

A decorative graphic consisting of a grid of grey dots of varying sizes, with several dots highlighted in red. The dots are arranged in a pattern that roughly outlines the shape of a map or a cluster of points.

# The Stolen Wealth

## Opportunities and challenges for civil society in asset recovery

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- According to the World Bank, USD 20 to 40 billion is stolen through corruption from the Global South and is hidden overseas, often in Europe and North America, every year. Only a very small part of this is identified and returned to the people it was stolen from.
- Asset recovery is the process of identifying, seizing and returning assets stolen by public officials from one country and transferred to another. It is a complex and lengthy process, but it is a fundamental part of countering impunity for corruption and delivering justice to the victims of corruption.
- This paper explores the role that civil society organisations, independent journalists and researchers can and should play in this process. Through case studies of five of the most important current cases of cross-border corruption, it outlines how civil society can contribute to the tracing of stolen assets through independent investigations, can ensure the transparent and accountable use of assets once they are returned, and can help the public make sense of the complexities involved in cross-border corruption and asset recovery.



# Contents

- 1. Executive Summary . . . . . 2**
- 2. Asset Recovery and Current Global Challenges . . . . . 3**
  - 2.1 International cooperation on asset recovery . . . . . 4
  - 2.2 High profile cases . . . . . 4
- 3. The Role of Civil Society in Asset Recovery . . . . . 5**
  - 3.1 Awareness raising and research . . . . . 5
  - 3.2 Advocacy . . . . . 6
  - 3.3 Casework and legal analysis . . . . . 6
  - 3.4 Monitoring the return of confiscated assets. . . . . 7
    - 3.4.1 Challenges to Civil Society Engagement in Asset Recovery . . . . . 7
    - 3.4.2 National challenges . . . . . 8
    - 3.4.3 Case Studies . . . . . 8
- 4. Conclusions. . . . . 15**

## 1. Executive Summary

International asset recovery – the process of identifying, seizing and returning public assets stolen through corruption from one jurisdiction and transferred to another – is both an incredibly complex and an incredibly important process. According to the World Bank, USD 20 – 40 billion is stolen from developing countries and disappears overseas every year, of which a tiny part is identified, confiscated and returned.<sup>1</sup> Even if success is difficult, asset recovery is of fundamental importance: it provides justice and compensation to the victims of corruption and demonstrates that crime does not pay.

Asset recovery is deeply connected to the flaws and mechanisms of the current global financial system: it involves a complex web of global interactions, the occurrence of grand corruption<sup>2</sup> at the domestic level and the use of services that facilitate illicit flows of capital and money laundering through global financial centres such as the UK, Switzerland or Germany. Too often, large sums from state budgets are stolen by public officials in developing countries in the Global South and end up hidden in offshore accounts in tax havens or laundered through the purchase of luxury goods and properties in the Global North.

Typically, a case of asset recovery involves investigations aimed at tracing and identifying the stolen assets; prosecutions and convictions leading to the confiscation of the identified assets; and the return of the proceeds of corruption to the countries of origin. All phases of this process require a strong political will and technical capacity both on the part of the countries from which the assets have been stolen and of those countries where they are hidden. Efficient international cooperation is therefore a key factor for succeeding in asset recovery. History has shown that the lack of these conditions significantly slows down the success of returning stolen assets.

Because of this complexity, asset recovery is a challenging topic for governments themselves. Even when a

government is interested in returning stolen funds – for example after a regime change, as could be seen in Tunisia, Ukraine or Nigeria – vested interests, secrecy, uncooperative officials, differences in language and systems and modes of work hamper the identification, freezing, confiscation and return of these assets. When high level officials involved in grand corruption are still in office, not only is there little incentive for the country of origin to recover assets, there is often also little incentive for financial centres, tax havens or countries of destination to react because, to an extent, they all benefit from these schemes and would face political consequences for challenging them.

Grand corruption is, however, far from a victimless crime. In all the asset recovery stages it is the people, often from developing countries, who lose. When public funds disappear and only make it back to the country of origin through a lengthy and difficult process, this translates into a lack of adequate goods or services and weakens trust in national and international democratic institutions to bring justice and to hold the corrupt accountable.

Civil society engagement in asset recovery is vital for holding governments to account and to help the public make sense of the complexities involved in cross-border corruption and asset recovery. Independent journalism can uncover cross-border corruption and expose flaws in the returns process, civil society organisations can encourage discussion on how returned money can be used and provide an independent voice on the progress of a case, and academia and think tanks can develop an understanding of how the grand corruption took place and what reforms could be made. All have a fundamental role to play in advancing stolen asset recovery.

In the past decade, as asset recovery has increasingly come to be recognised as a priority in the global political arena, civil society organisations have become more and more involved in shaping policies and making their voices heard in the fight against cross-border corruption and in calling for making asset recovery more transparent, efficient and accountable. Nevertheless, civil society faces many challenges in this field, not least the diminishing space to act, repression and violence, but also issues of resources and capacity.

1. StAR, »Few and far: the hard facts on stolen asset recovery,« 2014, p. 1, 6.

2. Transparency International defines »grand corruption« as »the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished.« Transparency International, [https://www.transparency.org/news/feature/what\\_is\\_grand\\_corruption\\_and\\_how\\_can\\_we\\_stop\\_it](https://www.transparency.org/news/feature/what_is_grand_corruption_and_how_can_we_stop_it) [accessed 29 October 2018]

While change at the national level is key, recommendations for the advancement of asset recovery at the global level include:

- More support to and space for civil society to work on asset recovery
- Increased transparency and commitment to publicly accessible information on companies and structures, including beneficial ownership information
- Strengthened enforcement of anti-money laundering provisions
- Greater transparency in the asset recovery process on the part of all states involved in the chain
- Open dialogue with civil society organisations on the return of confiscated assets to allow for effective monitoring of returns

## 2. Asset Recovery and Current Global Challenges

In its original, technical meaning, international asset recovery refers to the legal processes that governments enter into to recover stolen wealth: identifying, freezing, confiscating and returning stolen assets. However, in the past decade, this definition has been broadened and asset recovery has been recognised as a key tool in combating cross-border corruption and preventing the outflow and inflow of illicit financial flows resulting from grand corruption. This ambivalence is, to an extent, a reflection of the reality that 'technical asset recovery' as a process is far from straightforward and that, as much as it may have been designed not to be, it is still as much a political process as a legal one.

Under the United Nations Convention Against Corruption, asset recovery involves four steps: the prevention and detection of transfers of proceeds of crime (Art. 52), the direct recovery of property (Art. 53), the recovery of property through international cooperation (Arts. 54–55), and the return and disposal of assets (Art. 57).<sup>3</sup>

3. See UNODC Division for Treaty Affairs: Chapter V Asset Recovery Articles 51–59 Fundamental principle of UNCAC [https://www.unodc.org/documents/NGO/UNCAC\\_Chapter\\_IV\\_Asset\\_Recovery\\_UNODC.pdf](https://www.unodc.org/documents/NGO/UNCAC_Chapter_IV_Asset_Recovery_UNODC.pdf) [accessed 19 October 2018].

Typically, a case of international asset recovery starts when a government in jurisdiction X asks authorities in jurisdiction Y to freeze assets related to the proceeds of corruption. This is followed by a mutual legal assistance request to jurisdiction Y where both jurisdictions work together to provide evidence in the prosecution and eventual confiscation of the assets. Under the usual process, confiscation generally requires a final conviction for corruption relating to those assets in the country where the assets were stolen. Given the difficulties that often occur in this process, some countries have introduced non-conviction-based forfeiture, enabling civil procedures to be brought for the proceeds of corruption.<sup>4</sup> Once the assets are confiscated, the involved jurisdictions start negotiations on the details of the return processes, often accompanied by difficult discussions on the conditionality of return.

