

CITIZEN GUIDE TO
**ASSET
RECOVERY**
IN KENYA




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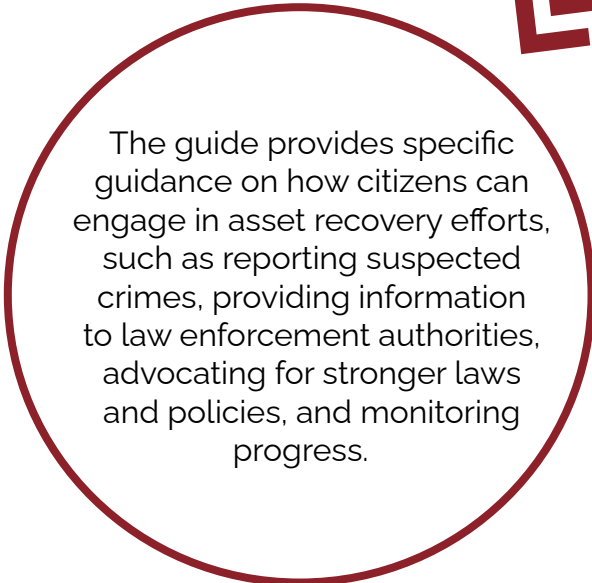
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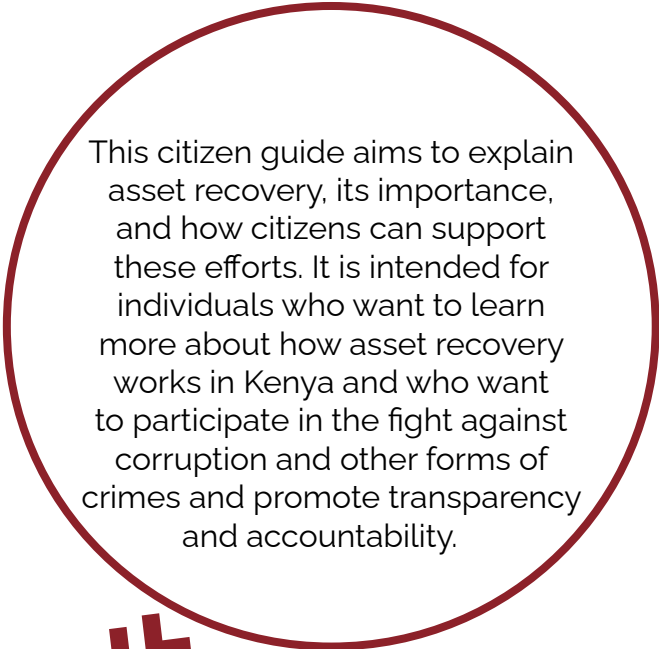
SUMMARY



Ultimately, this guide aims to empower you to play an active role in supporting asset recovery efforts and contribute to the global fight against corruption and other forms of crime.



The guide provides specific guidance on how citizens can engage in asset recovery efforts, such as reporting suspected crimes, providing information to law enforcement authorities, advocating for stronger laws and policies, and monitoring progress.



This citizen guide aims to explain asset recovery, its importance, and how citizens can support these efforts. It is intended for individuals who want to learn more about how asset recovery works in Kenya and who want to participate in the fight against corruption and other forms of crimes and promote transparency and accountability.

1: Asset Recovery Basics

In this section, we provide an initial overview and explanation of asset recovery. We clarify the meaning of asset recovery, how it functions, and why it plays a crucial role in Kenya's fight against corruption and other forms of crime.

2. Legal Framework in Kenya

This section looks at the legal framework for asset recovery in Kenya. It explains which laws are relevant for asset recovery, which agencies are involved and the international commitments Kenya has made that are relevant to asset recovery.

3: Kenya's Asset Recovery Process

Here, we delve deeper into the concept of asset recovery within the context of Kenya. We explore how asset recovery is practiced in the country, who or what agency is responsible, including the specific methods and strategies employed. Additionally, we discuss any unique challenges or considerations relevant to Kenya's asset recovery efforts.

4: Citizen & Civil Society Engagement in Asset Recovery

This section focuses on the involvement of citizens and civil society organizations (CSOs) in asset recovery initiatives. We examine the importance of their participation, discussing ways in which citizens and CSOs can contribute to the asset recovery process. This may include advocating for transparency, reporting corruption to authorities, raising awareness, and holding relevant authorities accountable.

5: Asset Recovery Case Studies and CSO Participation in the Process

In this section, we present specific case studies that highlight successful instances of asset recovery in Kenya and other jurisdictions. We explore the role played by CSOs in these cases, examining their active participation and contributions throughout the asset recovery process. By analyzing these examples, we aim to showcase the effectiveness of CSO involvement in achieving successful outcomes.

