



THE SOCIAL REUSE OF RECOVERED ASSETS IN KENYA

CIFAR RESEARCH PAPER

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EXECUTIVE SUMMARY

The social reuse of recovered assets plays a vital role in ensuring that resources stolen through corruption and other crimes are redirected to benefit society. When assets are forfeited, seized and confiscated, one of the ways they can be effectively utilized is through social reuse, which involves putting these assets to work in addressing the needs of society. This approach emphasizes the involvement of civil society in decision-making processes and the establishment of clear parameters for asset reuse.

By channelling recovered assets into social reuse projects, they not only serve as a deterrent to criminal activities, but also reinforce the message that crime doesn't pay. This practice is also particularly important for addressing the needs of communities deprived of essential resources due to criminal activities.

In the context of Kenya, while there have been instances where recovered assets from corruption cases have been used for the public benefit, existing legislation does not provide a framework for social reuse.

Domestic recoveries have seen limited evidence of reuse, primarily involving land recoveries returned to government institutions. However, in the case of cross-border recoveries, there have been notable examples of assets being put to social reuse. Nonetheless, questions persist regarding project selection, stakeholder inclusion, and the monitoring and audit of funds, including who ultimately benefits from these initiatives.

Summary recommendations

- » **Establish a comprehensive legal framework:** that explicitly addresses the concept of the social reuse of recovered assets.
- » **Facilitate Multi-Stakeholder Collaboration:** foster collaboration among government agencies, civil society organizations, and affected communities in the development and implementation of social reuse policies.
- » **Provide Statistics and Data on the Utilisation of Recovered Assets:** release transparent and accountable data on how recovered assets have been allocated and used.
- » **Monitor and Evaluate:** implement robust monitoring and evaluation mechanisms to track the progress and impact of projects that are part of social reuse initiatives.
- » **Practise Restorative Justice:** incorporate principles of restorative justice in the development of a policy framework for the social reuse of recovered assets.



INTRODUCTION

Over the past twenty years, Kenya has seen a number of financial crime- and corruption-related scandals involving large sums of money. This includes the Anglo-leasing scandal, where USD 33 million was paid for fictitious contracts,¹ the Goldenberg scandal, where USD 2.3 billion was stolen,² the Windward case, where roughly USD 4 million was taken³ and the Chicken gate scandal, where USD 349,057 was misappropriated.⁴ Recent estimates suggest that Kenya loses KES 2 billion (approx. USD 12.7 million) a day to corruption.⁵

This diversion of funds adversely affects development projects and hampers the provision of essential public services, consequently depriving citizens of their fundamental rights. This underscores that corruption and other related forms of crime are not victimless⁶ but have real, human costs. To address the effects of the losses incurred on states, societies and individuals, the restitution of these funds should take centre stage.

Asset recovery seeks to do just that: to ensure that proceeds of crime and corruption are traced, seized and returned to their rightful owners.

Social reuse, a concept within asset recovery, complements asset recovery by extending the impact beyond restitution. It involves repurposing reclaimed assets, such as physical spaces, within the community to address pressing social needs and foster sustainability.⁷ By integrating social reuse into the asset recovery process, stolen resources can be leveraged to actively benefit the wider community. Re-claiming stolen assets goes a long way in ensuring that there is a decrease in illicit financial flows and therefore advancing sustainable development.⁸

This paper provides an analysis of the social reuse of assets in Kenya. The first section introduces the concept of social reuse. It provides a clear and concise definition of the concept of social reuse of recovered assets and highlights the various advantages associated with social reuse. This section then delves into challenges that may arise when implementing the concept of social reuse, such as legal complexities, stakeholder cooperation, and resource allocation.

The paper then considers established standards and practices relevant to the social reuse of recovered assets. It discusses international guidelines that govern the repurposing of assets. Additionally, it offers an insightful exploration of experiences with social reuse initiatives from Nigeria and Italy. By examining case studies and success stories, this section provides valuable insights into diverse approaches and strategies employed globally.

It continues with Kenya's specific experience with the social reuse of recovered assets by providing an overview of the legal framework in place for asset recovery and outlining Kenya's approach to repurposing reclaimed resources for societal benefit. Through in-depth analysis and examples, this section sheds light on the challenges faced and successes achieved in the Kenyan context, offering an understanding of the local dynamics surrounding social reuse.