Asset recovery therefore requires strong political will to act against high-level corruption and to cooperate with other governments. At the same time, it requires the capacity to face complex issues such as identifying assets in a global financial system where hiding one's identity through offshore companies has become very easy; the compliance and cooperation of financial institutions; and sharing lists of politically exposed persons (PEPs) and corruption evidence among law enforcement agencies which often operate with very different approaches.<sup>5</sup> Additionally, issues of the recognition of the decisions of foreign courts, differing definitions of the crime of corruption, historic diplomatic relationships, conditionality in returns and the inconsistent application of rules make this process extremely challenging. All these difficulties make the asset recovery process very lengthy: on average, a case may last from five to ten years before the victims of grand corruption – the citizens of the countries of origin – can see their money back.

4. See StAR: A Good Practices Guide for Non-Conviction Based Asset Forfeiture, 2009. [https://www.unodc.org/documents/corruption/Publications/StAR/StAR\\_Publication\\_-\\_Non-conviction-based\\_Asset\\_Forfeiture\\_E.pdf](https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Non-conviction-based_Asset_Forfeiture_E.pdf) [accessed 30 November 2018].

5. UNCAC, Art. 52.

## 2.1 International cooperation on asset recovery

The UN Convention against Corruption, (UNCAC), remains the key legal instrument at the international level providing a legal framework for inter-state cooperation on asset recovery. Indeed, the initial push for adopting UNCAC came from a group of governments from the Global South who aimed at strengthening international cooperation on asset recovery. Importantly, asset recovery is also part of Sustainable Development Goal 16. In particular, the target under Goal 16.4 is to 'by 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime,' obliging States to work towards strengthening the system.

To address the complexity of asset recovery and to avoid barriers to returns, as well as to harmonise action, in recent years states have convened several forums to discuss ongoing cases and to identify general issues that need to be addressed. This cooperation takes place mainly through the facilitation of the United Nations Office on Drugs and Crime (UNODC) and the World Bank's Stolen Asset Recovery Initiative (StAR) with the participation of key governments from the Global North and the Global South. After the revolutions in North Africa in 2011 and Ukraine in 2014, regional forums brought together North African<sup>6</sup> and Ukrainian<sup>7</sup> officials and politicians with their counterparts in Europe and North America. These regional forums ended in 2017, with the holding of the first Global Forum for Asset Recovery, which was hosted by the US and UK and focussed on asset recovery in Nigeria, Sri Lanka, Tunisia and Ukraine.<sup>8</sup> These events have been supplemented over the years by several meetings organised by groups of states, such as meetings held in 2017 in Addis Ababa<sup>9</sup> and in 2018 in Berlin.<sup>10</sup> In the framework of the UNCAC state party conference, member states also meet regularly to discuss the improvement of asset recovery frameworks. Other commitments on

asset recovery principles and strengthened cooperation were made in the framework of the G20 and at the London Anti-Corruption Summit in 2016.

These efforts have, however, only dealt with a fraction of the current cases that involve international asset recovery, which in turn are likely to be only a small fraction of the larger problem of cross-border corruption. Also, it is difficult to assess the efficiency of these initiatives since bilateral meetings on single cases are carried out behind closed doors and without the involvement of non-state actors.

## 2.2 High profile cases

International cooperation on stolen asset recovery started in the second half of the 20th century, when countries from the Global South started asking other countries for help to recover assets stolen by high-level officials of their previous regimes. Some notable cases included those of Vladimiro Montesinos, the former head of Peru's intelligence service and advisor to President Fujimori, which saw the return of assets totalling USD 170 million;<sup>11</sup> of former President Marcos in the Philippines and the ongoing investigation of up to USD 10 billion in stolen assets;<sup>12</sup> and of former President Abacha in Nigeria, relating to stolen assets estimated to be worth USD 3–5 billion.<sup>13</sup>

However, in the second decade of the 21st century many more asset recovery cases have been initiated and have grown in importance as the true scale of cross-border corruption has become more visible globally. The World Bank/UNODC's Stolen Asset Recovery Initiative's Corruption Cases Database lists 117 ongoing cases as of October 2018, covering 50 jurisdictions of origin and 45

6. StAR: The Arab Forum for Asset Recovery, <https://star.worldbank.org/ArabForum/About> [accessed 20 October 2018].

7. StAR: The Ukraine Forum on Asset Recovery, <https://star.worldbank.org/ufar/ukraine-forum-asset-recovery-ufar> [accessed 20 October 2018].

8. StAR: Global Forum on Asset Recovery <https://star.worldbank.org/about-us/global-forum-asset-recovery-gfar> [accessed 20 October 2018].

9. UNODC: International Expert Meeting on the Management and Disposal of Recovered and Returned Stolen Assets, including in support of sustainable development, <https://www.unodc.org/unodc/en/corruption/addis-egm-2017.html> [accessed 20 October 2018].

10. Basel Institute on Governance, 'Need to shed light on financial transactions, modernize legislation and provide guidance for the return on asset recovery key priorities in Africa-Europe asset recovery cooperation,' 27 March 2018, <https://www.baselgovernance.org/news/need-shed-light-financial-transactions-modernize-legislation-and-provide-guidance-return-asset> [accessed 20 October 2018].

11. Laila Martin, 'Montesinos is gone, but has Peru recovered all the money he stole?' [cifar.eu 29/06/2017](http://cifar.eu/29/06/2017), <http://cifar.eu/montesinos-gone-peru-recovered-money-stole/> [accessed 28 October 2018].

12. N Davies, 'The \$10bn question: what happened to the Marcos millions?', *The Guardian*, 7 May 2016, <https://www.theguardian.com/world/2016/may/07/10bn-dollar-question-marcos-millions-nick-davies> [accessed 28 October 2018].

13. Agatino Camarda, 'Asset recovery in Nigeria: the good and the bad,' [cifar.eu](http://cifar.eu), 12 September 2018, <http://cifar.eu/nigeria-asset-recovery/> [accessed 28 October 2018].

jurisdictions involved in returns.<sup>14</sup> While several of these cases are small, the cumulative effect is large, as is the complexity involved.

High-profile cases span all regions of the world. In South America, the Odebrecht cash-for-contracts scandal / Operation Car Wash has been named »the largest foreign bribery case in history«<sup>15</sup> and continues to have political consequences across the region, with the company admitting to having paid bribes in several countries and agreeing to a fine of at least US\$3.5 billion.<sup>16</sup> This scandal affected Mexico, one of the focal countries of this report, which was also facing domestic cases of cross-border corruption by former state governors.

In Africa, in addition to the Abacha case, high-profile investigations span the continent: from the post-revolution North African processes covering Egypt, Tunisia and Libya,<sup>17</sup> to the Obiang case in Equatorial Guinea, which saw the son of the President found guilty of corruption, sentenced, fined and subjected to seizure of his assets in France;<sup>18</sup> and the Hidden Debts case in Mozambique, discussed below.

In Asia, the 1MDB case in Malaysia continues to spark investigations across the world, while the Karimova case in Uzbekistan, in which the daughter of the former President of Uzbekistan is implicated, involves facilitation payments and bribes of up to US \$1 billion.<sup>19</sup>

Finally, within Europe, the Moldovan bank fraud and the corruption allegations against Ukraine's former President Yanukovich are the most high-profile ongoing cases. However, financial institutions and centres from

European countries have been very involved in ongoing cases from around the world as destination countries for stolen assets: Germany alone has frozen over €700 million relating to Libya.<sup>20</sup>

### 3. The Role of Civil Society in Asset Recovery

Civil society – NGOs, journalists, academia, think tanks and citizens – has a key role to play in all stages of asset recovery. Across the world, there are many cases of civil society organisations (CSOs) engaging in various ways across a range of cases of international asset recovery, often in difficult contexts.