In essence, asset recovery is the process of returning the proceeds of corruption and other crimes that have been hidden at home or abroad to compensate victims or public finances.

Asset recovery is an important element of fighting crimes such as corruption and money laundering.

It involves identifying, tracing, freezing, seizing, confiscating, forfeiting, and returning the proceeds of crime in accordance with the principles of national and international law.¹

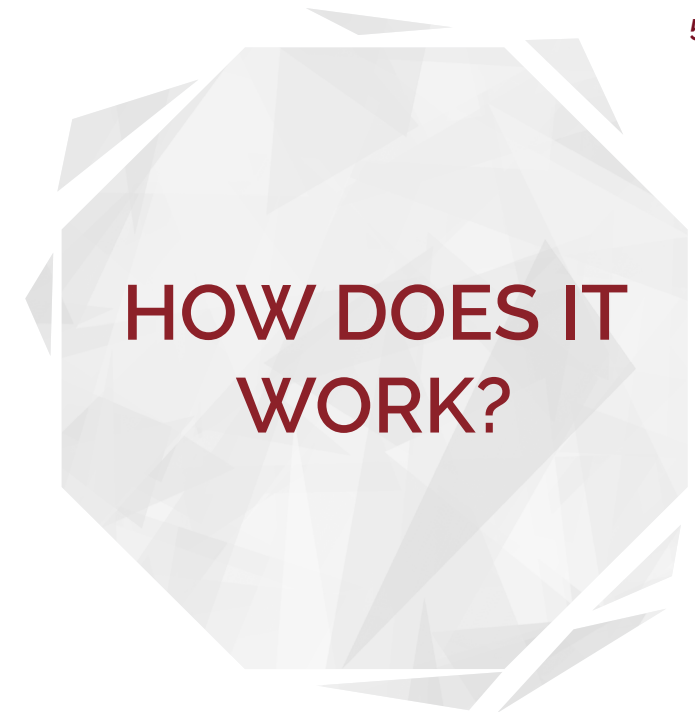
A significant portion of development related finances in low- and middle-income countries is evidently lost through the theft of public assets. The stolen public resources often end up in foreign jurisdictions in an attempt by the perpetrators to hide them. The impact of corruption and other forms of crime is far reaching and plays a significant role in the deprivation of citizens of development and public goods, weakens public institutions and reduces investor confidence.²

The recovery of stolen assets serves an integral and practical role both in the return of resources to their rightful owners and to demonstrate that crime or corruption does not pay.

WHAT IS ASSET RECOVERY?

Asset recovery can take place in the following ways³:

1. **Criminal prosecution** against an individual or a legal entity for corruption or another crime, followed by a court order to confiscate the proceeds of that corruption or crime.
2. **Civil forfeiture proceedings** where claims are brought that specific funds are illicitly acquired.
3. Besides conviction and non-conviction-based processes, **Alternative Dispute Resolution** (ADR) has been taken up by Ethics and Anti-Corruption Commission (EACC) as a means to resolve crime and corruption through a process other than litigation.



Why the different approaches?

Criminal prosecution can result in jail time for the offender but requires high evidentiary standards and is therefore more difficult to prove.

If the case has taken place within the **country where the original crime or corruption occurred**, assets will be confiscated by the court and provided to a government agency or the public budget. In Kenya the process is guided by the provisions of Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), 2009), Part VII and Part VIII and can either take the form of criminal or civil forfeiture where the latter does not require conviction and is a subject to non-conviction-based confiscation.

When the assets have been **hidden internationally**, the situation is more complex. In this case there may be a need for court cases in both the country where the crime occurred and, in the country, where the assets are hidden.

Further, if a foreign court has confiscated assets, **discussions will need to take place between both countries** to arrange for the assets to be returned. These discussions can often be long and challenging.⁴



Asset recovery is both important for recovering stolen or misappropriated assets and serves as a deterrent to future criminal activities and can help to build strong institutions and restore public trust in them.

By disrupting the financial incentives of individuals and criminal organizations, asset recovery can reduce the profitability of crime and corruption and discourage individuals from engaging in illegal activities in the first place.⁵



WHY IS ASSET RECOVERY IMPORTANT?

HOW DOES ASSET RECOVERY HELP WITH THIS?

