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The Role of Civil Society Organisations in Asset Recovery

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GUARDING THE GUARDS: THE ROLE OF CIVIL SOCIETY ORGANIZATIONS IN ASSET RECOVERY

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Abstract

In Zimbabwe, civil society organizations (CSOs) have played a significant role in documenting corruption and mismanagement depriving the citizens of their basic human rights. This work can facilitate asset recovery efforts, which is a high priority for the Government. The country continues to face enormous challenges despite the political changes in recent years, and this makes the contribution of civil society all the more important. In particular, CSOs can raise public awareness, research, advocacy, case management, and monitoring of returned assets. Therefore, It should be promoted and equipped to work with government and state institutions, providing information, increasing accountability and building political will. The government and third sector may achieve significantly more when working together than either could independently. This paper seeks to provide CSOs with a platform to engage effectively and support the recovery of stolen assets within and beyond Zimbabwe's borders. It encourages CSOs to explore opportunities to effectively engage in the asset recovery process, including in partnership with other actors. Therefore, they can work towards returning the assets to Zimbabweans in desperate need. As the first of its kind, it is not intended to be exhaustive but rather provides an introductory overview of CSOs' engagement with asset recovery and identifies their specific strengths. In addition, it also analyses asset recovery networks, allowing them to understand who is already working to build on this knowledge for future collaborations. In terms of scope, this study analyses asset recovery in the context of corruption-related offenses, emphasizing cases involving senior public officials, and discusses experiences from Indonesia and the Philippines.

Keywords : *Advocacy, Asset Recovery, Civil Society Organizations*

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I. INTRODUCTION

The Zimbabwe Anti-Corruption Commission (ZACC) estimates that US\$7 billion is illegally held in foreign bank accounts¹ and this is equivalent to the country's principal external debt.² The potential economic impact

¹ "Asset Recovery: ZACC Identifies \$70bn Cash, Properties," The Herald, accessed 13 November 2021, <https://www.herald.co.zw/asset-recovery-zacc-identifies-7bn-cash-properties/>.

² Zimbabwe's debt is estimated to be US\$13.7 billion. Some US\$7 billion of the total is payments that are in arrears. See The 2022 National Budget Speech by Hon. Prof. Mthuli Ncube, Minister of Finance and Economic Development, delivered to the Parliament of Zimbabwe on 25 November 2021. http://www.zimtreasury.gov.zw/index.php?option=com_phocadownload&view=category&id=67&Itemid=793.

for Zimbabwe would be considerable when this money was returned. Consequently, asset recovery has been high on the government agenda. Soon after unexpectedly coming to power in November 2017, President Emmerson Mnangagwa began pursuing assets stolen by officials, mainly members of the previous regime. His first action was to pass a three-month general amnesty for individuals and companies to surrender public funds illegally stashed abroad.³

However, they were not compelled or promoted by the amnesty could not compel. President Mnangagwa passed unexplained wealth orders (UWOs) legislation to impose stronger obligations based on the directives of the Presidential Powers Act allowing the government to recover the unexplained wealth.⁴ UWOs are a tool for recovering ill-gotten assets, which shifts the responsibility to the respondent and makes it a requirement under civil law to explain the source of their wealth.⁵ On July 5, 2019, the Zimbabwean government gazetted a bill (HB 14) to amend the Money Laundering and Proceeds of Crime Act. The amendment was welcomed by the public with a few reservations and was adopted by parliament with the support of lawmakers from across the political divide.⁶ Zimbabwe became one of three countries in the world to adopt full UWOs, and the first in Africa.⁷

The ZACC, facing enormous operational challenges under the

³ The following statement was issued by President Mnangagwa on 28 November 2017, advising those that were involved in illegal activities to bring back any funds they may have sent out of Zimbabwe:

“Activities linked to Operation Restore Legacy have, among other issues, helped to uncover cases where huge sums of money and other assets were illegally externalised by certain individuals and corporates. Needless to say, such malpractices constitute a very serious economic crime against the People of Zimbabwe which the Government of Zimbabwe will never condone. As a first step towards the recovery of the illegally externalised funds and assets, the Government of Zimbabwe is gazetted a three-month moratorium within which those involved in the mal-practice can bring back the funds and assets, with no questions being asked or charges preferred against them. The period of this amnesty stretches from 1 December 2017 to the end of February 2018. Affected persons who wish to comply with this directive should liaise with the Reserve Bank of Zimbabwe for necessary facilitation and accounting. Upon the expiry of the three-month window, Government will proceed to effect arrest of all those who would not have complied with this directive, and will ensure that they are prosecuted in terms of the country’s laws. Those affected are thus encouraged to take advantage of the three-month moratorium to return the illegally externalised funds and assets in order to avoid the pain and ignominy of being visited by the long arm of the law.”

