code of conduct is overseen. Although not directly linked to the asset recovery management, Nigeria has made a positive experience with CSO systemic engagement in institutional oversight through CSO representation on the Board of the Nigeria Extractive Industries Transparency Initiative (NEITI), which has conducted successful oversight of the management and auditing of the country's natural resources. 116 Despite the opposition of law enforcement agencies, the voices for CSO inclusion in the institutional oversight have been very robust amongst the abuse of the large volume of domestic recoveries in recent years.117

G) DEVELOPMENT PARTNERS AND ASSET RECOVERY MANAGEMENT

Cooperation between African-based civil society and development partners is indispensable in the management of recovered assets. African CSOs are often entirely dependent on Official Development Assistance (ODA) provided by development partners or private donations. More and more development partners engage with the asset recovery process as they consider this theme as a politically supported and relatively uncontroversial part of national anti-corruption reforms. The trend suggests there is scope for increasing funding for specific programs targeted to raising awareness and building capacities in the fields of asset management.

British ODA has supported civil society monitoring of international recoveries, such as in the Nigerian Abacha II return, while the Swiss ODA has been used to implement projects funded by recovered assets in Uzbekistan. The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH has also supported capacity building for asset recovery actors, under its Global





Programme Combating Illicit Financial Flows. 120 The German government identified fighting illicit financial flows and the return of stolen assets as part of its long-term African Strategy *Marshall Plan for Africa*. 121 Norway further supports fighting illicit financial flows and asset tracing including financing asset recovery efforts globally. 122

In terms of CSO support, development partners have so far concentrated on capacity building, asset tracing, monitoring of international recoveries and advocacy for international recovery. However, domestic asset recovery efforts including the management of interim and final forfeiture, supporting of the strengthening of national legal frameworks and advocacy activities have largely not been targeted. Activities supported by development partners are typically ad-hoc and limited to isolated funding of monitoring and advocacy trips or other one-off activities. CSOs are also supported for asset recovery related activities at the national level, but support to civil society for long-term engagement in the management of international and domestic efforts has not yet materialised.

As part of support, more could also be build on positive developments elsewhere. For example, European based jurisdictions such as Italy and the Netherlands have excellent asset recovery management systems in place due to decades of confiscations from organised crime. Local non-governmental organisations placed in these jurisdictions have experience with oversight over the management of recovered assets, including advocacy towards the compensation of victims of organized crime. This experience could be easily replicated to African-based CSOs.



CONCLUSIONS



CONCLUSIONS

The aim of this paper is to contribute to efforts to strengthen asset recovery systems, particularly in Sub-Saharan Africa and related to the involvement of CSOs, through analysis of the management of recovered assets. Different approaches, gaps, and strategies in the management of both domestic and internationally recovered assets have been examined. The research has identified common weaknesses and challenges hampering transparency and accountability in the accountable use of the recovered resources. Success factors and drivers of change were explored in creating asset recovery systems across the continent. Finally, based on established evidence and experiences, possible roles and entry points for civil society organisations, the media and development partners were outlined.

The African asset recovery narrative has been dominated in recent years by efforts to maximise the volume of internationally recovered assets. Policy frameworks and advocacy efforts for an accountable management of recovered assets have in this been overlooked. The end-use of recovered assets to compensate victims of corruption and associated crimes has played a marginal role, especially with respect to domestic recoveries across African jurisdictions. Support to the management of domestic interim and final forfeitures has been overlooked by the international anti-corruption community. Nevertheless, while international recoveries to Africa move slowly forward and concern only a handful of African jurisdictions, this paper underlines that legal, institutional, and operational steps have been taken towards strengthening the accountability and transparency in asset management.

The Common African Position on Asset Recovery (CAPAR) demonstrates concerted effort in calling for a speedy recovery of assets form countries harbouring stolen assets, while also considering how recovered assets should be managed. Learning from early challenges, the repatriation by Switzerland of USD 322.5 million stolen by Nigeria's former military ruler Sani Abacha in 2017 and the recent return by France of EUR 150 million stolen by Obiang have led to a new generation of asset recovery arrangements that put the transparency and accountability in the management and the end-use of the recovered assets in focus. Innovative mechanisms can be found even in contexts of pervasive corruption or autocratic systems, where the offender still belongs to the ruling elite. The French case underlines those legal reforms in the states willing to return assets in a transparent way are doable in a relatively short time frame. Both returns demonstrate the central role played by the international and domestic civil society in advocacy for accountable management of returns, end-use outside of regular budgets in recipient countries and a strong monitoring component performed by competent civil society.