- » The recovery of assets ensures that stolen or misappropriated assets are **returned to their rightful owner**. This can include returning funds to victims of corruption and other crime.
- » Enforcement and proactive initiatives of recovery serve to disrupt the financial incentives of various actors by seizing and forfeiting their assets. This makes it more difficult for individuals to engage in corruption and related offences and **reduces the profitability of illicit activities**.
- » The successful recovery of assets can **serve as a deterrent to future criminal activities**. By making it more difficult for criminals to enjoy the benefits of their crimes, and further discourages individuals from perpetrating unlawful activities aimed at theft of public assets.
- » Recoveries **restore public trust in institutions** that have been affected by financial crimes and demonstrate that the authorities are committed to combating financial crimes. The outcome of such initiatives can serve to restore confidence in the integrity of financial systems.
- » The recovery of stolen assets can **provide economic benefits**, such as the return of funds to victims of corruption and other crimes or the repurposing of assets for legitimate uses. This can help to promote economic development and stability.

1

Overall, asset recovery is a complex process that requires the expertise of investigators, law enforcement officers and relevant trained professionals.



2

Various mandated agencies and their qualified staff work together to uncover evidence of fraudulent activities and follow the trail of illegally acquired assets, often involving multiple jurisdictions and hidden offshore accounts.



3

The importance of a coordinated and integrated approach to asset recovery, which involves collaboration among national and international law enforcement agencies, regulatory bodies, financial institutions, and other stakeholders is emphasized by existing international regimes.⁶



**WHAT ELSE
DO I NEED TO
KNOW?**

IMPORTANT TO KNOW

Journalists, civil society and citizens play a key role in exposing corruption and crime, and holding authorities to account in investigating, recovering and managing stolen assets.

> **Asset Recovery:** Is the process of identifying, freezing, confiscating and returning assets that have been obtained through criminal activity. It is a complex and challenging process, but it is an essential part of the fight against corruption and other forms of crime.

> **Asset Management:** Is the process of overseeing and administering assets that have been seized, frozen, or confiscated as part of an anti-corruption investigation or prosecution.⁷

> **Asset Return:** The process of returning confiscated assets to their rightful owners, including domestically. Where hidden overseas, this involves the repatriation of funds or property to the country where the crime was committed.

> **Confiscation:** The legal process of taking possession of assets that have been obtained through corruption and other crimes, as ordered by a court of law.⁸

> **Corruption:** The abuse of entrusted power for personal gain.⁹

> **Forfeiture:** The act of relinquishing ownership of assets or property, often as a result of a court order or legal agreement.

> **Freezing:** An order to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of, and for the duration of the validity of, an action initiated by a competent authority or a court under a freezing mechanism.¹⁰ This is a way to prevent suspects using or hiding assets while proceedings are ongoing.

> **Money Laundering:** The process of disguising the proceeds of criminal activity as legitimate funds, in order to conceal their illegal origin and avoid detection by authorities. This often involves changing to form of assets, from for example money to houses or cars, and moving money across different countries and bank accounts.¹¹

> **Predicate offence:** any offence as a result of which proceeds have been generated that may become the subject of an offence.¹²

> **Proceeds of Crime:** Financial benefits obtained through criminal activity, which may include money, property, or other assets.¹³

> **Restitution:** The act of compensating victims of crime, often involving the return of assets or funds that were obtained through criminal activity.¹⁴

> **Seizure:** A measure to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of an action initiated by a competent authority or a court under a freezing mechanism. Unlike a freezing action, a seizure is a more forceful measure that allows the competent authority or court to take complete control of specified funds or other assets.¹⁵



TERMS USED IN ASSET RECOVERY



This is a quick guide to terms commonly used in and around asset recovery. Feel free to come back to check it as you go through the guide!



OVERVIEW



In this section, we discuss the legal and administrative processes and procedures that are used to identify, trace, freeze, seize, confiscate, and recover assets that have been obtained through corrupt practices or other criminal activities in Kenya

Asset recovery in Kenya is governed by several pieces of legislation:

Proceeds of Crime and Anti-Money Laundering Act (POCAMLA), provides for the forfeiture and recovery of the proceeds of crime and assets that have been acquired through unlawful activities, such as corruption.

This law empowers law enforcement agencies, such as the Ethics and Anti-Corruption Commission (EACC), Assets Recovery Agency (ARA), Office of the Director of Public Prosecution (ODPP) and the Directorate of Criminal Investigations (DCI), to investigate financial crimes and to initiate legal proceedings to recover assets that have been obtained through crime and corruption.¹⁶

Additionally, alongside POCAMLA, the **Anti-Corruption and Economic Crimes Act (ACECA)** provides for the compensation and recovery of improper benefits in Part VI.

Improper benefits according to ACECA is gain derived from secret inducements for advice (soliciting for information that could lead to influence) and deception of principles (presentation of falsified information).