Finally, building on the insights gained from Kenya's experience, the paper offers a set of practical recommendations tailored to the Kenyan context. It provides actionable strategies and policy suggestions aimed at optimizing the social reuse of recovered assets in the country.

By addressing specific challenges and leveraging local strengths, these recommendations aim to enhance the effectiveness and impact of social reuse initiatives in Kenya.

DEFINING THE SOCIAL REUSE OF RECOVERED ASSETS

Asset recovery is the process of returning the proceeds of corruption and other forms of crime that have been hidden at home or abroad to compensate the victims or public finances. It involves identifying, tracing, freezing, seizing, confiscating, forfeiting, and returning the proceeds of crime in accordance with principles of national and international law.⁹

The asset recovery process begins with the identification of assets that have been misappropriated, followed by tracing and freezing those assets to prevent their further use or movement.¹⁰ Assets that have been identified as the proceeds of crime can then be confiscated, with the ultimate aim of returning them to their rightful owner.

When a successful legal process culminates in the confiscation of ill-gotten gains, the question of how to use the proceeds of crime emerges. This matter falls under the final stage of the asset recovery process – the disposal stage – after the ultimate confiscation order is undertaken. There are various options available for the repurposing of the confiscated assets and one of them is the social reuse of the recovered assets.

Of note here is that frozen assets – i.e. those not yet confiscated – can also be socially reused. While there are several lessons from this paper that will also be useful for pre-confiscation use, the focus of this paper is however on post-confiscation reuse.

SOCIAL REUSE

Social reuse is the act of returning the profits gained from criminal activities to the communities impacted by such crimes, with the intention of directing these funds towards the needs of those communities.¹¹

There are two ways in which social reuse takes shape:¹²

- » **Direct reuse** where the assets are used or repurposed for public benefit or social aims. This could be by converting property recovered from criminal enterprises or corrupt individuals such as land into a community playground, for instance.
- » **Indirect reuse** is when the proceeds of crime are distributed through special funds to compensate victims. This is either where money is confiscated or where assets are converted into another form for use by the community, for example selling agricultural land and using the sale funds to build a community centre.

Both forms of social reuse ultimately benefit society. They utilise the assets with the objective of facilitating mechanisms to prevent and combat crime and corruption through incentivised programs, and although their implications might not seem direct, society ultimately benefits from the proceeds.

UNDERSTANDING THE DIFFERENCE BETWEEN SOCIAL REUSE AND VICTIM COMPENSATION

A closely related but different concept to social reuse is victim compensation. The main difference between social reuse and victim compensation in asset recovery is the purpose of the recovered assets.

- » **Social reuse** is the use of confiscated assets for public interest or social purposes, such as providing housing for the homeless, funding education programs, or supporting victims of crime.
- » **Victim compensation**, on the other hand, is the use of confiscated assets to compensate the victims of the specific crime for their losses.¹³

In some cases, the same assets can be used for both social reuse and victim compensation.

Various frameworks like the United Nations Conventions Against Corruption (UNCAC) advocate for the inclusion of victims in the recovery process and for them to benefit from the returns. It is often the prerogative of the state to identify the victims and ensure that they are compensated for the negative impacts suffered from the loss of resources.¹⁴

The decision of how to use confiscated assets is ultimately up to the government or other entity that has recovered the assets, adhering to policies on the use of received assets if available. There are a number of factors that may be considered in making this decision, such as the wishes of the victims, the needs of the community, and the potential impact of the use of the assets on crime prevention. Important to note is that victim compensation and social reuse can often go hand-in-hand.

VICTIM COMPENSATION & SOCIAL REUSE

An example of dual benefit is the Italian social cooperative Al di là dei sogni (Beyond the Dreams). Having taken over a former mafia-owned farm, the cooperative employs societally disadvantaged individuals, including persons recovering from addiction, former prisoners, and people released from public mental hospitals, in an effort to both provide sustainable livelihoods and prevent those individuals from being targeted by the mafia for alternative employment. Victim communities are therefore compensated for the crime through employment and economic investment, while the farm is used in a way that benefits the community through supporting community members.¹⁹

BENEFITS OF SOCIAL REUSE

Both direct and indirect social reuse of recovered assets can have an array of potential benefits that accrue to the recipient countries or societies through advancing their social, economic and political situation. Social reuse can also contribute to ending corruption through directing funds to projects that disincentivise the crime.