On the national legal and policy level, African jurisdictions do not however offer an abundance of good examples in the transparent and accountable management of recovered assets and more needs to be done to put in place strong domestic systems outside of the ad hoc nature of international returns and particularly to address purely domestic asset recovery.

While analysing success factors and drivers of change in setting up accountable and transparent systems of recovered assets, five elements were identified as important in this.





Firstly, a national database of international and domestic recoveries comprising of interim and final forfeitures is an important precondition for data-driven accountability and transparency. Categories of assets, responsible law enforcement agencies or other competent institutions and/or account managers provide important data when tracing recovered assets.

Secondly, adequate, and accountable funding arrangements for asset recovery management agencies are an important element. Dedicated agencies outside the law enforcement system, as present for example in South Africa, demonstrate accrued competency in managing domestic recoveries.

Thirdly, functional oversight of the asset recovery management system is essential. Parliaments, supreme audit institutions and/or civil society organisations are important safeguards against political interference, penetration of corrupt actors and mismanagement in responsible institutions.

Fourthly, a legal framework dedicated to the management of recovered assets or annexed to existing asset recovery legislation is essential. Countries like Nigeria have not been able to pass appropriate legislation. Other jurisdictions such as Mozambique, Kenya or Zambia have made progress in recent years.

Lastly, contextual drivers such as the independence of law enforcement, effective criminal justice system or access to information shape the institutional and policy preconditions needed for a successful asset recovery management system in a national context.

More and more African jurisdictions are involved in asset recovery efforts partly due to the effort of domestic and international civil society organisations. This paper suggests entry points for relevant civil society organisations in the African context.

Depending on the general governance context, African civil society can play a decisive role in the monitoring of the enduse of domestically and internationally recovered funds.

Legal drafting and steering of legislative processes for an accountable and transparent asset recovery management system is in line with the traditional role of African civil society organisations shaping the legal governance domain for decades.

Furthermore, research and analysis on the national systems for the management of recovered assets is universally insufficient across African jurisdictions. Domestic civil society is well positioned to fill this information and evidence gap. In addition to this entry point, data collection and costeering of asset recovery databases can be performed by civil society. CSOs are already involved in some international recoveries through data collection and monitoring of the end-use.

Informal exchanges with domestic and international stakeholders are extremely important in regard to the modalities of the asset recovery management. Knowledge of the political context and the assessment of CSOs has been recognised by most international actors as a distinct added value in the asset recovery process, and especially at the stage of discussing asset recovery management. CSOs can be the decisive factor determining an accountable and transparent end-use of returned assets. Strategic and politically informed engagement has proven effective in shaping the return modalities in international recoveries such as the Abacha II return to Nigeria, Obiang case from France and US to Equatorial Guinea or the Karimova Uzbekistan case. In domestic returns, South African, Mozambique or Kenyan CSOs, amongst others, have played an important formal and informal role in setting up domestic asset recovery management systems with an emphasis on





accountability and transparency.

The next frontier of CSO engagement and a considerable untapped potential is the formal inclusion of CSOs in the oversight of agencies that are tasked with the management of recovered assets. As explained, more and more African jurisdictions are creating specialized agencies tasked with asset recovery management. The inclusion of CSOs in statutory bodies of oversight agencies has precedence in some African national contexts. Weak law enforcement institutions and underperforming supreme audit institutions, coupled with dysfunctional parliamentary oversight, supports an argument for the greater formal inclusion of credible civil society organisations.

This paper underlines that as asset recovery efforts across the African continent intensify, a stronger emphasis on transparent and accountable asset management, with the ultimate objective of compensation for victims, is needed. As shown above. accountable asset management is a 'quick win' for most African jurisdictions. This paper has attempted to document and suggest some systemic entry points, especially for civil society actors, with the objective of making national asset recovery management systems an integral part of the anti-corruption effort. In doing so it has sought to document evidence and practical suggestions for Africa-based stakeholders, particularly civil society. Overall, this aims to support civil society actors to be more assertive in shaping the global asset recovery narrative towards benefitting African victims of corruption.



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