While this study is based on the findings of CiFAR's interaction with civil society organisations and individuals in five different countries, a helpful starting point for an analysis of civil society's role is the *Guide to the Role of Civil Society Organisations in Asset Recovery*, developed for the Arab Forum for Asset Recovery (AFAR).<sup>21</sup> The document is particularly useful as it involved the contribution of several civil society organisations active in asset recovery, was developed by the International Centre for Asset Recovery (ICAR), a leading institution working on asset recovery, and was endorsed by the UK, one of the major destination countries for stolen assets.

Following the structure of and drawing on the ICAR Guide, there are four main areas of civil society engagement in asset recovery and fighting cross-border corruption. In this section we sketch out these areas, outline recent examples for each area and make recommendations for stronger and more meaningful civil society engagement in this field, both at the national and international levels.

#### 3.1 Awareness raising and research

One first key area of civil society engagement is raising awareness. Through this, CSOs can generate demand for asset recovery and help other CSOs and key stakeholders better understand their roles and responsibilities in asset

14. Stolen Asset Recovery Initiative: Corruption Cases Database: <https://star.worldbank.org/corruption-cases/assetrecovery/?f%5B0%5D=bundle%3Aarw> [accessed 28 October 2018].

15. L Pressly, »The largest foreign bribery case in history« BBC World Service, 22 April 2018, <https://www.bbc.com/news/business-43825294> [accessed 12 November 2018].

16. L Pressly, »The largest foreign bribery case in history« BBC World Service, 22 April 2018, <https://www.bbc.com/news/business-43825294> [accessed 12 November 2018].

17. L Martin, »Beyond Egypt: other people worth sanctioning in MENA« CiFAR.eu, 16 March 2017, <https://cifar.eu/beyond-egypt-people-worth-sanctioning-mena/> [accessed 12 November 2018].

18. BBC, »Equatorial Guinea VP Teodorin Obiang sentenced in France« 27 October 2017, <https://www.bbc.com/news/world-europe-41775070> [accessed 12 November 2018].

19. J Oldfield, »Karimova, corruption and communications« CiFAR.eu, 31 May 2017, <https://cifar.eu/karimova-corruption-communications/> [accessed 12 November 2018].

20. Correspondence with the Bundesministerium für Wirtschaft und Energie, 2017.

21. ICAR and UK Government, *Guide to the Role of Civil Society Organisations in Asset Recovery* (2013), accessible at: <https://cso.assetrecovery.org/> [accessed 10 November 2018].

recovery.<sup>22</sup> Awareness raising can involve for example highlighting the importance of asset recovery for the fight against corruption across different sectors of society, building public demand for asset recovery and explaining to diverse audiences the roles and responsibilities of various actors in the asset recovery process. Research activities by CSOs typically aim to enhance the capacity of actors to work on asset recovery, including by providing new information on return processes and providing principles and best practices for the re-use of assets once returned. According to the CSO Guide, while civil society organisations have a particularly delicate role to play in pressuring governments to act through campaigns and awareness raising, they should at the same time not raise expectations over the speed at which assets can be returned to an unrealistic level.

In addition to these issues that the Guide identifies, an important role for civil society in recent years has been in cross-border awareness raising. In particular, civil society organisations can work within international networks on asset recovery and can exchange knowledge with others working on a single case from different locations, sharing information and strategic approaches. In this way, CSOs can go beyond putting pressure solely on their own government; they can also help generate an understanding of the complexities in the whole process that may be slowing down a return, hence enabling CSOs to exert the right pressure at the right moment. For example, in recent years civil society organisations, including NGOs, academia and independent experts from different jurisdictions, came together to campaign on the accountable return of assets to Uzbekistan.<sup>23</sup>

### 3.2 Advocacy

Advocacy in the context of asset recovery aims both to build political will and to promote reform and accountability.<sup>24</sup> Civil society can for instance engage in advocacy on the reform of systems that allowed the theft of public assets in the first place and for transparency and accountability in the process of returning assets. The CSO Guide highlights that this is a dual responsibility: to advocate

for reform both in the country of origin and in that of destination.

Increasingly there is also an important role for academia, think tanks and independent experts: they can create a better understanding of the systemic issues that lead to cross-border corruption as well as of the reforms that would need to take place on a global scale to prevent future asset thefts. The Tax Justice Network, for example, has taken up the issue of the global financial system ever more visibly through its Financial Secrecy Index, which analyses financial secrecy in more than 100 jurisdictions.<sup>25</sup> Similarly, civil society worked together on these issues at the 2017 Global Forum for Asset Recovery, where a common civil society statement of policy reforms was presented to the host governments through the UNCAC Coalition.<sup>26</sup>

### 3.3 Casework and legal analysis

Civil society, particularly investigative journalists, have significantly contributed to exposing evidence of corruption and tracing illicit financial flows. This work has been of huge support to law enforcement in uncovering corruption and in identifying the assets of persons under investigation and/or prosecution for cross-border corruption. The Panama and Paradise Papers, following the Swiss and Luxleaks investigations, have been at the forefront of investigative journalism contributing to the identification of dozens of high-level corruption and tax evasion cases. The Panama Papers alone had a huge impact in terms of opening lines of investigations for authorities and explaining for the first time to a global audience how criminals and corrupt officials can easily hide dirty money through offshore companies in tax havens and financial centres in the North.<sup>27</sup> There are many other examples at the national and regional levels with comparable impact,

22. Above, pp. 8–10.

23. <http://statecrime.org/state-crime-research/uzbekistan-and-principles-for-responsible-asset-return/>

24. Above, pp. 10–12.

25. Tax Justice Network, ›Financial Secrecy‹ <https://www.taxjustice.net/topics/secrecy/> [accessed 11 November 2018].

26. UNCAC Coalition, ›Civil society statement on the Global Forum for Asset Recovery‹ 4 December 2017, [https://uncaccoalition.org/en\\_US/civil-society-statement-for-the-global-forum-on-asset-recovery/](https://uncaccoalition.org/en_US/civil-society-statement-for-the-global-forum-on-asset-recovery/) [accessed 11 November 2018].

27. Will Fitzgibbon, ›ONE YEAR ON: Tax Wars, Follow-Up Investigations And Who Was Actually In The Paradise Papers?‹ ICIJ, 5 November 2017, <https://www.icij.org/investigations/paradise-papers/tax-wars-follow-up-investigations-and-who-was-actually-in-the-paradise-papers/> [accessed 13 November 2018].

including the Yanukovych leaks in Ukraine or the Alcatel/Rodriguez revelations in Costa Rica.<sup>28</sup>

A case-based approach to asset recovery can also entail launching judicial proceedings by civil society to require authorities to start proceedings.<sup>29</sup> As cited in the CSO Guide, one of the most discussed examples of this was the work of Transparency International France and Sherpa to launch a claim as a civil party to a criminal investigation, requiring the French prosecutor to open an investigation into the allegedly illicit wealth of the ruling families of Congo-Brazzaville, Equatorial Guinea and Gabon in France,<sup>30</sup> with Vice President Teodorin Obiang of Equatorial Guinea found guilty of corruption in 2017.<sup>31</sup>

A key and promising element for successful civil society engagement in asset recovery is the cooperation among different groups of civil society. Journalists, NGOs and experts often work together, contributing their different strengths and approaches, supporting each other in difficult contexts and making an impact together.