Benefits of social reuse encompass:¹⁵

1. Addressing specific societal needs, by financing various programs and initiatives such as healthcare and education offering the potential for aiding socially vulnerable individuals
2. Demonstrating the state's commitment to combatting crime. The use of assets to fund programs that benefit society can help to build public trust in the justice system. This can lead to a more positive attitude towards

crime-fighting strategies and to a reduction in crime and corruption cases.¹⁶

3. Amplifying awareness about asset seizure and confiscation and educating the public about these legal tools by publicizing cases where criminal assets are seized. This informs people about their use in crime prevention, garners support, and makes it harder for criminals to hide assets.
4. Facilitating more effective communication about confiscation, promoting the message that 'crime does not pay' to deter criminal enterprises.
5. Increasing public visibility of the operations of law enforcement agencies, prosecution bodies, and courts, thereby fostering greater public interest and support in the fight against crime.
6. Enabling more optimal utilization of certain assets that might otherwise go unused and potentially deteriorate.

CHALLENGES IN THE IMPLEMENTATION OF SOCIAL REUSE

The adoption and implementation of mechanisms for the social reuse of assets can bring about a series of implications that extend across multiple dimensions. These implications underscore the complex nature of this approach and the need to carefully consider both its benefits and challenges.

When considering the adoption of social reuse mechanisms, several noteworthy aspects emerge:¹⁷

1. **Asset Condition:** A significant

concern arises from the condition of confiscated movable assets, such as vehicles. Often, these assets are in poor condition, necessitating additional budgetary allocation for repairs in order to make them functional and usable.

2. **Budgetary Strain:** In cases where the condition of confiscated assets is particularly dire or complex to manage, there is a possibility that substantial additional funding from the state budget could be required for their restoration and maintenance. This scenario raises the concern that the costs of restoration might outweigh the potential benefits of their reuse, thus leading to a burden rather than a beneficial outcome.
3. **Reallocation Challenges:** In certain contexts, allocating funds based on social reuse objectives might diverge from government policy on fund distribution, potentially posing a challenge to the intended financial allocations.
4. **Preference and Transparency Challenges:** The process of selecting specific social causes or beneficiaries to receive the assets can introduce difficulties. Preference conflicts may arise when favouring one cause or beneficiary over others, potentially leading to disagreements and disputes during the selection process. This will particularly be the case when there is no or only limited inclusion of key stakeholders in the process and where there is little transparency in decision making.

5. **Re-misuse and related 'revenge' crimes** risks targeted at the funds and the beneficiaries of the funds. In cases in Italy, for example, organised criminal groups have targeted social reuse projects for revenge crimes for using assets they formally controlled.¹⁸

STANDARDS RELEVANT TO THE SOCIAL REUSE OF RECOVERED ASSETS

UNITED NATIONS CONVENTION AGAINST CORRUPTION

In the context of social reuse of assets, Article 35 of the United Nations Convention against Corruption emphasizes the principle of compensation for damages, suggesting that when assets are recovered from corruption-related activities, they could potentially be used to compensate those who have suffered due to corrupt acts.²⁰ Article 57 further underscores the importance of a structured approach to asset return and disposal, which aligns with the concept of social reuse. It implies that assets recovered from corruption could be reintegrated into society through responsible disposal or return to their rightful owners, promoting the idea of restorative justice and societal benefit.²¹

COMMON AFRICAN POSITION ON ASSET RECOVERY

The Common African Position on Asset Recovery (CAPAR) has two provisions that could support social reuse as a priority. Paragraph 19 of the CAPAR establishes both that the use and disposal of recovered and returned African assets is a sovereign right and specifies that AU Member States are 'entitled to use assets for the common good of citizens in accordance with Africa's development agenda, domestic laws and other legitimate government purposes' (emphasis added). Recommendation 4.3.2 further encourages adopting domestic policies on the use of returned assets for development, meeting sustainable development goals or implementing any other social investment projects.