⁴ The president made temporary provision for such orders in the Presidential Powers (Temporary Measures) (Amendment of Money Laundering and Proceeds of Crime Act and Exchange Control Act) Regulations, 2018, gazetted in SI 246/2018 of 9 November 2018 and made under the Presidential Powers (Temporary Measures) Act.

⁵ Rachel Davies Teka, “Unexplained Wealth Orders: A Brief Guide,” Transparency International UK, 30 May 2017, accessed 20 November 2022, <https://www.transparency.org.uk/unexplained-wealth-orders-brief-guide>.

⁶ “Bill Watch 65/2019-Progress on Bills, but Not on Budget,” Veritas, accessed 22 November 2022, <https://www.veritaszim.net/node/3840>.

⁷ Basel Institute on Governance, *Annex I: A Compilation of Illicit Enrichment Legislation and Other Relevant Legislation* (Basel Institute of Governance, 2021), available at illicitenrichment.baselgovernance.org.

previous regime, has been restructured. The new ZACC established an asset recovery unit, the main such body in the country.⁸ Asset recovery ranks next to prosecutions in terms of priority in the anti-corruption strategy, as explained in the Strategic Plan (2020–2024).⁹ The ZACC has an ambitious plan to increase asset recovery to US\$1 billion by 2024.¹⁰ Since the inception, the unit has launched investigations into 43 cases, with the value of assets identified and seized amounting to US\$24.7 million.¹¹ Recently, the ZACC made headlines when it successfully recovered assets from Douglas Tapfuma, Principal Director in the Office of the President and Cabinet (State Residence), Samuel Undenge, former Minister of Energy and Power Development, David Murangari, former CEO of the Zimbabwe Mining Development Corporation, Moses Juma, former acting CEO of the Zimbabwe National Road Administration, Luke Akino and Paddington Kadzangura.¹²

The ZACC has recently called for another amnesty for the return of assets despite this development. The commission’s chair renewed the amnesty call at a Victoria Falls conference in October 2021: ‘Citizens who acquired the assets through corruption should bring them back, and they are not going to be arrested since amnesty will be given.’¹³ It seems the drastic measures have not yielded the desired results, and the war on corruption is being lost. However, this study is not claiming that asset recovery has become a binary issue of victory or defeat. It argues that the speed of travel on asset recovery remains painfully slow. Primarily, it intends to support the anti-corruption and asset recovery efforts, focusing on actions of the CSOs. It advocates a shift of focus from national authorities to civil society’s role. CSOs in Zimbabwe have already played a significant role in documenting cases that can facilitate asset recovery. Several local NGOs have produced their documented accounts of corruption in Zimbabwe. However, there is a shortage of literature on engagement with asset recovery.

Asset recovery is critical in strengthening some key foundations of

⁸ The key authorities involved in corruption prevention and asset recovery include the Zimbabwe Anti-Corruption Commission, the Office of the President and Cabinet, the Public Service Commission, the Office of the Auditor General, the Corporate Governance Unit in the Office of the President and Cabinet, the Procurement Regulatory Authority, the Financial Intelligence Unit, the National Prosecuting Authority, the Office of the Prosecutor General, the Zimbabwe Republic Police and the Zimbabwe Revenue Authority.

⁹ On file with the author.

¹⁰ *Ibid.*

¹¹ “ZACC Guns for US\$7bn Assets Illicitly Siphoned out of the Country,” *The Sunday Mail*, 25 July 2021, <https://www.sundaymail.co.zw/zacc-guns-for-us7bn-assets-illicitly-siphoned-out-of-the-country>.