### 3.4 Monitoring the return of confiscated assets

One last, but key area of civil society involvement is the process of returning confiscated assets to the country of origin. NGOs can engage citizens to campaign for the transparent and accountable return of assets and to advocate for and potentially participate in any return mechanisms established to disburse returned money. In fact, as the CSO Guide mentions, CSOs are in a unique position to represent the voice of the victims of grand corruption and to involve them in monitoring how returned funds are used.<sup>32</sup>

The Bota Foundation, established as a mechanism for disbursing returned money to Kazakhstan via civil society, and the monitoring of the return of Abacha funds to Nigeria are often cited as examples of successful CSO involvement in return processes. More recent examples

include the renewed efforts to return stolen assets to Nigeria, as discussed below, and the ongoing efforts by Uzbek civil society to ensure that funds are not directly returned to the Uzbek government as long as space for independent, civil society monitoring is non-existent.<sup>33</sup>

#### 3.4.1 Challenges to Civil Society Engagement in Asset Recovery

The new, complex and often dangerous field of asset recovery presents civil society actors such as NGOs, academia and investigative journalists with many challenges, both at the national and global levels. Some of these problems are common to civil society organisations working in other fields such as human rights or environmental protection. Of particular concern are the shrinking space for critical voices and growing risks to the safety of activists in many countries. However, anti-corruption and asset recovery work, especially under regimes where corruption is endemic throughout society, comes with specific, additional challenges. Asset recovery requires specific technical skills and experience such as an understanding of the complexities of illicit financial flows and corruption; investment in time, since investigating corruption and recovering assets are lengthy processes; and, very often, engagement and confrontation with some of the most powerful state actors and individuals in society.

#### *Global challenges*

As asset recovery is an intrinsically international issue, civil society needs to operate on the transnational and global levels. Both the flow of corrupt money and the recovery of these assets, as well as institutional and legislative reforms, need to happen not only domestically but also internationally in order to have an impact.

However, acting globally comes with both external and internal challenges. External challenges include three main problems. The first of these is influence. Changing a law at the national level requires extensive advocacy based on solid evidence. But addressing the use of shell companies as a tool for hiding corrupt wealth, for

28. <https://yanukovychleaks.org/en/> and <https://impact.gijn.org/case-studies/alcatel-case-costa-rica/>

29. ICAR and UK Government (n.21), pp. 14–18.

30. As above, p. 16.

31. See n.17.

32. ICAR and UK Government (n.21) pp. 18–20.

33. Association for Human Rights in Central Asia, 'On principles of responsible asset repatriation to Uzbekistan' 8 August 2018, <https://ahrca.eu/uzbekistan/rule-of-law/1000-on-principles-of-responsible-asset-repatriation-to-uzbekistan> [accessed 13 November 2018].



example, requires legal changes across offshore jurisdictions and financial centres worldwide, otherwise corrupt finance will simply shift location. To advocate for such change, civil society needs to identify and leverage influential actors, which is only possible through international networks of civil society, and to target certain governments and international actors. This is often very difficult for civil society organisations, particularly in developing countries, given that their focus is often predominantly national and accessing international networks is not always easy. Apart from being difficult to carry out, these actions are resource-intensive.

Hence, the resources available to civil society for work on asset recovery are a second, related challenge, as these are often limited, in part due to the relative novelty of the topic among CSOs and in the donor community. Fundraising in support of actions outside of the national context is particularly challenging and such actions can be expensive. Funding can also raise issues of credibility, particularly as large governmental donors in this field may be based in countries with important financial centres.

A final external challenge in global work on asset recovery is the issue of access. Several international forums have taken place on asset recovery, and the Conference of Parties to the United Nations Convention Against Corruption has an annual meeting on the topic. However, civil society access to these events has so far been limited, in contrast to human rights forums. This means that organised civil society is often excluded from large areas of decision-making.

Internal challenges on asset recovery work at the global level include issues of cooperation between civil society actors working on asset recovery. For investigative journalists, cooperation at the global level has provided an opportunity to report on these issues, no more so than in the Panama and Paradise Papers. CSOs have also taken great strides towards cross-border cooperation. Difficulties remain, however, particularly in terms of knowledge differences, language and capacity, with US and European CSOs often disproportionately represented internationally.

### 3.4.2 National challenges

On the national level, challenges can become acute. Externally, civil society faces reputational, resource or physical threats, especially when corrupt political leaders are still in power or when systems that allowed grand corruption to take place have not changed. This is particularly the case when civil society actors undertake investigatory work: in 2018 alone, three journalists were murdered in the EU for investigating corruption.<sup>34</sup> In other cases, civil society engages in research or advocacy that touches on government interests. More of these challenges are discussed in the case studies below.

External challenges at the national level can also mean that CSOs are simply shut out of processes and are not provided the information they need in order to play a role in the asset recovery process.

Internally, civil society organisations often lack expertise and focus. Often asset recovery cases begin in a country without experience of having undertaken such a process before. This lack of expertise not only poses problems for governments, but also makes it difficult for civil society to both oversee the work of government and explain it to the people, and to know whether governments are meeting their obligation to investigate, prosecute and return stolen assets. This can lead not only to uncertainty, but also to increased tension between government and non-governmental actors over whether a case is progressing well. In addition to this, asset recovery cases can take many years to complete. For civil society to maintain focus on a case over the long term requires a substantial commitment of time and personnel, which is not always possible.

### 3.4.3 Case Studies

The case studies examined here include some of the most high-profile and some less prominent cases currently ongoing across the globe. They have been drawn up on the basis of both official information and the results of fact-finding visits carried out for this report. The cases illustrate not only the complexity of asset recovery and

34. Theodor Troev, Kerin Hope et al, 'The journalists killed in EU member states in the past year', Financial Times, 8 October 2018, <https://www.ft.com/content/e806a7c4-cae5-11e8-9fe5-24ad351828ab> [accessed 20 November 2018].

the challenges faced by states and civil society, but also the growing opportunities that exist when civil society is able and encouraged to engage in asset recovery.

### Case study 1

#### *Mozambique: The Hidden Debts*

One of the most challenging current asset recovery cases, both for government and civil society, is the Hidden Debts case in Mozambique. Challenging not only because of the complexities of the case, but also because international asset recovery cases are not commonplace in Mozambique, either as a country of origin or a country of destination, meaning that government and civil society cannot draw on experience to navigate these complexities.

The case involves a secret US\$2 billion loan from the UK branches of the Swiss Bank *Credit Suisse* and the Russian Bank *VTB Capital* to partially state-owned companies in Mozambique, with the government of Mozambique providing a state guarantee for the loan. US\$850 million of this was loaned to *Empressa Moçambica de Atum*, US\$622 million to *ProIndicus* and €535 million to *Mozambique Asset Management*. Some confusion and dispute exist over the original purpose of the loans, but what later became clear was that the larger part of them was earmarked for maritime security. Despite legislative requirements, Parliament was not informed of these loans, with details only becoming public following a statement by the Mozambique authorities that they were unable to service their debts.<sup>35</sup> It also appears that the three companies were only established shortly before the banks provided the loans and that they all had the same CEO, at the time a senior officer in the security services.<sup>36</sup> To put the size of the loan in context, the GDP of Mozambique was US\$11 billion in 2016.<sup>37</sup>

Several failures in the loan process have been identified, including the failure of parliamentary oversight that should have prevented the government from guaranteeing the loan unilaterally and in secret, and the role of the

banks in performing due diligence checks.<sup>38</sup> In November 2016, the risk assessment firm Kroll was brought in to audit the loans and to make sense of what had taken place. According to Kroll's report, approximately US\$500 million remained unaccounted for. This amount was alleged to have been included in the state budget and/or used to buy military equipment, but Kroll was unable to corroborate this. They also identified a suspected inconsistency of approximately US\$713 million between the cost of equipment purchased for maritime security and the costs that should have been incurred according to an independent expert. Further, they found an undisclosed bank account held by the firm *Empressa Moçambica de Atum* and a payment to Credit Suisse of US\$51 million that needed more explanation.<sup>39</sup>