FINANCIAL ACTION TASKFORCE STANDARDS

FATF Recommendation 4 states that countries should adopt measures to enable their competent authorities to dispose of confiscated criminal assets. The interpretive note for Recommendation 38 encourages countries to contemplate the creation of a fund dedicated to assets obtained through forfeiture. This fund would serve as a repository for all or a portion of assets confiscated, directing these resources towards purposes such as law enforcement, healthcare, education, or other suitable endeavours.²²

CIVIL SOCIETY PRINCIPLES FOR ACCOUNTABLE ASSET RETURN²³

The Civil Society Principles for Accountable Asset Return also include several recommendations aiming towards social reuse.

Principle 9 suggests that recovered assets should be used to enhance the well-being of the country of origin, elevate living standards, and reinforce the rule of law in accordance with human rights and the Sustainable Development Goals.

Principle 10 encourages engagement of a variety of stakeholders, including civil society, in deciding the allocation of recovered assets for reparations and the betterment of affected communities. It also encourages victim engagement and the involvement of independent civil society to advocate for victims' interests when required.

OHCHR RECOMMENDED PRINCIPLES ON HUMAN RIGHTS AND ASSET RECOVERY²⁴

The Office of the High Commissioner for Human Rights' Recommended Principles on Human Rights and Asset Recovery includes several points relevant for social reuse.

Principle 7 states that Receiving States should allocate returned assets in an accountable, transparent and participatory manner. This is specified as requesting that States allocate recovered assets to the realisation of economic, social and cultural rights.²⁵

Principle 8 further states that Receiving States should use recovered assets in a manner that contributes to the realization of human rights and again here specifies that "Funds recovered by States through asset recovery processes may therefore contribute to the available financial resources from which States can draw for the purposes of realizing economic, social and cultural rights, as well as civil and political rights. In allocating recovered funds, receiving States should further take into account the right to development and the corresponding duties held by States".²⁶

EXPERIENCES WITH THE SOCIAL REUSE OF ASSETS

ITALY

AN EXAMPLE OF THE DIRECT SOCIAL REUSE OF ASSETS

Italy has actively championed the concept of repurposing criminal assets, particularly those recovered from mafia-related activities. This approach emerged as a response to the distinctive threat posed by mafia organizations to affected communities. The original law introducing this concept aimed to both weaken criminal economic power and to return resources to the community for the purpose of social and institutional reintegration. This form of restitution aims to restore stolen assets to citizens impacted by crime in their locality.²⁷

Recent years have witnessed significant recoveries of assets through both conviction-based and non-conviction-based methods, often tied to anti-mafia preventive actions. In 2014, Italy's efforts led to the retrieval of around EUR 1 billion in assets, including 102 companies, 239 real estate properties, and various movable assets associated with mafia-related activities. The magnitude of these recoveries posed significant challenges for their administration and disposal.²⁸

In response, the Italian government established innovative collaborations with various stakeholders, including investigating judges, local municipalities, private sector entities, financial institutions, and judicial managers. These partnerships aim to ensure that the confiscated assets directly benefit the victimized communities.

Several instances in Italy exemplify the practicality of the social reuse concept: allocating confiscated homes to families who lost their residences due to flooding, designating manors to municipalities for accommodating women in need, providing buildings to house refugees and homeless individuals and assigning a confiscated sailing boat to the University of Tuscia and port authorities for vocational training and summer cruises.²⁹

» Agricultural Movement in Italy Takes on the Mafia

In Sicily's Alto Belice Corleonese region, a cooperative has been using confiscated Mafia land for positive change. La Placido Rizzotto Libera Terra co-op, established in 2001, produces various goods and hosts tourists on a 618-acre estate. This initiative is part of the wider network Libera Terra, which shares knowledge and resources among its co-ops.

By rehabilitating the once-neglected land, the co-op has shown that positive change is possible in challenging environments. Italian laws allow for the social reuse of confiscated property, and Libera Terra helps groups bid for and manage these assets. This model not only redistributes wealth but also provides jobs, particularly for those who previously had limited alternatives to working for the Mafia.

The impact of social reuse on the Mafia is hard to measure, but their attempts to intimidate co-op operators indicate their concern. Research by Libera shows that reuse of confiscated properties benefits regional development and employment, especially for young people.

