



13th International
Anti-Corruption Conference
IACC

Global Transparency:
fighting corruption for a sustainable future.
Athens, Greece | 30 October - 2 November 2008

WORKSHOP REPORT FORM

Number and title of workshop

1.7 THE ROLE OF CIVIL SOCIETY IN RECOVERING ASSETS

Date and time of workshop

Thursday 30 October 2008, 17.30 – 19.30

Moderator (Name and Institution)

Anne Lugon-Moulin, Basel Institute on Governance, Switzerland

Ms Gillian Dell, Transparency International

Rapporteur (Name and Institution)

Craig Fagan, Transparency International

Panellists (Name, institution, title)

Jeremy Carver, TI UK) on behalf of Dr Mr Kamal Hossain, Former Minister of Foreign Affairs of Bangladesh, member of the TI Advisory Council, Bangladesh

Mr Stuart Gilman, StAR, World Bank/UNODC

Ms Anne Lugon-Moulin, International Centre for Asset Recovery (ICAR), Basel Institute on Governance, Switzerland

Ms Gillian Dell, Global Programmes Manager, TI Berlin

Mr Chandrashekhhar Krishnan, Executive Director, TI-UK

Ms Maud Perdriel-Vaissière, Jurist, Sherpa, France

Ms Anne-Kathrin Glatz, Advisor, Bern Declaration, Swiss NGO Coalition, Switzerland

Summary (300 words)

From the Abacha case in Nigeria to Marcos in the Philippines, there are gross examples of former leaders and public officials abusing their power to steal assets. World Bank estimates are that US\$ 1 trillion are the total global proceeds of bribery and up to 25 percent of Africa's gross domestic product may be lost to corruption.

Yet asset recovery is a relatively new issue in the world of anti-corruption initiatives. It has largely come to the forefront following the passage of the UN Convention against Corruption (UNCAC) in 2003. UNCAC has clear provisions regarding the responsibility of signatories to prevent thefts, prosecute these cases and return stolen assets (Chapter V). In addition, the OECD Anti-Bribery Convention has provided a framework for legal codes and actions



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countries must take in cases of stolen assets. In the case of Switzerland, the country modified its customer disclosure laws when it signed onto the OECD convention.

The process of asset recovery involves a multitude of players that go beyond governments in the North and South. It includes law enforcement agencies, law firms, financial institutions and civil society organisations in various countries. Until now, the role of civil society has remained overlooked as an important force driving the recovery of stolen assets.

Civil society organisations and citizens have proven critical in leading advocacy efforts and raise awareness of acts, claims and cases. They have helped to pass domestic legislation needed to implement the relevant UNCAC provisions and prosecute cases. In addition, they have provided information that has been essential to allow key cases to move forward. Civil society organisations also have taken on a watchdog role to monitor assets once they have been returned to the country, such as in Nigeria and Mozambique.

Summary of Presentations (300 words per panellist)

The remarks of Kamal Hussein, as presented by Jeremy Carver, framed the discussion within the context of the world's unfolding financial crisis. Addressing the topic of stolen assets as part of a reform of the global financial system is essential if the world is to successfully tackle questions of development and poverty. Capital flight to offshore financial centres (OFCs), also called "tax havens", is estimated at ten times the flows that developing countries receive from donors.

Bangladesh's experience with asset recovery was given as an example of the complicated nature of the process and its linkages back to development. One of the country's deposed leaders, Mohammed Ershad, had stolen millions from the country during the 1980s. The exact amount only came to light following the collapse in 1991 of the global financial giant the Bank of Credit and Commerce International (BCCI), where many of his stolen proceeds went.

Transparency International has argued that such stolen assets could support national development efforts if they were returned. However, mutual legal assistance (MLA) and justice systems need to be in place if this is to work in practice.

From the side of civil society, promoting improvements in asset recovery efforts should include six general areas of actions. First, citizens must advocate for their countries to sign and ratify UNCAC. Second, mutual legal assistance provisions and regular report cards of asset recovery work should involve civil society. Third, civil society should work with financial institutions to conduct regular audits of their customer databases. Fourth, there should be increased measurement tools developed by civil society organisations to track the problem and progress made on combating it. Fifth, the work of the anti-corruption movement should be promoted in offshore financial centres. Sixth, and finally, citizens in financing centres and requesting countries must work more closely in preventing capital flight and in pursuing claims.