The companies involved in the Hidden Debt case have challenged the findings of the report;<sup>40</sup> however, in January 2018 the Public Prosecutor launched proceedings at the Administrative Tribunal against the managers of the public companies. The tribunal can issue financial penalties but criminal charges are unlikely.<sup>41</sup>

Unlike other cases included in this study, processes in Mozambique are at an early stage. It is unclear where, when and whether a case will begin that will involve an international asset recovery component. The limited capacity and resources of the government to investigate and prosecute international asset recovery cases is one factor in this, but there are also questions over the ownership of the US\$2 billion that will need to be resolved if

38. Blum, no.1, p. 19–20.

39. Kroll, Independent audit related to loans contracted by ProIndicus S.A., EMATUM S.A. and Mozambique Asset Management S.A., 23 June 2017, [https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk/technology/mozambique/files/files/2017-06-23\\_Project%20Montague%20-%20Independent%20Audit%20Executive%20Summary%20English%20\(REDACTED%20FOR%20PUBLISHING\).pdf](https://www.open.ac.uk/technology/mozambique/sites/www.open.ac.uk/technology/mozambique/files/files/2017-06-23_Project%20Montague%20-%20Independent%20Audit%20Executive%20Summary%20English%20(REDACTED%20FOR%20PUBLISHING).pdf), Joseph Hanlon, Kroll full report 3: Kroll points fingers at Finance Ministry, Credit Suisse & Palomar – Hanlon, Club of Mozambique 10 September 2017, <http://clubofmozambique.com/news/kroll-full-report-3-kroll-points-fingers-at-finance-ministry-credit-suisse-palomar-hanlon/> [accessed 2 May 2018], Jubilee Debt Campaign, 100 UK MPs criticise Mozambique secret lenders ahead of debt talks in London, 19 March 2018, <https://jubileedebt.org.uk/press-release/100-uk-mps-criticise-mozambique-secret-lenders-ahead-of-debt-talks-in-london> [accessed 10 May 2018].

40. Borges Nhamire and Matthew Hill, Mozambican Companies That Hid \$1.4 Billion Debt Slam Kroll Audit, Bloomberg 10 October 2017, <https://www.bloomberg.com/news/articles/2017-10-09/mozambican-companies-criticized-over-debts-slam-kroll-audit> [accessed 11 May 2018].

41. Joseph Cotterill, Mozambique's prosecutor opens case into \$2bn hidden loans scandal, Financial Times 29 January 2018, <https://www.ft.com/content/c82857c8-0500-11e8-9650-9c0ad2d7c5b5> [accessed 11 May 2018].

35. Constanze Blum, Transnational Organized Crime in Southern Africa and Mozambique, FES Peace and Security Series, Friedrich Ebert Stiftung, 2016, p- 18–20.

36. International Monetary Fund, Republic of Mozambique: Selected Issues, March 2018, pp.20–21.

37. World Bank Data: Mozambique, <https://data.worldbank.org/country/mozambique> [accessed 10 April 2018].

asset recovery is to take place: talks were held in March 2018 between Mozambique and its creditors to discuss restructuring the debt repayment<sup>42</sup> and any move to default on the debts entirely would raise the question of to whom any recovered assets should be paid.

The Mozambique institutional structure to prevent future thefts is also challenging. While Mozambique has several anti-corruption laws in place, these laws are not implemented effectively and do not cover all areas needed to reduce corruption risks and provide checks and balances over institutions of government, making high-level corruption a particular concern.<sup>43</sup> This is reflected in the country's poor ranking in Transparency International's Corruption Perception Index 2017 and its close-to-worst ranking in the International Centre for Asset Recovery's Anti-Money Laundering Index 2018.

Civil society engagement in asset recovery in Mozambique is generally important for the transparency and accountability of government action and is particularly important at this time to ensure that progress is made, and made in the right way, with regards to the Hidden Debt case. This could set a precedent for future action as Mozambique further exploits its natural resources; hence, it is also important that civil society presses for government action that would serve as a deterrent to future crimes and would ensure that robust responses are ready both at the government and civic levels should crimes be committed in the future.

Despite its importance, it is extremely challenging for civil society to work on this case. This comes in the form of both capacity issues, due to the novelty of the case, and more fundamentally in terms of safety and security. Journalists have been targeted and violently attacked for working on this case<sup>44</sup> and civil society actors are consequently obliged to tread a fine line between effective action and personal security.

42. Jubilee Debt Campaign, Mozambique proposes paying secret debts in a decade, 3 April 2018, <https://jubileedebt.org.uk/news/mozambique-proposes-paying-secret-debts-in-a-decade> [accessed 11 May 2018].

43. Bertelsmann Stiftung, Transformation Index 2018: Mozambique, <http://www.bti-project.org/en/reports/country-reports/detail/itc/moz> [accessed 26 May 2018]; Global Business Anti-Corruption Portal: Mozambique, <https://www.business-anti-corruption.com/country-profiles/mozambique/> [accessed 26 May 2018].

44. Committee to Protect Journalists, Mozambique journalist abducted, assaulted, 28 March 2018 <https://cpj.org/2018/03/mozambique-journalist-abducted-assaulted.php> [accessed 2 May 2018].

## Case study 2

### *Nigeria: the return of the Abacha funds*

Nigeria is likely one of the most politically active countries worldwide in its efforts to recover national assets looted through corruption. Over the past two decades, cases related to General Sani Abacha and other officials have been used by asset recovery specialists as case studies, referred to as best practice and discussed in political arenas, more than for any other country from the Global South.<sup>45</sup>

The current government of Muhammadu Buhari has put the fight against corruption in Nigeria and the recovery of stolen assets at the forefront of its political agenda. Over the past three years, the Nigerian government has vigorously requested the governments of countries where Nigerian stolen assets are allegedly hidden to make greater efforts to help Nigeria recover these assets. Among other initiatives, Nigeria was one of the key focus countries at the Global Forum on Asset Recovery (GFAR) held in December 2017 in Washington DC.<sup>46</sup>

As a result, the government claims to have recovered millions of Nairas in the past three years, mostly relating to domestic recovery.<sup>47</sup> Nevertheless, the real success of Nigeria's asset recovery efforts is difficult to measure, due to a general lack of transparency in the data on recovered assets. Civil society organisations have repeatedly expressed concerns that relevant agencies and the government release little or no information on recovery processes, including descriptions of the cases, status, amounts and, most importantly, how the large amounts recovered are to be used. This is especially worrying for domestically recovered assets: while at the international level countries of destination have to some extent negotiated with Nigeria to press for returned assets to be reinvested in social projects, this has obviously not been possible with regard to assets recovered within Nigeria. The lack of transparency carries a strong risk that

45. See for instance Ignasio Jimu, Basel Institute of Governance »Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan«, 2009.

46. Stolen Asset Recovery Initiative, »Global Forum on Asset Recovery«, <https://star.worldbank.org/about-us/global-forum-asset-recovery-gfar> [accessed 11 November 2018].

47. Huffington Post, »Nigeria Says It Has Recovered \$9.1 Billion In Stolen Money And Assets«, 6 April 2018, [https://www.huffingtonpost.com/entry/nigeria-recovers-9-billion-dollars-stolen-money\\_us\\_5752daefe4b0c3752dcdc7bf](https://www.huffingtonpost.com/entry/nigeria-recovers-9-billion-dollars-stolen-money_us_5752daefe4b0c3752dcdc7bf) [accessed 11 August 2018].

recovered assets could again end up in dirty hands, as has allegedly happened in some of the Abacha returns over the past two decades.<sup>48</sup> This risk also extends to cases where the government has agreed to reinvest the returned assets in social projects, such as the recent \$322 million returned from Switzerland.