This approach is not limited to Italy; other countries, like Albania, have also employed social reuse. By reassigning properties for positive purposes, society sends a powerful message that what was taken can and should be given back.

While property confiscation is an effective tool against criminal organizations, effective management remains a challenge. Libera Terra's model addresses this issue, providing a practical way to redistribute wealth locally and promote social justice. Francesco Citarda's co-op stands as a testament to the potential of social reuse in revitalizing entire territories.³⁰

» Villa Santa Teresa

Villa Santa Teresa is a specialized clinic in diagnostics, radiotherapy, and nuclear medicine. Initially founded by Michele Aiello, who was later convicted for mafia association, after Aiello's arrest in 2003, the clinic was seized and, following a Supreme Court judgement in 2013, a new Administrative Council was appointed, led by a judicial administrator to oversee the social reuse of the clinic.

The primary goal after seizure was to ensure the continuity of treatments for patients, maintain service levels, support staff where needed, and engage with the scientific community and local communities. The new administration focused on recovering clinic assets sustainably and within legal parameters.

The administration implemented various changes, including redirecting employees to departments lacking proper control, especially the financial department, which was central to Aiello's fraudulent activities. They also enhanced medical assistance, requalified personnel, and established partnerships with other centers and non-profit organizations. They invested in staff

training and partnered with another hospital for this.

These efforts led to significant achievements, including the elimination of millions of euros in risky invoices, the restoration of clinic assets, and resolution of administrative trials. Despite facing a substantial budget reduction post-seizure, the clinic maintained high-quality oncological treatments and implemented an ethical code as required by law.³¹

Both the Placido Rizzotto Libera Terra co-op and Villa Santa Teresa show how the use of direct social reuse mechanisms can dismantle criminal power and also revitalize communities by redirecting confiscated assets to meaningful and socially beneficial uses.

NIGERIA

AN EXAMPLE OF THE INDIRECT SOCIAL REUSE OF ASSETS

The recovery and repatriation of USD 505.5 million hidden in Swiss banks to Nigeria during 2005 and 2006 marked a significant endeavour, as acknowledged by the World Bank in 2007. After extensive negotiations, Nigeria and Switzerland mutually agreed that these funds would be allocated to pro-poor projects, overseen by a neutral third party. The World Bank was selected to supervise the fund's utilization and contribute to enhancing public finance management in Nigeria.³²

A grant of approximately USD 280,000 was channelled from the Swiss government through the World Bank to co-finance the Public Expenditure Management and Financial Accountability Review (PEMFAR). This initiative aimed to reform budget spending in alignment with Nigeria's national economic empowerment development strategy (NEEDS) priorities

encompassing education, health, and essential infrastructure sectors like power, roads, and water.

From the repatriated USD 505 million, allocations were designated for priority pro-poor sectors: power (USD 168.5 million), works (USD 144.5 million), health (USD 84.1 million), education (USD 60.1 million), and water resources (USD 48.2 million). The World Bank, in partnership with Integrity, a Nigerian civil society organization, conducted a field monitoring survey on projects funded by these funds recovered from the looting of a former Nigerian president Abacha.³³

The allocation of the repatriated funds led to increased budget spending in pro-poor development projects across sectors like health, education, water, electricity, and roads, reflecting Nigeria's efforts toward achieving the Millennium Development Goals (MDGs). Nonetheless, challenges arose in tracking fund allocation in the national budget. Some spending agencies used the funds to settle arrears or partially finance ongoing projects. Moreover, quality maintenance of projects proved problematic, with some projects lagging behind schedule or being abandoned, sometimes due to corruption.³⁴

The complexity of effectively repurposing these recovered funds underscores the need for careful administration, oversight, and transparency to ensure their transformation into tangible and sustainable social reuse.

UNPACKING THE SOCIAL REUSE OF RECOVERED ASSETS IN KENYA

Kenya has been actively involved in various forms of asset recovery, encompassing both domestic and cross-border cases. Notably, recouped funds recovered domestically are channelled into the consolidated fund due to the provisions of the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA). However, there are also plans for a specialised Criminal Assets Recovery Fund (CARF) to be operationalised by the National Treasury Cabinet Secretary.³⁵

In the absence of the CARF, recovered assets paid into the consolidated fund are subsequently allocated in the budgeting cycles. Therefore, monitoring the amounts redirected to the National Treasury presents a challenge in tracking and makes it difficult to accurately gauge the effects of specific recovery efforts and identify the recipients or beneficiaries of the reclaimed assets, including their social use.