¹² *Ibid.*

¹³ Leonardo Ncube, “Bring Back Ill-Gotten Wealth to Get Amnesty,” *The Chronicle*, 27 September 2021, <https://www.chronicle.co.zw/bring-back-ill-gotten-wealth-to-get-amnesty/>.

sustainable development, such as the rule of law and strong, transparent, accountable institutions. As Mike Pfister has argued, CSOs can provide a powerful foundation for sustainable development by combining hard and soft assets, ranging from the capacity of law enforcement institutions to the political will to fight criminal networks.¹⁴

This seminar paper has been compiled using a desk review methodology. It reviews publicly available documents, policy documents, and legislation on asset recovery. It also utilizes ‘grey literature’ – documents that have not been formally published in academic sources (books or journals) such as reports, theses, conference proceedings, newspapers, fact sheets, websites and policy documents. These items have been obtained by requesting information from organizations dealing with asset recovery and corruption in Zimbabwe or using customized search engines/searching specific websites. Reports on asset recovery implementation by member states of the United Nations Convention against Corruption (UNCAC) and CSOs have also been reviewed.

II. STATE-OF-THE-ART AND OBJECTIVES

Generally, the process of recovering stolen assets is led by states. In addition to the ZACC, other key authorities involved in corruption prevention and asset recovery in Zimbabwe are the Office of the President and Cabinet (OPC), the Public Service Commission, the Office of the Auditor General, the Corporate Governance Unit in the OPC, the Procurement Regulatory Authority of Zimbabwe, the Financial Intelligence Unit, the National Prosecuting Authority, the Office of the Prosecutor General, the Zimbabwe Republic Police and the Zimbabwe Revenue Authority. Most of these institutions have powers that sometimes outstrip those of the ZACC. However, they have been ineffectual relative to their size and statutory power and have displayed little appetite for asset recovery.

CSOs can also play a decisive role in various stages of the asset recovery process.¹⁵ The importance has been enshrined in the UNCAC, whose article 13 calls on state parties to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental and community-based organizations, in preventing and combating corruption.¹⁶

¹⁴ Mike Pfister, “Recovering Assets in Support of the SDGs: From Soft to Hard Assets for Development,” Basel Institute on Governance, Working Paper Series No. 29, 2, available at https://baselgovernance.org/sites/default/files/2019-05/WP29_AssetRecovery_SDGs.pdf.

¹⁵ *Ibid.*

¹⁶ Ukraine Forum on Asset Recovery (UFAR), “Guide to the Role of Civil Society Organizations in Asset Recovery,” 6, available at https://star.worldbank.org/sites/star/files/cso_user_guide_ukraine_-_english_final.pdf.

Similarly, the African Union (AU) – based on its 2018 annual theme ‘Winning the fight against corruption: A sustainable path to Africa’s transformation,’ developed the Common African Position on Asset Recovery – highlighted the critical role of civil society, and called on states to ensure greater civil society involvement in asset recovery.¹⁷

Broadly, ‘asset recovery’ describes a series of actions undertaken to trace, seize, confiscate and return stolen assets.¹⁸ The most commonly cited definition is the World Bank, according to which it includes preventing and detecting corruption, tracing the proceeds of corruption, preserving and confiscating these proceeds and then allocating and returning them.¹⁹ This is also consonant with the UNCAC, which defines ‘asset recovery’ as relating to the proceeds of corruption, as opposed to ‘asset confiscation’ or ‘asset forfeiture,’ which refer to recovering the proceeds or instrumentalities of crime.²⁰

The four main stages of asset recovery can be summarised as follows. First, asset tracing, which is the process of examining revenues generated by criminal activity under the trail of illegally acquired proceeds.²¹ Second, asset freezing involves retaining property pending a final decision in a criminal case to prevent assets from being destroyed, transformed, removed, transferred or disposed of before the case is closed.²² Third, asset confiscation is intended to stop criminals from accessing the property by permanently taking it away.²³ Finally, asset disposal refers to the actual recovery of criminal assets, before reverting to the relevant state, are shared among several states.²⁴

Tracing, freezing, confiscation, and disposal of each of the abovementioned steps present unique challenges. Managing the stages of an asset recovery investigation can be extremely time-consuming and complex. It requires a lot of resources, expertise and political will. Commentators have described asset recovery as the most complicated area of law.²⁵ As seen below, asset recovery cases can take many years and sometimes decades.