Parallel to the increased interest of the current government in asset recovery, Nigerian civil society, including NGOs, the media and academics, have dedicated growing attention to the recovery of looted assets. More and more CSOs are working to make the recovery and re-use of returned assets more transparent and oriented towards the benefit of Nigerians. International officials describe the engagement of civil society in asset recovery as articulate, vibrant and well connected with government institutions<sup>49</sup> and Nigerian CSOs have often been described as the strongest and most established in Sub-Saharan Africa in the field of asset recovery. To contextualise this, however, it should be noted that the number of Nigerian NGOs and other groups actively involved in asset recovery has been, and still is, limited. This engagement is mainly led by a group of three to four well-known, connected and established organisations, although interest in the topic is currently on the rise among many other groups. As this is a new issue, civil society organisations still have limited knowledge on the complexities of cross-border corruption and asset recovery, and are still developing the tools to effectively monitor the re-use of returned assets for social purposes. Nevertheless, the involvement in the monitoring of the recent return of \$322 million from Switzerland is a promising step towards more substantial CSO engagement in making asset return more transparent and accountable.<sup>50</sup>

### Case study 3

#### *Malaysia: The 1MDB scandal*

1MDB is currently the principle asset recovery case in Malaysia and is one of the largest in the world. 1MDB is a strategic development company, wholly owned by

the government of Malaysia<sup>51</sup> and set up in 2009 by the former Malaysian Prime Minister Najib Tun Razak to act as a sovereign fund to invest in energy, real estate and other industries.<sup>52</sup>

Concerns about 1MDB were initially raised in 2015 when it missed a loan payment of USD 550 million, triggering an investigation in Malaysia. In June of 2015, the Wall Street Journal then reported that USD 681 million of 1MDB money had been deposited in Prime Minister Najib's personal bank account.<sup>53</sup> Investigations in Malaysia cleared Najib of wrongdoing, identifying the USD 681 million in Najib's bank account as a gift from Saudi Arabia, which Saudi Arabia confirmed.<sup>54</sup> Investigations were, however, opened in the US and Switzerland, with the former bringing a civil lawsuit under the Foreign Corrupt Practices Act, alleging USD 4.5 billion had been stolen from the 1MDB by high-level fund officials and their associates, including Prime Minister Najib, both in the US and elsewhere. The US launched a criminal investigation in 2018.<sup>55</sup>

After the change in government following the 2018 election in Malaysia, the new Malaysian government reopened the 1MDB investigation and arrested Najib, with police claiming to have found nearly USD 275 million in assets in properties linked to him.<sup>56</sup> Najib denies all wrongdoing.<sup>57</sup>

51. 1MDB: About us, Archived. <https://web.archive.org/web/20140506001136/http://www.1mdb.com.my/about-us/what-we-do> [accessed 30 September 2018].

52. A. Ananthakshmi and Emily Chow, »Timeline: The 1MDB scandal that led to the arrest of former Malaysian PM Najib« Reuters, 3 July 2018, <https://www.reuters.com/article/us-malaysia-politics-najib-timeline/time-line-the-1mdb-scandal-that-led-to-the-arrest-of-former-malaysian-pm-najib-idUSKBN1JT1CZ> [accessed 30 September 2018].

53. As above.

54. BBC, »Malaysia 1MDB: Saudi minister says Najib funds were donation«, 15 April 2016, <https://www.bbc.com/news/world-asia-36051474> [accessed 30 September 2018].

55. Joseph Sipalan, Rozanna Latiff, »Malaysian ex-prime minister Najib arrested in stunning fall from grace« Reuters, 3 July 2018. <https://uk.reuters.com/article/uk-malaysia-politics-najib/former-malaysian-premier-najib-arrested-amid-graft-probe-idUKKBN1JT0VV> [accessed 30 September 2018].

56. A. Ananthakshmi and Emily Chow (n.ix).

57. Joseph Sipalan, Rozanna Latiff, »Malaysian ex-prime minister Najib arrested in stunning fall from grace« Reuters, 3 July 2018. <https://uk.reuters.com/article/uk-malaysia-politics-najib/former-malaysian-premier-najib-arrested-amid-graft-probe-idUKKBN1JT0VV> [accessed 30 September 2018].

48. Swiss Info, Is the Abacha accord a model for returning »dictator funds?«, 2 March 2018, [https://www.swissinfo.ch/eng/business/switzerland-and-nigeria\\_is-the-abacha-accord-a-model-for-returning--dictator-funds--/43938016](https://www.swissinfo.ch/eng/business/switzerland-and-nigeria_is-the-abacha-accord-a-model-for-returning--dictator-funds--/43938016) [accessed 11 November 2018].

49. Interview with an international public official in Abuja, Nigeria, 26 June 2018.

50. See CiFAR, »How Nigerians are raising their voice on asset recovery«, 31 August 2018, <https://cifar.eu/nigeria-civil-society-switzerland> [accessed 11 November 2018].

Several jurisdictions are currently involved in 1MDB investigations and confiscations. CHF 104 million (USD 105 million), for example, has been confiscated from Swiss bank profits related to the 1MDB case. Civil society in Malaysia has campaigned for the fair and transparent return of this money.<sup>58</sup> An estimated USD 180 million in assets have been seized in Singapore<sup>59</sup> – to date USD 11.2 million has been approved to be returned to Malaysia –,<sup>60</sup> and a superyacht believed to be the proceeds of corruption was seized and returned to Malaysia by Indonesia.<sup>61</sup> However, the biggest case is taking place in the United States, where civil and criminal proceedings related to 1MDB are seeking to recover USD 1.7 billion.<sup>62</sup> As with other cases, officials from the US have entered into negotiations with the Malaysian government to discuss return of any assets ultimately confiscated.<sup>63</sup>

While the change in government has prompted more openness to working on the 1MDB case and in general, prior to 2018 Malaysia scored poorly on voice and accountability<sup>64</sup> and press freedom,<sup>65</sup> and the continued existence of the Security Offences (Special Measures) Act 2012, which has been used in the past to detain civil so-

ciety activists for up to 28 days without trial,<sup>66</sup> represents a threat to and deterrence for civil society actors speaking out on asset recovery.

Despite this, civil society organizations are both engaged and knowledgeable about international asset recovery, are willing to engage the new government on the issue and see the potential for advocacy on accountable and transparent return. While they are few, they are well organised and enthusiastically engaged on the topic. A challenge for them is riding this new wave of optimism over 1MDB both to push for an accountable and transparent return of funds and to institute the reforms that will prevent future theft.

#### *Case study 4*

##### *Mexico: Asset thefts by state governors and the Odebrecht case*

Unlike the other case studies in this report, there is not one standout case of asset recovery in Mexico, but rather a series of ongoing cases in many areas, from organised crime to politicians and the private sector.

At the political level a high-profile example is provided by the ongoing cases against several former governors of Mexico's 31 states. This includes the case of César Duarte, the governor of Chihuahua from 2010 to 2016, who fled Mexico in March 2018 after being accused of embezzling millions of pesos and is currently believed to be in the United States. In total, 20 properties belonging to César Duarte have been seized since he fled. He was known for his lavish lifestyle and is accused of using an official helicopter to fly friends and family to his ranch at weekends. He is suspected of embezzling 79 million pesos (USD 4.2 million) during his term.<sup>67</sup> Another prominent case is that of Tomás Yarrington, the governor of Tamaulipas from 1999 to 2005, who was finally arrested in Florence, Italy, in 2017. Some of the assets forfeited include: a US\$ 640,000 condominium, alleged to be the proceeds of corrupt payments received from the Gulf Cartel in exchange for non-interference in their criminal

58. Bruno Manser Funds, Swiss lawmakers say Malaysian government never claimed confiscated 1MDB profits, 13 March 2018, <https://www.bmf.ch/en/news/swiss-lawmakers-say-malaysian-government-never-claimed-confiscated-1mdb-profits> [accessed 30 September 2018].