With physical assets, excepting land that has been returned to specific agencies or ministries, it is unclear how properties or vehicles recovered are disposed of and whether the proceeds are also paid into the consolidated fund.

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE SOCIAL REUSE OF RECOVERED ASSETS IN KENYA

In the context of managing, disposing, and reusing recovered assets in Kenya, the following legal provisions are noteworthy:

Anti-Corruption and Economic Crimes Act, 2003

The ACECA in its provisions under Part VI, Section 51, on compensation and recovery

of improper benefits, enumerates the importance of compensating individuals who suffer or experience financial losses by those convicted of crime and corruption. Under Section 54, it gives the court the mandate to authorise compensation and/or the return of property or an amount of equivalent value to its rightful owner. If the rightful owner cannot be identified, the court can order the property or equivalent amount to be forfeited to the government. Courts can determine the quantification of such orders.³⁶

However, the Act does not give direction on how the recovered assets should be utilised. It provides for the transfer of the recovered funds into the Consolidated Fund under Section 56C. Any recovered assets or property, regardless of their nature, are to be surrendered to the Permanent Secretary to the Treasury, whether they have been obtained during investigations or through court actions.³⁷

Proceeds of Crime and Anti-Money Laundering Act, 2009

Similar to the provisions in the ACECA, POCAMLA does not provide for the social reuse of assets but rather focuses on a specialised fund, the Criminal Assets Recovery Fund (CARF). Section 109 provides for the establishment of the CARF, which is foreseen to manage and host money and property derived from confiscation and forfeiture orders. Section 110 mandates that all funds and property derived from the confiscation and fulfilment of forfeiture orders are to be sent to the CARF and Section 113 tasks the Treasury Cabinet Secretary with issuing regulations.³⁸

The regulations to operationalise the fund are yet to be presented to parliament for approval. Once adopted, this framework could be used to address current concerns regarding the proper utilization of repatriated and domestic assets.³⁹

It should be noted though that regarding the administration of the CARF, the following applies:

- a. Funds from concluded confiscation and forfeiture orders detailed in Sections VII to X are paid into the Consolidated Fund.
- b. Property derived from concluded confiscation or forfeiture orders detailed in Sections VII to X become government property and is disposed of following relevant laws concerning public property disposal.

Under the current form of the proposed Act, mention of any form of social reuse or compensation as well as parameters for identification of victims and subsequent beneficiaries or use for public goods, restitution and/or restoration are missing.

KENYA'S EXPERIENCE IN THE SOCIAL REUSE OF ASSETS

Domestic recoveries

Domestic instances of the return of properties are evident through the efforts of the Ethics and Anti-Corruption Commission (EACC), the Assets Recovery Agency (ARA) and other law enforcement agencies. However, there is generally a lack of information regarding the use of the recovered criminal assets for social or other purposes.

An example of a recovery that can be tracked, concerns land that has been

returned to its original proprietors, mainly public institutions.⁴⁰

The EACC has handed over to the Government 39 title deeds for public property worth KES 5.2 billion, recovered from private developers since 2013.⁴¹ This is part of property recoveries worth 30 billion since 2013. These properties, which include parcels of land belonging to various public institutions and county governments, had been grabbed in collusion with public officials and were returned to public institutions to serve their initial purpose. Of these recovered parcels of land, there is publicly available information about their end use only in one case: the recovered 60-acre parcel of land in South B, Nairobi, which had been stolen by several individuals is being reused for low-cost housing by the government, with construction currently ongoing.⁴²

A further example where information exists about the end use of assets is the transfer from the EACC and ODPP of KES 2 billion recovered from graft cases to the National Treasury's Covid-19 emergency fund. These funds from the ODPP and EACC came from the prosecution fund established in 2019. The ODPP prosecution fund had to that date recovered KES 2.9 billion, from which the KES 2 billion was used in the fight against the novel coronavirus.⁴³

International recoveries

Two significant cross-border returns have taken place in Kenya, which demonstrate the indirect utilization of recovered assets. While not explicitly referred to as cases practising social reuse, there is some evidence of social purpose and lessons that can be used for developing social reuse policies in Kenya. The subsequent discussion and analysis delves into the approach employed in these cases for re-utilisation.