¹⁷ See *Common African Position on Asset Recovery*, The 33rd African Union Assembly of Heads of State and Government, held in Addis Ababa in February 2020, para. 12 and 23.

¹⁸ “Guide to the Role of Civil Society Organizations in Asset Recover,” Basel Institute on Governance, <https://learn.baselgovernance.org/mod/page/view.php?id=452&lang=de>.

¹⁹ Jean-Pierre Brun et al., *Asset Recovery Handbook: A Guide for Practitioners, Second Edition* (Washington DC: World Bank, 2020), 53.

²⁰ United Nations Convention against Corruption opened for signature 31 October 2003, 2349 UNTS 41 (entered into force 14 December 2005), art. 51–59.

²¹ Brun et al., *Asset Recovery Handbook*.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Jack Smith, Mark Pieth and Guillermo Jorge, “The Recovery of Stolen Assets: A Fundamental Principle of the UN Convention against Corruption,” *U4 Brief*, no. 2 (2007): 2.

The UNCAC explicitly makes asset recovery one of the fundamental principles (article 51, UNCAC) and dedicates an entire chapter to the recovery (chapter V).²⁶ In addition, the Conference of States Parties (CoSP), the UNCAC's main decision-making body (all states that have ratified the UNCAC are automatically part of the CoSP), established the Working Group on Asset Recovery. This open-ended intergovernmental group has met regularly since 2007.²⁷ The working group is responsible for assisting and advising the CoSP concerning implementing the mandate to secure the return of proceeds of corruption. Under UNCAC article 13, civil society should be involved in national and international anti-corruption efforts. In article 63, it should be involved in UNCAC review processes.

In 2009, the CoSP adopted the resolution establishing the UNCAC review mechanism²⁸ and the process comprises two five-year cycles. The first cycle (2010–2015) covers chapters III (criminalization and law enforcement) and IV (international cooperation). The second cycle (initially 2015–2020, extended to 2024) covers chapters II (preventive measures) and V (asset recovery). A country review process is conducted in three phases. Phase I: self-assessment- The state's party identifies a focal point to coordinate the country's participation in the review and then fills out a standardized self-assessment checklist. Phase II: peer review- Two reviewer countries provide experts to form a review team. The team conducts a desk review of the completed self-assessment checklist. Phase III: country review report and executive summary- With the assistance of the UN Office on Drugs and Crime (UNODC), the expert review team prepares a country review report and an executive summary. Civil society plays an important role as an independent observer of governments' implementation of the UNCAC and the transparency of the review process.

The most recent phase of the review process found that Zimbabwe has made significant progress toward developing normative legal frameworks for implementing chapter V (asset recovery) of the UNCAC. Even though the review of Zimbabwe has been completed, only the executive summary has been published on the UNODC profiles page. The government's self-assessment checklist and the full country report have not been publicly released (it is only mandatory to publish the executive summary).²⁹ The summary of the

²⁶ United Nations Convention against Corruption, art. 68 (1).

²⁷ "Open-Ended Intergovernmental Working Group on Asset Recovery," UNODC, accessed 13 November 2021, <https://www.unodc.org/unodc/en/corruption/WG-AssetRecovery/working-group-on-asset-recovery.html>.

²⁸ UNODC, *Third Session of the Conference of the States Parties to the United Nations Convention against Corruption*, Resolution 3/1, available at <https://www.unodc.org/unodc/en/corruption/COSP/session3-resolutions.html>.