Asset recovery in Kenya is an important tool in the fight against corruption and other financial crimes, and it is seen as a key means of promoting accountability and transparency in government and in the private sector.¹⁷

STARTING POINT



The legal framework for asset recovery in Kenya is informed by international and regional agreements Kenya has ratified. The Constitution of Kenya (CoK) 2010, Article 2(6), states that any treaty or convention ratified by Kenya becomes part of the law of Kenya under the Constitution. This means that treaties and conventions that Kenya has ratified have the same legal status as laws passed by Parliament. This is important because it ensures that Kenya is bound by its international obligations.

United Nations Convention Against Corruption, 2003



The [United Nations Convention against Corruption](#) (UNCAC) is the key international agreement dedicated to fighting corruption. It recognizes the importance of asset recovery and devotes an entire chapter (Chapter V) to this issue.

The chapter outlines measures countries should take to recover stolen assets, including cooperation and assistance in legal cases between countries. It also establishes guidelines for the disposal of recovered assets and the sharing of recovered assets between countries.¹⁸

Kenya is a signatory to the UNCAC and has taken several steps to implement its provisions, including those related to asset recovery.¹⁹

African Union Convention on Preventing and Combating Corruption, 2003



The [African Union Convention on Preventing and Combating Corruption](#) (AUCPCC), aims to promote and strengthen anti-corruption measures in Africa and provides a framework for cooperation between African countries and the international community in preventing and combating corruption.²⁰

One of the key provisions of the AUCPCC is the promotion of asset recovery as an essential tool in the fight against corruption. The convention encourages countries to develop and implement effective measures to identify, trace, freeze, seize, and confiscate the proceeds of corruption and other related offences. It also calls for international cooperation in the recovery and return of stolen assets.

To support the implementation of these provisions, the AUCPCC establishes the African Union Advisory Board on Corruption (AUABC), which is responsible for monitoring the implementation of the convention and providing technical assistance to member states. The AUABC also promotes regional and international cooperation in the recovery of stolen assets.

**INTERNATIONAL LAW
AND POLICY RELEVANT
TO ASSET RECOVERY IN
KENYA**



The Common African Position on Asset Recovery (CAPAR) represents the political commitment of African governments to enhance the effectiveness and efficiency of asset recovery processes.

- » Monitoring and overseeing the implementation of CAPAR is crucial in ensuring transparency and accountability throughout these processes.
- » The development of CAPAR aims to streamline the framework, policies, and resources dedicated to asset recovery, as well as strengthen investigative and prosecutorial capabilities across African nations. This facilitates improved cross-border investigations, collaboration, and information-sharing among African countries.²¹
- » CAPAR provides a comprehensive outline of the necessary steps and measures to address the continued depletion of African assets. It focuses on effectively detecting, retrieving, and overseeing African assets located in foreign jurisdictions while respecting the development goals and independence of African Union Member States.
- » The CAPAR framework revolves around four key pillars; detection and identification of assets, recovery and return of assets, management of recovered assets and cooperation and partnerships.



**ANTI-CORRUPTION
AND ECONOMIC
CRIMES ACT, 2003**



The Anti-Corruption and Economic Crimes Act (ACECA) of 2003 provides for the compensation and recovery of improper benefits in Part VI. Improper benefits according to ACECA is gain derived from secret inducements for advice (soliciting for information that could lead to influence) and deception of principles (presentation of falsified information).

Section 51 of ACECA holds corrupt individuals liable to compensate those who suffer losses as a result of their corrupt acts. Section 55 allows for civil forfeiture of unexplained assets, that is the surrender to the state of properties that a person suspected of corruption has, and is unable to adequately account for despite being given a reasonable chance. Section 56 provides for preservation orders which permit relevant agencies to appoint a receiver for any property suspected to have been acquired through corrupt conduct, the receiver has powers of management, control and possession of the property.



**PROCEEDS OF CRIME
AND ANTI-MONEY
LAUNDERING ACT,
2009**



The Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) of 2009 enables asset recovery through criminal and civil cases. The Assets Recovery Agency (ARA) is primarily responsible for enforcing its provisions.²² The ARA is responsible for identifying, tracing, freezing, seizing, and confiscating the proceeds of crime generally, with investigations conducted by its officers. Section 109 of the act establishes the Criminal Assets Recovery Fund (CARF) and designates ARA as its administrator to facilitate the management of confiscated and forfeited property and funds. The CARF is a critical part of Kenya's anti-money laundering and asset recovery regime. It provides a central repository for assets that have been confiscated or forfeited, this allows for the management and disposal of these assets in a transparent and accountable manner.

**ETHICS AND ANTI-
CORRUPTION
COMMISSION ACT,
2011**



Section 11(j) of the EACC Act of 2011, allows EACC, a body established under Article 79 of the Constitution – to institute court proceedings for the recovery or protection of public property, confiscation of proceeds related to corruption, or payment of compensation.

The asset recovery process in Kenya involves a range of actors, including law enforcement agencies, prosecutors, courts, and civil society organizations.