Windward Case

This legal case centred around corruption and money laundering involving Samuel Gichuru, a former CEO of Kenya Lighting and Power Company, and Chrysanthus Okemo, a former Kenyan Minister of Energy. The two individuals received bribes for granting engineering and energy contracts. The bribes were routed through Windward Trading Limited, a company owned by Gichuru and the funds associated with the bribes were held in bank accounts at Jersey's HSBC Bank Plc and Royal Bank of Scotland International.⁴⁴ Jersey, an island jurisdiction, undertook investigations into the case and froze approximately GBP 3 million held in bank accounts within its jurisdiction. It solicited legal assistance from 12 different countries.⁴⁵

The crucial aspect of this case, concerning the utilisation of assets, lies in an Assets Sharing Agreement between the governments of Jersey and Kenya.⁴⁶ The agreement amounts to approximately GBP 3.6 million, and Jersey is to keep a fraction of the amount to cover expenses incurred during the legal proceedings. However, instead of releasing the proceeds directly to Kenya, the funds, as of 2023, are being transferred and disbursed through third-party entities, Crown Agents and Amref Health Africa. The purpose of this transfer is to utilize the funds for public good projects mutually agreed upon by Kenya and Jersey.⁴⁷

Specifically, the funds are utilized on mutually agreed and identified developmental projects, based on the project description, specifications and budget itemisation, agreed upon by the Steering Committee in April 2020. The agreement indicates that the funds should go towards Covid-19 emergency response interventions. This arrangement

aligns with the concept of social reuse of recovered assets. The funds seized as a result of corrupt activities are not only being confiscated but are also being redirected towards initiatives that benefit society as a whole.

The Assets Sharing Agreement outlines the importance of addressing societal challenges via the projects disbursing recovered assets, reflecting a broader trend of incorporating social considerations into the management and reuse of confiscated proceeds from corruption cases.

However, this return, albeit ongoing, has been accompanied by limited awareness of the specifics of the agreements, particularly on the criteria of the selection of the projects and involvement of stakeholders in decision making.⁴⁸ Participation in decision-making and community-led initiatives are usually central to social reuse projects.

Smith and Ouzman case (Chickengate scandal)

In the Smith and Ouzman case, a corruption scandal emerged involving bribery by British individuals to secure contracts for the supply of ballot papers in Kenya. The National Crime Agency in the UK conducted thorough investigations, leading to the trial and conviction of two British employees of the Smith and Ouzman company under the UK's Bribery Act. Subsequently, confiscation orders were issued, and the company involved was found guilty and fined GBP 2.2 million.⁴⁹

Significantly, the UK government demonstrated its commitment to addressing the broader impact of corruption by agreeing to share a portion of the confiscated funds with Kenya. This collaboration resulted in an allocation of KES 49 million, which was then utilized to acquire seven ambulances.

These ambulances were earmarked for distribution across underserved areas through the Ministry of Health.⁵⁰

However, there were concerns over the selection criteria of the project and questions on how the government chose to buy ambulances and the purpose they serve, as well as the selected counties which were to receive the ambulances.

By using the confiscated funds to purchase ambulances for distribution in vulnerable areas, the case demonstrates a direct link between the ill-gotten gains from corruption and their transformation into assets that benefit the broader society. The decision to invest in ambulances underscores the potential impact on healthcare accessibility and response in areas where these resources are sorely needed.

Additionally, the case highlights the complexity of the asset recovery process under the Kenyan law. While the decision to utilize repatriated funds for a social cause is commendable, there is no evidence to show that monitoring and subsequent audit of the utilisation of these funds were undertaken. Further, the auditing of these funds according to various stakeholders can prove to be a challenge.⁵¹

Similar to the Windward case, it is also unclear what criteria was used to select the project, procure the ambulances, and who was involved in the various stages from decision-making to final receipt and the use of the ambulances.