²⁹ CoSP Implementation Review Group, "Executive Summary: Zimbabwe," CAC/COSP/IRG/II/2/1/Add.15, 2 July 2020, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/Implementa->

report notes under ‘successes and good practices that Zimbabwe’s legislative framework includes a ‘prohibition for any person on entering into or continuing any business relations with a shell bank or a respondent financial institution in a foreign country.’³⁰ A ‘shell bank’ has no physical presence in the country where it is incorporated, licensed, and unaffiliated with a regulated financial group subject to effective consolidated supervision.³¹ However, Zimbabwe has not been able to stop individuals and company members from abusing shell companies. The Pandora and Panama Papers have shown that shell companies are used to launder cash outside Zimbabwe.³²

The Anti-Corruption Trust of Southern Africa (ACT-SA) authored a civil society report with support from the UNCAC Coalition and information supplied by other CSOs³³ and it is also available in Shona and Ndebele. Given that the government has not made the full report public, the parallel report by the ACT-SA is a vital source of information.³⁴ The section below addresses ways CSOs can be involved in asset recovery processes and mechanisms.

III. METHODS OF CSO ENGAGEMENT WITH ASSET RECOVERY

CSOs are widely credited for their flexibility in using advocacy activities and strategies to effect policy change. They can use insider and outsider tactics when performing advocacy. Insider tactics mean advocacy by directly engaging with the policymaker through lobbying, while outsider tactics use confrontational means such as demonstrations, social actions, or media campaigns. CSOs might adopt more dynamic, flexible and diversified advocacy strategies including confrontational/consensual activities or insider/outsider tactics to raise awareness. Furthermore, the role of CSOs is to mainstream international issues including goal, objectives, and framework at

[tionReviewGroup/ExecutiveSummaries2/V2003385e.pdf](#).

³⁰ Zimbabwe, *Money Laundering and Proceeds of Crime Amendment Act*, 2020, art. 52, para. 4.

³¹ “Glossary of the FATF Recommendations,” FATF 2012, accessed 3 December 2021, <https://www.fatf-gafi.org/glossary/s-t/>.

³² Will Fitzgibbon, “Zimbabwe’s List of Alleged Offshore Offenders Includes Panama Papers Shell Companies,” ICIJ, 26 March 2018, <https://www.icij.org/investigations/panama-papers/zimbabwes-list-of-alleged-offshore-offenders-includes-panama-papers-shell-companies/>.

³³ The Anti-Corruption Trust of Southern Africa, “Civil Society Report on the Implementation of Chapter II (Prevention) & Chapter V (Asset Recovery) of the United Nations Convention Against Corruption in Zimbabwe,” <https://uncaccoalition.org/wp-content/uploads/Final-Civil-Society-Report-on-Zimbabwe-ACT-SA-UNCAC-Coalition-8.3.2021.pdf>.

³⁴ Marijana Trivunovic, Nils Taxell, Jesper Johnson, and Rita De Cássia BIASON, “The Role of Civil Society in the UNCAC Review Process: Moving beyond compliance?,” *CMI U4 Anti-Corruption Resource Centre* 4, (May 2013), <https://www.u4.no/publications/the-role-of-civil-society-in-the-uncac-review-process-moving-beyond-compliance>.

the national level. It enhances public awareness and monitors international policy implementation at the national level.

The following sections set out pragmatic steps to enhance the effectiveness and performance of the ZACC asset recovery processes. They are based on a summary of the Arab Forum on Asset Recovery (AFAR) Guide to the Role of Civil Society Organizations in Asset Recovery, developed by the Basel Institute on Governance's International Centre for Asset Recovery. Even though the guide was developed in the specific context of the AFAR, the content is applicable globally and can provide useful guidance to CSOs from other regions. For instance, the AFAR Guide has been recontextualized in the Ukraine Forum on Asset Recovery (UFAR) Guide to the Role of Civil Society Organizations in Asset Recovery.

A. AWARENESS RAISING AND RESEARCH

Awareness raising in the context of asset recovery is defined in the AFAR Guide as campaigns on the significance of asset recovery and its role in the fight against corruption and development efforts to create demand for asset recovery, and raise awareness about the roles and responsibilities of concerned stakeholders. The introductory section of the present paper discussed how CSOs had been involved in researching and documenting corruption cases. Research and awareness are intrinsically linked, where projects uncover issues and formulate ideas backed by established evidence, and awareness campaigns communicate these ideas to a wide audience. The aforementioned article 13 of the UNCAC seeks to promote the participation of CSOs in preventing and combating corruption through public information activities. However, Zimbabwean CSOs' potential role in documenting corruption has been underutilized, despite several previous examples.