59. Fortune / Reuters, »As 1MDB Scandal Unravels, Singapore Seizes \$177 Million in Assets« 21 July 2016, <http://fortune.com/2016/07/21/as-1mdb-scandal-unravels-singapore-seizes-177-million-in-assets/> [accessed 30 September 2018].

60. The Star, »Guan Eng: RM46mil 1MDB-linked funds from Singapore is just »tip of the iceberg« 10 September 2018, <https://www.thestar.com.my/news/nation/2018/09/10/guan-eng-rm46mil-1mdblinked-funds-from-singapore-is-just-tip-of-the-iceberg/#3IP026wLcZ5QtQ0A.99> [accessed 30 September 2018].

61. The Star, »Equanimity was properly seized under the laws of Malaysia, says AG« 7 August 2018, <https://www.thestar.com.my/news/nation/2018/08/07/equanimity-was-properly-seized-under-the-laws-of-malaysia/> [accessed 30 September 2018].

62. CNBC/Reuters, »Malaysia's embattled former leader Najib questioned by anti-corruption agency«, 21 May 2018, <https://www.cnbc.com/2018/05/21/us-department-of-justice-says-it-will-pursue-investigations-related-to-malysias-1mdb.html> [accessed 30 September 2018].

63. The Star, »Guan Eng: RM46mil 1MDB-linked funds from Singapore is just »tip of the iceberg« 10 September 2018, <https://www.thestar.com.my/news/nation/2018/09/10/guan-eng-rm46mil-1mdblinked-funds-from-singapore-is-just-tip-of-the-iceberg/#3IP026wLcZ5QtQ0A.99> [accessed 30 September 2018].

64. World Bank Governance Indicators 2018: Malaysia, <http://info.worldbank.org/governance/wgi/#reports> [accessed 30 September 2018].

65. Reporters without Borders: Press Freedom Index 2018, <https://rsf.org/en/ranking> [accessed 30 September 2018].

66. Human Rights Watch, »Malaysia: Reject Security Bill Extension«, 30 May 2017, <https://www.hrw.org/news/2017/03/30/malaysia-reject-security-bill-extension> [accessed 1 October 2018].

67. BBC, »Fugitive Chihuahua governor Duartes bison seized«, 26 February 2017, <https://www.bbc.com/news/world-latin-america-43195550> [accessed 30 September 2018].

enterprise by public officials and law enforcement; a Pylatus aircraft; a 46,175-acre tract of land in Bexar County, Texas; and a residence in Port Isabel. Tomás Yarrington is alleged to have funnelled bribery and embezzlement funds through the use of shell companies and nominees to real property and other assets in Mexico and the U.S.<sup>68</sup> The list also includes Javier Duarte (no relation to César Duarte), governor of Veracruz from 2010 to 2016, who was arrested in Guatemala after a six-month manhunt spanning at least three continents. Federal auditors allege he misappropriated more than 55 billion pesos (USD 2.97 billion). His wife is reportedly living a luxury life in London and had allegedly enjoyed the use of a 15-acre, USD 9.7 million ranch called El Faunito.<sup>69</sup>

Mexico has also been affected by the Odebrecht investigations spanning the Americas. Unlike in other countries in the region, two separate federal investigations into the case have stagnated. The lack of progress in the Odebrecht case has been a sore point in Mexico since late 2016, when the company admitted to U.S., Swiss and Brazilian authorities in a multibillion-dollar settlement that it had paid USD 10.5 million in bribes to Mexican officials<sup>70</sup>.

While there have been efforts in the right direction to tackle endemic corruption and asset recovery in Mexico—such as the creation of the General Audit Office (Auditoría Superior de la Federación) and the creation of the National Anti-Corruption System, a set of laws and institutional reforms meant to facilitate transparency and reduce impunity for corruption-related crimes, progress has been beset by difficulties. The National Anti-Corruption System has fallen victim to political infighting. Three years after its approval, the Senate has yet to name the special prosecutor on corruption-related crimes or fill key vacancies, including the 18 magistrates that are supposed to investigate and prosecute administrative

misconduct.<sup>71</sup> Furthermore, the design of the Mexican legal framework makes asset tracking and recovery a feasible yet elaborate and tricky affair<sup>72</sup> and the justice system does not effectively fight corruption, with reports of impunity levels for corruption-related crimes topping 95% percent of suspected cases.<sup>73</sup>

While civil society has been able to significantly increase public awareness of corruption, it lacks the political power to pressure the government, judiciary, and political parties to effectively investigate and redress cross-border corruption, with CSOs having faced violence, including threats and murders.<sup>74</sup> Nevertheless, civil society engagement in asset recovery in Mexico has proved to be essential for the transparency and accountability of government action and is particularly important at this time to ensure that progress is made in the right way with regards to the impunity of public officials. Meetings indicated that the new government, MORENA, and its leader, President Andrés Manuel López Obrador, could open a window of opportunity to tackle impunity and ensure the necessary systems to recover stolen assets.

#### Case study 5

##### *Moldova: The one billion dollar bank fraud*

In late 2014 a huge corruption case hit Moldova, Europe's poorest country – the infamous »one billion dollar bank fraud«. The scandal, involving three of the largest banks of the country – Banca de Economii, Banca Sociala and Unibank, holding around one third of the country's assets at the time, put the fragile economic and banking system in Moldova severely at risk, robbing the country at least one billion dollars, around 15% of its annual GDP. At the end of November 2014, shortly before national elections, in just two days the three Moldovan banks transferred up to USD one billion in loans to companies owned by anonymous individuals. The assets, which the banks paid

68. STAR Corruption Cases Database, [https://star.worldbank.org/corruptioncases/search/site/mexico?db=All&solrsort=ss\\_jurisdiction\\_origin%20asc&rows=50](https://star.worldbank.org/corruptioncases/search/site/mexico?db=All&solrsort=ss_jurisdiction_origin%20asc&rows=50) [accessed 30 September 2018].

69. The Guardian, »Mexico: wife of captured ex-governor living high life in London, rival alleges«, 30 May 2018, <https://www.theguardian.com/world/2018/may/30/mexico-karime-macias-london-governor-veracruz> [accessed 30 September 2018].

70. The New York Times, Mexico Could Press Bribery Charges. It Just Hasn't., 11 June 2018, <https://www.nytimes.com/2018/06/11/world/americas/mexico-odebrecht-investigation.html> [accessed 30 September 2018].

71. Interview with Gerardo Carrasco, Director de Litigio Estratégico, Mexicanos contra la corrupción y la impunidad.

72. The Law Reviews, »The Asset Tracing and Recovery Review – Edition 6 Mexico, October 2018 <https://thelawreviews.co.uk/edition/the-asset-tracing-and-recovery-review-edition-6/1174624/mexico>«, [accessed 10 October 2018].

73. IMCO, Anatomía de la Corrupción 2a. edición, corregida y aumentada, January 2017, [https://imco.org.mx/politica\\_buen\\_gobierno/anatomia-de-la-corrupcion-2a-edicion-corregida-y-aumentada/](https://imco.org.mx/politica_buen_gobierno/anatomia-de-la-corrupcion-2a-edicion-corregida-y-aumentada/) [accessed 10 October 2018].