CONCLUSIONS

Crime and corruption have far-reaching consequences for economies, societies, and individuals. Illicit financial flows, misappropriation of assets, and bribery divert funds that could otherwise be channelled towards development and essential public services, depriving citizens of their fundamental rights. Kenya's corruption cases serve as a stark reminder of the magnitude of these challenges, with numerous instances of significant financial losses due to financial crime.

The concept of social reuse of recovered assets presents a promising solution to counteract these losses and to address financial crime more generally. By redirecting the confiscated proceeds of criminal activities towards community projects, societies stand to gain multiple benefits. Specific societal needs can be addressed while compensating victims and supporting vulnerable individuals. Furthermore, by visibly disposing of the recovered stolen assets via projects that benefit the public, social reuse demonstrates a government's commitment to combatting crime, amplifies awareness about asset confiscation, and encourages greater public support in the fight against corruption. It can also provide opportunities for employment that reduce the need to engage in criminal enterprises and, in that way, disincentive crime and corruption.

The implementation of social reuse policies and activities need to be carefully thought through, however. Complex economic considerations, suboptimal asset conditions, budgetary strains, as well as legislative and preference conflicts, all contribute to the intricacies of this approach. To navigate these challenges effectively, countries must establish comprehensive legal and policy frameworks that define the process of social reuse, involving multi-stakeholder collaboration, needs assessment,

transparent selection mechanisms, and rigorous monitoring and evaluation.

International agreements such as the United Nations Convention against Corruption and principles outlined at the international level provide valuable guidance for structuring policies related to the social reuse of recovered assets. Moreover, real-world examples, such as those from Nigeria, Italy, and Kenya's experience to date, underscore the importance of well-designed policy implementation and the positive impact that social reuse can have on marginalized communities.

The social reuse of recovered assets presents a forward-thinking strategy to transform ill-gotten gains from crime and corruption into instruments of positive change. By carefully navigating the complexities, establishing sound policy frameworks, and engaging in meaningful and transparent collaboration, societies can ensure that these assets serve the greater good and contribute to sustainable development, ultimately transforming the ambition that *crime does not pay into one where fighting crime pays for communities.*

RECOMMENDATIONS

Given the intricacies associated with the social reuse of recovered assets, it is imperative for Kenya to take into account several recommendations to embed any moves towards the social reuse of recovered assets:

1. Comprehensive legal framework:

The government should develop and enact a robust legislative framework that explicitly addresses the concept of the social reuse of recovered assets. This framework should provide clear definitions, procedures, and criteria for the identification of victims, beneficiaries, and projects eligible for funding. It should also establish a transparent and accountable mechanism for the management and disposal of recovered assets.

The operationalization of the new Asset Recovery Fund (CARF) could be a first step in addressing the administration and management of recovered assets. CARF, as a government fund established to receive, manage, and disburse assets that have been forfeited or confiscated due to crime or corruption, could be used to support indirect social reuse initiatives, such as providing housing, funding education programs, or supporting the victims of crime.

For physical assets, new legislation and policy would be required to establish a system where assets can be effectively managed and reused for social purposes.

2. Multi-Stakeholder Collaboration:

The government should foster collaboration among government agencies, civil society organizations, and affected communities in the development and implementation of social reuse policies. This collaborative approach would enhance transparency, accountability, and ensure that the interests of various stakeholders are considered.

3. Mechanisms to Provide Statistics and Data on the Utilisation of Recovered Assets:

The government should establish transparent and accountable mechanisms for providing data on how recovered assets have been allocated and used. The information should include assets that have been allocated to each project, the beneficiaries of the projects, and the outcomes of the projects. This information should be made publicly available to ensure transparency and accountability and to show the benefits of social reuse to communities.

4. Monitoring and Evaluation:

The government should implement robust monitoring and evaluation mechanisms to track the progress and impact of projects that are part of social reuse initiatives. Regular reporting on the utilization of funds, project outcomes, and benefits accrued to communities would enhance transparency and accountability, which are key for the successful implementation of social reuse projects.

- 5. Restorative Justice:** The government should consider incorporating principles of restorative justice in the development of a policy framework for the social reuse of recovered assets. Restorative justice is an approach to justice that focuses on repairing the harm caused by crime or corruption. This approach could be used to prioritize projects that directly benefit the victims of crime and corruption, aiming to repair the harm caused by these activities.

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