Stuart Gilman, who is Deputy Director of the Stolen Asset Recovery Initiative (StAR), focused on ideas for building a bigger profile for civil society in the process. StAR, a joint initiative of the World Bank and UNODC, works with requesting countries to recover assets that have been stolen by previous leaders and sent abroad to financing centres. It was set up in 2007 to facilitate the systematic and timely return of assets. UNCAC has provided the framework for these two organisations to come together to pursue this work. However, an effective tool for implementing the convention's provisions on asset recovery is still needed. For Gilman, civil



society is a critical piece of these efforts. Civil society actors are able to lead broader advocacy initiatives and generate the evidence needed to prosecute cases.

StAR is currently developing tools and training to help make asset recovery under UNCAC a reality. The first initiative is providing free materials to civil society for advocacy and awareness-raising on the topic. For Anti-Corruption Day (9 December), UNODC, as part of StAR, produced a campaign (<http://www.unodc.org/yournocounts/>) that addresses asset recovery. StAR also is developing a guide to assist actors with non-conviction based forfeiture as an alternative way to get at proceeds without having to enter into criminal proceedings. It also is holding consultations with civil society actors to produce a “white paper” on how StAR and CSOs can work together in asset recovery. Gilman recognised that training and building the capacity of civil society will be essential if these efforts are to be successful. The International Centre for Asset Recovery (ICAR) should figure prominently in this work.

There are other simple techniques that could produce substantial changes. The compilation and validation of politically exposed persons (PEPs) and life-style checks of officials’ assets when compared to their public sector pay checks do work and do not require high technical expertise. For Gilman, all these efforts help to convince “kleptocrats” that there is no safe place to put there stolen money.

Anne-Kathrin Glatz (Tax Justice Network/ Bern Declaration), Chandrashekhar Krishnan (TI-UK) and Maud Perdiel-Vaissière (SHERPA) provided case examples of how partners in the North and South have gone after stolen assets.

Glatz explained that changes in Swiss laws have done much to facilitate the return of stolen assets to requesting countries. Beginning in 1998, the Swiss Money Laundering Act was passed and mandated that banks needed to disclose information on their customers. In 2000, Swiss banking codes were further amended to include the corruption of public officials as a reason for having to declare assets. Finally, the Federal Bank Information Guidelines were changes to force banks to disclose information to the government of any suspicious assets that they receive.

Glatz discussed the work she is involved in through an umbrella of Swiss civil society organisations – the Bern Declaration. The group has effectively pursued stolen asset cases with Nigerian (for US\$ 460 million) and Angolan (for US\$ 21 million) counterparts against past leaders. The lessons learned have been that even when the money is found, obstacles can prevail for its return (as in the case of Angola) and utilising the funds can be complicated (as in the case of Nigeria).

The Bern Declaration worked with the Nigerian Civil Society Network on Stolen Assets (40 local NGOs) in 2004 to identify projects where returned funds could be channelled. The World Bank and the network were to monitor the process. Unfortunately, delays in returning the funds meant that many of the identified projects were delayed or eventually abandoned (due to lack of funding).

In the case of Angola, efforts are still progressing. The main challenge is that those accused of stealing the money are still in power. It also has lead to questions of national sovereignty since the government wants to use the funds for humanitarian projects which are different from what the NGOs (many of which are foreign) have requested.

TI-UK provided an overview of the work that the British government has done to address money laundering claims by civil society against the governments in Kenya, Zambia and Pakistan, as well as other countries. The OECD and UN conventions have provided a platform for pursuing the cases as well as the passage of key national legislation, including the “Proceeds of Crime Act” (2002). This law established an investigation within the UK police



force, which is tasked with identifying violations and recovering assets. The UK also has the power to enforce foreign orders from requesting states if there has been a conviction and an audit. These mechanisms have been critical for helping requesting countries successful claims. Zambia was able to recover US\$ 57 million between 1995 and 2001 that had been stolen by past leaders and deposited in British banks.

As Krishnan explained in the case of the UK, financial centres must have defences to prevent stolen funds from entering, but once they are there, processes have to be in place to facilitate their return. TI UK started in 2003 to look at the financial system chain and the criminal and civil areas related to asset recovery. The chapter has urged UK authorities to narrow the space for any legitimate challenges to claims and to minimise technical obstacles. Another obstacle that they are targeting is the Crown Prosecutor Service and the need to build more prosecutor-to-prosecutor networks when working on cases.