Many sources used for this paper show a lack of awareness about asset recovery. As the AFAR Guide recommends, CSOs should undertake awareness campaigns, and research efforts to inform citizens about asset recovery. Examples of campaigns include informing the public about the importance of asset recovery and systemic weaknesses. Other CSOs and non-CSO stakeholders can be helped to understand their roles and responsibilities in asset recovery.

B. ADVOCACY

The UFAR Guide defines advocacy in the context of asset recovery as work to influence political will, promote reform in public policy, strengthen government accountability regarding asset recovery and related issues and

demand stronger prevention mechanisms from the private sector. Advocacy strategies are more targeted than the awareness-raising activities discussed above. Examples include campaigning and lobbying the government for asset recovery-related legislative, institutional and policy reform. Zimbabwean CSOs have frequently been able to persuade undecided public sections to undertake specific actions and can execute the same regarding asset recovery. The UFAR Guide, stresses the importance of a clearly defined and realistically achievable objective when launching advocacy campaigns.

C. CASEWORK AND LEGAL ANALYSIS

The UFAR Guide defines casework, and legal analysis in the context of asset recovery as activities to generate useful information and intelligence used by relevant government authorities such as financial intelligence units and investigative and prosecutorial authorities. Some CSOs can assist the government with the task of identifying and exposing criminal assets acquired by corrupt officials and enablers by tracing such assets through financial investigations or forensic auditing. This enables investigations and prosecutions to be initiated to recover the stolen assets and bring perpetrators of corruption to justice.

Furthermore, casework and legal analysis may allow CSOs to initiate their legal proceedings concerning stolen assets. In Zimbabwe, this may seem impossible, but CSOs should consider private litigation or the use of whistleblowers to reveal stolen assets.

D. RETURN OF CONFISCATED ASSETS

There is no universal agreement on the principle that confiscated funds from corruption should be returned, as enshrined in article 51 of the UNCAC. The UNCAC provides that countries involved in returning stolen assets may conclude agreements for the final disposal of the confiscated property where appropriate. Consequently, there is a high degree of convergence on the need to put returned assets to good end use and ensure they are not stolen. The AFAR Guide recommends that CSOs play a role in the stages before and during the return of confiscated assets originating from corruption and related crimes. Generally, this includes providing input to the decision-making process over end-use. CSOs are well placed to represent the voice of potential victims of corruption, and can contribute to a national dialogue on the potential end use of returned assets. Objectives may include transparent and focused utilization of returning assets.

IV. COMPARATIVE EXAMPLES

A. NIGERIA

General Sani Abacha, who governed Nigeria from 1993 to 1998, died on June 8, 1998, from a reported heart attack.³⁵ About US\$5 billion was looted over the five years of his rule according to Transparency International estimates.³⁶ After his death, investigations were launched into Abacha's criminal dealings, first by General Abdulsalami Abubakar and subsequently by President Olusegun Obasanjo, who was then the Chair of the Advisory Board of Transparency International. These investigations culminated in campaigns, including civil society groups, to recover the assets stolen by Abacha and associates, hidden outside Nigeria.

It took Nigeria five years to acquire a repatriation judgment from the Swiss authorities because the Abacha family filed multiple appeals and engaged a huge number of attorneys to obstruct or impede the process.³⁷ After a series of negotiations, which led to the World Bank being selected as a neutral party to monitor recovered assets, a total of US\$505.5 million of assets were repatriated between September 2005 and early 2006.³⁸ In 2008, Enrico Monfrini, the Swiss lawyer representing Nigeria, reported that US\$508 million found in the Abacha family's Swiss bank accounts was sent from Switzerland to Nigeria between 2005 and 2007. By 2018, the amount Switzerland had returned to Nigeria had reached more than US\$1 billion.³⁹

Other countries were hesitant to return the assets to Nigeria, which is still perceived as very corrupt. Recovering money from Liechtenstein was challenging, but in June 2014, the country returned US\$277 million to Nigeria.⁴⁰ Recently, US\$308 million held in accounts based on the Channel Island of Jersey was also returned.⁴¹ This only came about after the Nigerian authorities agreed that the money would specifically be used to help finance

³⁵ "The Death of General Sani Abacha," BBC World Service, 11 July 2015, accessed <https://www.bbc.co.uk/programmes/p02vyxqq>.