The main government agencies involved in national, as well as international recovery cases linked to financial crimes, are the EACC, DPP, ARA and DCI.

Notably, the government in its anti-corruption efforts created the Multi-Agency Team (MAT) that seeks to enhance synergy among agencies and streamline efforts towards combatting corruption, economic crimes and other related crimes. The MAT is made up of the aforementioned four institutions as well as the National Intelligence Service (NIS), Financial Reporting Centre (FRC), Kenya Revenue Authority (KRA) and the Office of the President. Although the latter agencies do not play a major role in asset recovery, they have been instrumental in the recovery and preservation of assets.²³

ARA (ASSETS RECOVERY AGENCY)

- Responsible for identifying, tracing, freezing, seizing, and confiscating the proceeds of crime, including money laundering, terrorist financing and terrorism proliferation financing. The ARA conducts investigations into asset recovery matters in relation to these crimes in Kenya. Sections 72 & 86 of POCAMLA also mandates the agency to manage preserved/restrained and forfeited assets.

EACC (ETHICS AND ANTI-CORRUPTION COMMISSION)

- Investigative and asset recovery powers. The EACC can institute court proceedings for the recovery or protection of public property, confiscation of proceeds related specifically to crimes of corruption. They can also seek payment of compensation (Section 11(j) of the EACC Act of 2011).

DCI (DIRECTORATE OF CRIMINAL INVESTIGATION)

- Conducts investigations into asset recovery matters in Kenya, often its investigators are seconded to ARA and EACC.

ODPP (OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS)


- Prosecutorial powers to initiate proceedings to recover proceeds of crime under Section 18 of the ODPP Act 2013. It has powers under Section 54 of ACECA, 2003 to order compensation upon conviction.

Asset recovery typically consists of the following steps:²⁴

- **1: Pre-Investigation**
This involves verifying the source of information about the suspected crime or corruption case and determining its authenticity. Any inconsistencies or incorrect statements should be rectified by establishing the truth. In the context of Kenya this could either be a single agency operation or a multi-agency operation involving multiple law enforcement agencies.
- **2. Investigation**
This includes identifying and locating the proceeds of crime and gathering evidence regarding ownership of assets in question and their origin. This involves financial investigations undertaken by law enforcement agencies, such as the ARA, EACC and the DCI to determine the suspect's financial profile, using preventive measures provided by anti-money laundering laws, and obtaining information about offshore structures through mutual legal assistance requests to law enforcement officials overseas. The outcome of this phase may be the seizure or preservation of assets to secure later court-ordered confiscation.
- **3. Freezing / Seizure of Assets**
Once assets have been identified, law enforcement agencies may seek to freeze these assets to prevent suspects from removing or further hiding these assets. Under POCAMLA, the courts can issue an order to freeze assets for a period of 90 days, which can be extended for a further 90 days upon application to the court. The process involves a range of legal proceedings, including criminal proceedings against the individuals involved in corrupt conduct, as well as civil forfeiture proceedings to recover the assets themselves. These proceedings are typically initiated by the ODPP, EACC and ARA.
- **4. Confiscation**
Once there is sufficient evidence of criminal activity and the assets in question are proven to be the proceeds of crime, law enforcement agencies may seek to seize and forfeit those assets. The process of seizure and forfeiture is typically carried out by the ARA and EACC upon receipt of a court order, who are responsible for managing the assets and ensuring that they are used for the benefit of the public.



STEPS TO ASSET RECOVERY



WAIT,
THERE'S
MORE!

5. And finally...disposal

If the assets are successfully forfeited, they may be returned to the state or to the victims of the crime, depending on the specific circumstances of the case. The state confiscates and disposes of the property in accordance with the provisions of POCAMLA and ACECA. When the assets are located in Kenya, the ARA is responsible for managing the assets and ensuring that they are returned in accordance with the law.

When the assets are located overseas, Kenyan authorities must cooperate with foreign law enforcement to ensure that these assets are frozen, preserved and confiscated. This can entail a simpler process, or that the steps above must also be completed in the foreign jurisdiction.

In these international cases, the return of any stolen money is also not automatic. Rather, the government of Kenya has to enter into negotiations with the country where the assets are located to secure the return of the assets. In these international processes there is no standard way that assets are returned and used.

Notably, it is common for both criminal and civil proceedings to be conducted simultaneously. This is because the two types of proceedings serve different purposes. Criminal proceedings are designed to punish the perpetrators of the crime, while civil proceedings are designed to recover the assets that were unlawfully acquired.