74. Bertelsmann Stiftung, BTI 2018 Country Report, Mexico. Gütersloh: Bertelsmann Stiftung, 2018 <https://www.bti-project.org/en/reports/country-reports/detail/itc/mex/>, [accessed 10 October 2018].

out with reserves of the National Bank of Moldova, were transferred to bank accounts in Latvia belonging to Hong Kong- and the UK-registered companies, according to investigations.<sup>75</sup>

Expert analysis and investigations showed that this operation was conducted in a highly coordinated, structured way and was made possible thanks to the support of key financial and political institutions.<sup>76</sup> According to the main investigation that followed the fraud, commissioned by the Moldova National Bank to the US investigation company Kroll in 2015, the mastermind of this plan was the political figure and entrepreneur Ilan Shor.<sup>77</sup> Plans to conduct this sophisticated theft started as early as 2012, when interest groups started aggressively buying shares of the involved banks; the banks were then decapitalised by lending assets far beyond their resources, the purpose being to involve the National Bank in lending them liquidity through its reserves. A key step to facilitate this process occurred in 2014 when the legislation governing the banking system was amended, creating the legal grounds for emergency loans the National Bank could give to commercial banks under government guarantee.

After November 2014, the National Bank of Moldova put the banks in special administration, after which they declared bankruptcy and were liquidated. In September 2016, when it was clear that the banks would have never been able to repay their loans, the government decided to put the burden of the accumulated debt on the taxpayers: as such, the Moldovan domestic debt was more than tripled in just a year and the fraud debt was to be repaid in the next 25 years.<sup>78</sup>

Additionally, Moldova played a key role in a large cross-national money laundering scheme which moved billions of dollars from Russia to the EU between 2010 and 2014, according to a 2014 investigation by the Organized Crime

and Corruption Reporting Project (OCCRP).<sup>79</sup> The scheme involved the use of offshore companies in the UK and tax havens, banks in Latvia and corrupt judges in Moldova. According to OCCRP, over 20 judges in Moldova helped launder over USD 20 billion from Russia to Europe, a staggering figure for a tiny and poor country such as Moldova. The Superior Council of Magistracy allegedly did not follow up on these cases although being aware of them no later than September 2016, when 15 judges were arrested – and, one year later, freed.<sup>80</sup>

Since the first report of the one billion-dollar bank fraud was drawn up, little has been done to follow up on its findings. Notwithstanding declarations of commitment, there has been a substantial lack of transparency in investigations, with experts saying that little to no progress has been made in tracing the assets and linking them to the responsible individuals since the fraud took place in 2014.<sup>81</sup> On the contrary, according to research, the Moldovan government has actively tried to create a certain perception around how the two cases have been handled and to assure Moldovans and international partners that investigations are ongoing.<sup>82</sup> Similarly, experts argue that little or no progress has been made in recovering assets from the bank fraud.<sup>83</sup> There is no indication that Moldova requested mutual legal assistance to foreign jurisdictions on starting recovery processes of the assets from the one billion case.

When details of the one billion fraud case were revealed in 2015, tens of thousands of Moldovans went on the streets, protesting against corrupt government officials, judges and criminals. Explicitly addressing their anger towards the «oligarch mafia», citizens demanded that the billion dollars stolen through the debt fraud should be given back to them. Moldovan non-governmental organisations, independent experts and investigative journalists have played and are still playing a key role in uncovering corruption schemes and the role of public

75. BBC, «The great Moldovan bank robbery», 18 June 2015, <https://www.bbc.com/news/magazine-33166383> [accessed 15 October 2018].

76. Transparency Moldova, «Radiography Of A Bank Fraud In Moldova: From Money Laundering To Billion Fraud And State Debt», 20 December 2016, <https://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/> [accessed 15 October 2018].

77. BBC, «The great Moldovan bank robbery», 18 June 2015, <https://www.bbc.com/news/magazine-33166383> [accessed 15 October 2018].

78. Transparency Moldova, «Radiography Of A Bank Fraud In Moldova: From Money Laundering To Billion Fraud And State Debt», 20 December 2016, <https://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/> [accessed 15 October 2018].

79. OCCRP, «The Russian Laundromat», 22 August 2014 <https://www.reportingproject.net/the-russian-laundromat/russian-laundromat.php> [accessed 15 October 2018].

80. Dumitru Alaiba, CPR, «Too Big to Jail»? Four years of inaction in the investigation of Moldovan financial crimes», [https://alaiba.files.wordpress.com/2018/05/too-big-to-jail\\_policy-brief-alaiba.pdf](https://alaiba.files.wordpress.com/2018/05/too-big-to-jail_policy-brief-alaiba.pdf) [accessed 15 October 2018].

81. As above.

82. Transparency Moldova, Public Policy Observer – Issue 10, June 2018, <http://www.transparency.md/wp-content/uploads/2018/06/Observator-Nr.10-ENG.pdf> [accessed 15 October 2018].

83. As above.

officials and institutions, and advocating for full accountability and transparency on Moldova's largest corruption cases.

Several Moldovan anti-corruption NGOs and think tanks, working closely with legal and financial experts, have been very active in the past decade, and especially since the two large-scale financial frauds, in conducting research and analysis around money laundering, corruption and asset recovery, bringing to light the sophisticated system and political implications that permitted the two cases to take place. NGOs and think tanks often conducted these initiatives jointly, in order to increase public pressure, which contributed to making them stronger. These initiatives have, however, faced increasing hostility from the government and official bodies, with journalists and NGOs working on this case increasingly feeling unsafe and being publicly smeared and defamed by authorities. There have also been limited opportunities for interaction between civil society in Moldova and other countries involved in the case, especially as attention to the investigations has waned.

## 4. Conclusions

Both governments and civil society alike face huge challenges and complexities in addressing cross-border corruption and recovering stolen assets. There are increasing numbers of asset recovery cases worldwide, and more and more actors are engaging with processes involving multiple countries and multiple offenders. While some states are making the right moves in terms of closing the loopholes that allow for the hiding of corrupt wealth, corrupt officials and their enablers in the financial and legal industries are identifying new ways to hide money. When it comes to returns, states are faced with having to engage with legal cultures and systems very different from their own and are having to negotiate the complexities of joint investigations, coupled with negotiations over returns processes.

While traditionally asset recovery has been a strictly inter-governmental issue, this is changing. Civil society is essential to asset recovery, making it more accessible to citizens, more transparent and more accountable. In the domestic setting, CSOs can help make sense of asset recovery cases to the public, can identify paths to structural reform, can put pressure on recalcitrant officials to act

and can do their own investigative work. In international settings, their networks and flexibility can move cases along in ways that governments cannot. Above all, civil society involvement can help prevent this corrupt wealth from being re-stolen, by ensuring returns are accountable and transparent.

Engaging in cases of asset recovery is not easy for non-state actors. Globally, there are limits to their influence due to limited resources, challenges in communications and simply being shut out of key meetings. Nationally, they can face threats to their organisations and sometimes their lives, as well as lacking basic information and expertise.

This disconnect between the theoretical role of civil society and practice is gradually being narrowed. As NGOs, journalists and research institutions become more experienced in these cases and in addressing financial crime more generally, and as networks grow stronger, civil society is becoming more influential.

As can be seen in the case studies, civil society is able to have a meaningful impact, even when the situation is challenging. However, more needs to be done. More support, in terms of space to operate, protection and resources, needs to be mobilised for civil society to play its role meaningfully. There is only one way to avoid asset theft and to prevent returned assets from disappearing in the future: a wide and meaningful civil society involvement in asset recovery and the prevention of cross-border corruption.





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