Ms. Perdriel-Vassière discussed the legal complaint that her organisation, SHERPA, has made against five African leaders on behalf of citizens from the countries in question: Angola, Congo (Brazzaville), Equatorial Guinea, Gabon and Sierra Leone. They have partnered with claimants from these countries to file the first case of its kind in France.

A 2007 report on dictators' wealth and stolen assets in France helped to provide the information needed to pursue claims against these governments. According to France's legal code, it is against the law to maintain stolen assets in the country. The claim of SHERPA was that the properties which were held could never have been bought based on the earnings of these leaders and their families (i.e. a "lifestyle check"). For example, the Obiang clan of Equatorial Guinea has purchased US\$ 5 million in luxury cars in France. The Bongo clan of Gabon owned 33 properties in France, including a private hotel bought in 2007 for 18.8 million Euros. In the case of the Congo, President Sassou n'Guesso and his relatives own 24 apartments in France and hold 24 bank accounts.

Although a police investigation was launched in June 2007 into these accusations, the investigation was closed in November of that same year. There were even reports that some of the leaders in question had personally asked the French government to drop the charges. Since then, SHERPA has partnered with the national chapter of Transparency International in France. This experience demonstrates the challenges of creating the political will of countries to ensure there is no state immunity when it comes to economic crimes.

Main Outputs (200 words, narrative form)

There are clear opportunities for civil society to support asset recovery initiatives. While the focus was largely on the work of CSOs in the financial centres, there efforts have been linked explicitly to citizens and networks in the requesting countries.

In terms of activities, it is a mix of the technical and the practical. Mutual legal assistance (MLA) and support on criminal and civil cases are technical areas where civil society's help is needed, although CSO capacities must also be built (or be in place). More practically, the vetting and validation of PEP lists is an opportunity where CSOs could be greater engaged. Moreover, the majority of countries have financial disclosure legislation that CSOs could use to detect abuses and deter corruption.

However, there are clear challenges for civil society to take on this work. Often in these countries, there is limited political space for civil society to act and dangers when they do. A country's legal framework can make it easy to oppose evidence in courts even when it is found. This last point reflects the concerns of the lack of political will on the part of many governments – both in the financial centres where the assets have gone (often in the North) and the countries requesting the return of their assets (often in the South). The private sector



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also may not be willing partner. Finally, the national sovereignty argument against involving NGOs in the process, especially foreign organisations, may be touted even when the case and conclusions are straight forward.

Recommendations, Follow-up Actions (200 words narrative form)

The consensus among presenters and participants was that there must be prevention of corruption as well as its detection. Once assets leave the country, it begins a long chain of actions that take time and cost money and may never be resolved, as the case against former Prime Minister Benazir Bhutto shows.

Stopping it from starting is the most effective action. This can only happen when there is political will by both countries and monitoring of government commitments. A review mechanism of the UNCAC, as has been called for by TI and other partners, would provide an important mechanism for following whether countries are meeting their obligations on asset recovery.

In terms of civil society, the StAR initiative argued that by strengthening asset recovery work, it will demonstrate to kleptocracies that there is no safe place to put their money. Naming and shaming needs to be part of these efforts.

StAR is producing a how-to-guide for civil society on “non-conviction based forfeiture” to help CSO partners get at proceeds without having to deal with criminal conviction. They also are building the national capacities of governments and CSOs through training, such as with International Centre for Asset Recovery (ICAR).



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Highlights (200 words please include interesting quotes)

By highlighting the work done in the home countries of financial centres, some interesting lessons were presented:

- There is a fundamental nexus between criminal and civil law in the cases. For example, facilitation payments are outlawed under UNCAC and the OECD Anti-Bribery Convention.
- There is a need to go after the bribery of individuals, which presents an incredible opportunity to revise the financial architecture during the current crisis.
- Political will to make a change in policies and outcomes is essential. For example, an expert group of the Commonwealth of States presented a plan in 2005 to revoke the statute of immunity for current leaders and to put corrupt leaders in check. However, none of the recommendations were accepted by member states.
- The majority of countries have financial disclosure and these need to be used to deter corruption. There is also a need to name and shame when information is known.
- There needs to be a greater collaboration by civil society organisations. Claims by Swiss NGOs against Angola were based on work done by Global Witness and its paper "Time for Transparency" in 2004.
- There will be an inherent conflict of what to do with the returned funds. In Angola, the money is tied up in litigation since the current government is claiming that it should reserve the right of decision on how to use it (which is still part of the same governing party that had stolen the assets).

Signed