Framework for the Return of Assets from Corruption and Crime in Kenya (FRACCK)

In March 2022, the FRACCK was employed to return Kshs. 450 million seized from former Kenya Power Managing Director Samuel Gichuru and former Cabinet Member Chris Okemo, who had held dockets in the Ministry of Energy and the Ministry of Finance. The money is in the process of being repatriated to Kenya from Jersey following the signing of an agreement.²⁵

In the agreement non-governmental organisations, Crown Agents and Amref Health Africa, were agreed upon as implementing organisations for the projects identified and approved by the steering committee. Returned funds are designated for health care needs. The Government of Kenya on the other hand has a responsibility of ensuring the delivery and long term maintenance of the aforementioned projects.

The agreement in its provisions sets out responsibilities, obligations and requirements for the Governments of Jersey and Kenya and the implementing organisations to guarantee transparency and accountability to facilitate the efficient repatriation of the assets and deter theft of the recovered assets.



OVERVIEW



Article 13 of UNCAC places an obligation on States Parties to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption.

Throughout the asset recovery process, individuals and groups outside the public sector should play a role in monitoring and advocating for transparency and accountability. They should also provide support to victims of corruption and related crimes, and work to raise public awareness of the importance of asset recovery in the fight against corruption and other crimes.

There are established good practices from various jurisdictions on ongoing and completed asset recoveries that citizens, CSOs, the private sector and the media in Kenya can borrow from to guide their involvement in the process of recovering unlawfully acquired assets.²⁶

Citizens in Kenya have an important role in asset recovery efforts by providing information and reporting cases of corruption and other crimes. This can include:

- Accessing information
- Engaging in public awareness activities
- Reporting corruption
- Participating in civil society organisations
- Engaging with wealth declarations

This section gives an overview of the various ways that citizens can be actively involved in asset recovery and contribute to the fight against corruption.

ACCESS TO INFORMATION REQUESTS

Citizens can lodge access to information request to relevant agencies to gain access to information on asset recovery cases and recovered assets. Alternatively they can write letters to their representatives, members of parliament (MP) to table inquiries in parliament or to the relevant parliamentary committees.

PUBLIC AWARENESS

Citizens can create public awareness on the importance of asset recovery in the fight against corruption and other financial crimes. By spreading information on asset recovery and its importance, citizens can help to build a culture of transparency and accountability.

REPORTING CORRUPTION

Citizens can report instances of corruption or crime as well as claims of disproportionate wealth to the legitimate income of a person to relevant authorities such as the EACC, ARA and DCI. These agencies provide for ways in which citizens can report potential cases of crime and corruption and in some cases rely on information from sources for their investigations, such as members of the public, heads of government departments and agencies, officials working in both the public and private sectors and the media.

For the EACC, information can be provided in writing, by telephone or in person.²⁷ ARA has a similar procedure to facilitate whistleblowing.²⁸ It is through such reported cases that law enforcement agencies identify assets that have been acquired through corrupt practices and initiate the asset recovery process.

PARTICIPATION IN CIVIL SOCIETY ORGANIZATIONS

Citizens can participate in civil society organizations that work on promoting transparency and accountability in the government and private sector. These organizations can advocate for stronger asset recovery laws and monitor the implementation of asset recovery efforts.



**WHAT ROLE
CAN CITIZENS
PLAY IN
ASSET
RECOVERY?**



WHAT ELSE?

WEALTH DECLARATIONS

Public officers in Kenya are required to declare their wealth annually. The wealth declaration is a requirement under the Public Officer Ethics Act, 2003. Public officers are required to submit their wealth declarations to the Ethics and Anti-Corruption Commission (EACC). The EACC is responsible for reviewing the wealth declarations and for investigating any suspicious or unexplained wealth.

The wealth declaration is an important tool in the fight against corruption and other forms of unethical conduct in public service. By requiring public officers to declare their wealth, the government can identify and investigate any suspicious or unexplained wealth. This helps to deter corruption and to promote transparency and accountability in public service.

Citizens and civil society can call for public officials to publish their wealth declarations annually if they don't do so through public actions and use declarations to identify suspicious cases which can be reported to authorities and civil society.



CIVIL SOCIETY'S ROLE

Civil society organizations (CSOs) play a critical role in asset recovery efforts by working to promote transparency, accountability, and good governance. This includes through²⁹:

- » **Research and policy development**
CSOs play a valuable role in supporting research and policy development on asset recovery. By using their legitimacy, CSOs help to identify and trace stolen assets, recommend policies to recover stolen assets, and advocate for the implementation of asset recovery policies.
- » **Advocacy and awareness-raising**
CSOs advocate for stronger asset recovery laws and policies, as well as raise awareness among the public about the importance of asset recovery in the fight against corruption and financial crimes. This can help to create a culture of transparency and accountability and increase public support for asset recovery efforts.
- » **Monitoring and oversight**
CSOs monitor the asset recovery process and provide oversight to ensure that it operates in a fair, transparent, and effective manner. This can include tracking the progress of asset recovery cases, reporting on any irregularities or abuses, and holding government authorities accountable for their actions.
- » **Legal assistance and support**
Some CSOs provide legal assistance and support to victims of financial crimes and other affected parties. This can include through; helping to file claims for the recovery of assets; providing representation in court; and advocating for the rights of victims
- » **Capacity building**
CSOs provide training and capacity building support to law enforcement agencies, prosecutors, and judges involved in the asset recovery process. This can help to strengthen the overall asset recovery system and ensure that it operates professionally and effectively.
- » **Asset management and disbursement**
Local and international CSOs manage and disburse recovered assets to ensure that they are used for the benefit of the public and victims of crime. They also monitor, evaluate and report on the implementation of projects funded by recovered assets using well developed indicators in line with international best practice.
- » **Participation in court user's committees**
CSOs can participate in court users committees and divisions and provide valuable information and expertise on a variety of issues related to asset recovery. This information can be used to help the committees and divisions develop policies and procedures for asset recovery, and to make decisions on individual cases.

The Proceeds of Crime and Anti-Money Laundering Act provides for reporting institutions, some of which can be classified as private sector actors, to monitor on an ongoing basis unusual transactions. They are further obliged to report these transactions to the Financial Reporting Centre. Reporting institutions ought to put in place internal mechanisms in compliance with existing laws.

Aside from these obligations, the private sector can play an important role in asset recovery efforts by collaborating with law enforcement agencies and government authorities to identify and recover stolen or misappropriated assets. This includes in³⁰:

» **Asset tracing and recovery**

Private sector entities, such as forensic accountants and lawyers, can assist in tracing and recovering assets that have been hidden or moved to avoid detection or seizure. This can include identifying offshore accounts, shell companies, and other complex financial structures used to conceal illicit assets.

» **Due Diligence and Compliance**

Private sector firms can conduct due diligence and compliance checks to identify potential risks and vulnerabilities related to money laundering and other financial crimes. This can help to prevent the misuse of the financial system for illicit purposes and facilitate the identification of assets that may be subject to recovery.

Under Part IV of POCAMLA, financial institutions are designated as reporting institutions. They are required to monitor all complex, unusual, suspicious, large, or other transactions on an ongoing basis.

» **Information sharing and collaboration**

Private sector entities can share information with law enforcement agencies and government authorities to support asset recovery efforts. This can support asset recovery by providing intelligence on illicit financial flows and other crimes, as well as collaborating on joint investigations and other law enforcement activities.

» **Asset management and disbursement**

Private sector entities can manage and disburse recovered assets to ensure that they are used for the benefit of the public. This can include supporting programs that promote good governance, human rights, and social justice.



THE PRIVATE SECTOR'S ROLE



THE ROLE OF THE MEDIA

The media plays a critical role in supporting asset recovery efforts by raising public awareness, and serving as a watchdog to ensure that the asset recovery process is fair and effective. As such the media can contribute to the asset recovery process in the following ways³¹:

25

» **Reporting and investigation**

The media can investigate and report on cases of corruption, financial crimes, and asset recovery efforts. This can help to expose wrongdoing, hold public officials and other actors accountable, and raise public awareness about the importance of asset recovery.

» **Advocacy and awareness-raising**

The media can advocate for stronger asset recovery laws and policies, as well as raise awareness among the public about the importance of asset recovery in the fight against corruption and other crimes. This can help to create a culture of transparency and accountability and increase public support for asset recovery efforts.

» **Information dissemination**

The media can disseminate information about asset recovery efforts, including the progress of asset recovery cases, the amount of assets recovered, and the methods used to recover assets. This can help to keep the public informed about the asset recovery process and increase confidence in the efforts of law enforcement agencies and government authorities..

» **Watchdog**

The media can serve as a watchdog to ensure that the asset recovery process is fair and effective. This can include monitoring the actions of law enforcement agencies and government authorities involved in the asset recovery process, reporting on any irregularities or abuses, and holding officials accountable for their actions.



UK & JERSEY RETURNS TO KENYA

An example of asset recovery in action is the repatriation of approximately USD 400,000 from the UK, which was used to purchase 11 ambulances to support the health sector in Kenya.

The money was recovered by a British court from Smith & Ouzman, a UK security printing firm that had bribed Kenyan election and examination officials to win printing contracts.

The firm paid \$545,091 to officials of the Interim Independent Electoral Commission (IIEC) to win the tender for printing electoral materials for the 2010 referendum and two by-elections.³²

In March 2022, the FRACCK was employed to return Kshs. 450 million seized from former Kenya Power Managing Director Samuel Gichuru and former Cabinet Member Chris Okemo, who had held dockets in the Ministry of Energy and the Ministry of Finance. The money is in the process of being repatriated to Kenya from Jersey following the signing of an agreement³³.

In the agreement non-governmental organisations, Crown Agents and Amref Health Africa, were agreed upon as implementing organisations for the projects identified and approved by the steering committee. Returned funds are designated for health care needs.

The hidden debt scandal in Mozambique has had a profound impact on the country, as it unveiled a widespread corruption scheme involving the unlawful diversion of billions of dollars in public funds through offshore companies and shell entities. In 2013, the scandal was exposed when the Mozambican government approved three loans totalling \$2.2 billion, which were meant for offshore gas projects but were misused to finance corrupt activities, including bribery and property acquisitions.³⁴ Sentences against some key figures were handed down in December 2022 and reforms in state owned enterprise oversight were improved. However, the scandal is not yet fully uncovered and the recovery of the bulk of the stolen assets is uncertain.

CSOs have played a crucial role in addressing the hidden debt scandal in Mozambique. Their involvement has included:

- providing information and analysis to raise awareness and exert pressure on the government, including through investigations,
- advocating for reforms in financial management systems and debt regulations to prevent future scandals, and
- monitoring the government's response to ensure accountability in asset recovery and prosecutions.



HIDDEN DEBT SCANDAL MOZAMBIQUE

In 2005, an agreement on restitution modalities was signed by Switzerland, Nigeria, and the World Bank, resulting in the restitution of USD 700 million of assets stolen by former Nigerian President Abacha from Switzerland to the Nigerian central budget.³⁵ Nigeria committed to using the repatriated funds for specific poverty alleviation projects and to conduct a comprehensive Public Expenditure Management and Financial Accountability Review (PEMFAR) overseen by the World Bank.

Civil society participation was introduced to monitor the expenditure of the recovered assets. This monitoring was done through the MANTRA project (Monitoring of Recovered Assets through Transparency and Accountability). The MANTRA project was established to guarantee transparency and accountability in the return of the Abacha II assets to Nigeria. It was devised through a collaboration between ANEEJ, the Federal Ministry of Justice, and the British government's Department for International Development (DfID).³⁶

Comprising of three main components, the MANTRA arrangement operated as follows:

1. A monitoring framework that establishes explicit criteria for overseeing the distribution of the recovered assets.
2. A monitoring committee responsible for supervising the implementation of the monitoring framework.
3. A community engagement strategy aimed at informing the beneficiaries of the recovered assets about the monitoring process and their rights.

MANTRA has played a crucial role in ensuring that the recovered assets are utilized to support the underprivileged and marginalized in Nigeria. The arrangement is characterised by the following elements³⁷:

1. It was designed to align with the GFAR Principles, internationally recognized standards governing the recovery and management of stolen assets.
2. The monitoring committee comprised of representatives from both the returning and receiving governments (the UK and Nigeria respectively) and civil society.
3. The community engagement strategy included public awareness campaigns and a mechanism for addressing complaints.

The implementation of the MANTRA arrangement occurred in two phases. The first phase, concluded in 2019, concentrated on monitoring the distribution of recovered assets in the National Cash Transfer Programme (NCTP). The second phase focuses on monitoring the utilization of recovered assets in other social safety net programs.

The MANTRA arrangement serves as a valuable instrument in ensuring transparency and accountability in the distribution of stolen assets. By ensuring that the recovered assets are utilized to benefit the impoverished and vulnerable population in Nigeria, it has become a model for other cases of asset recovery.



The logo for BOTA Foundation Kazakhstan is a large, light gray, multi-faceted geometric shape resembling a diamond or a cluster of crystals. The text "BOTA FOUNDATION KAZAKHSTAN" is centered within this shape in a bold, dark red, sans-serif font.

BOTA FOUNDATION KAZAKHSTAN

In 2007, Switzerland, the US, Kazakhstan and the World Bank signed agreements for the restitution of USD 84 million of frozen funds through the 'BOTA Kazakh Child and Youth Development Foundation' (BOTA), which would finance projects for the benefit of the Kazakh population, particularly in the areas of youth development and energy efficiency. This was a specially established foundation for the asset recovery.³⁸

The board of trustees of BOTA comprised of five Kazakh citizens and one representative each from the US and Switzerland governments, responsible for monitoring the expenditure of the funds. The foundation was managed by an independent international NGO established by the concerned parties, which operated independently of the Kazakh authorities. The frozen assets were transferred in instalments to the foundation and utilized under the supervision of a consortium consisting of two internationally recognized organizations (IREX Washington and Save the Children) and with the advice of the World Bank.³⁹

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