³⁶ "25 Corruption Scandals That Shook the World: Draining Nigeria of Its Assets," Transparency International, 5 July 2019, accessed <https://www.transparency.org/en/news/25-corruption-scandals#Nigeria>.

³⁷ Clare Spencer, "Sani Abacha – the Hunt for the Billions Stolen by Nigeria's Ex-Leader," BBC, 28 January 2021, accessed <https://www.bbc.com/news/world-africa-54929254>.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Rachael Hanna, "The Trilateral Nigeria-US-Jersey Agreement to Return Nigerian Dictator Abacha's Assets: A Preliminary Assessment," Global Anti-Corruption Blog, 24 April 2020, accessed <https://globalanticorruptionblog.com/2020/04/24/the-trilateral-nigeria-us-jersey-agreement-to-return-nigerian-dictator-abachas-assets-a-preliminary-assessment/> <https://globalanticorruptionblog.com/2020/04/24/the-trilateral-nigeria-us-jersey-agreement-to-return-nigerian-dictator-abachas-assets-a-preliminary-assessment/>.

infrastructure projects in the country.⁴² Some countries are yet to return the loot. To recover the Nigerian assets, the Swiss government designated the Abacha family a ‘criminal organization,’ allowing it to bypass the need for a conviction.⁴³

In 2017, the Swiss government returned about US\$322.5 million of money stolen by Abacha on the condition that the World Bank be involved alongside civil society groups in monitoring the use to prevent being stolen again.⁴⁴ Monitoring Transparency and Accountability in the Management of Returned Assets (MANTRA), a loose coalition of CSOs, was established to monitor the disbursement of the recovered funds, which was coordinated by another Nigerian NGO, the Africa Network for Environment and Economic Justice (ANE EJ). In 2018, the Government of Nigeria signed a memorandum of understanding (MOU) with the ANEEJ to monitor the distribution of the money. The Nigerian government used the recovered money to fund the social investment program to support poor and vulnerable Nigerians during the Covid-19 pandemic. MANTRA helps to ensure transparent use of the recovered funds in line with its stated purpose. ANEEJ has deployed 1,456 monitors across Nigeria and hired an audit firm to monitor the nationwide disbursements of recovered Abacha loot as part of the federal government’s response to the Covid-19 pandemic.⁴⁵

Nigeria came up with the innovative idea of signing MOUs on the return of assets with governments of other countries where Abacha’s money is hidden.

⁴² United Kingdom Government, *MoU between UK and Nigeria on the Modalities for Return of Stolen Assets Confiscated by the UK: Annex 1*, Policy Paper 19 March 2021, <https://www.gov.uk/government/publications/return-of-stolen-assets-confiscated-by-the-uk-agreement-between-the-uk-and-nigeria/mou-between-uk-and-nigeria-on-the-modalities-for-return-of-stolen-assets-confiscated-by-the-uk-annex-1>.

⁴³ Enrico Monfrini, “The Abacha Case,” in *Recovering Stolen Assets*, Mark Pieth, ed. Bern, Germany: Peter Lang, 2008), 48: Article 260(1) of the Swiss Penal Code defines a criminal organization as ‘an organization that keeps its structure and personal composition secret and pursues the purpose of committing violent crimes or enriching itself by criminal means’. See also Monfrini, “The Abacha Case,” 48–49: Although there was no precedent in qualifying a head of state, their family and members of their government as a criminal organization, this qualification was essential to the success of the Swiss criminal and mutual assistance proceedings, for two reasons. Firstly, pursuant to Article 260 Paragraph 3 of the Swiss Penal Code, the Swiss authorities had jurisdiction to investigate and prosecute all members of the Abacha criminal organization, even if they had not set foot in the country, on the sole basis that the organization’s criminal activity had partially taken place in Switzerland. Secondly, and more importantly, pursuant to Article 59 ciphers 3 of the Swiss Penal Code, the qualification as a criminal organization would result, for the persons who has participated in or supported it, in reversing the burden of the proof, as they would have the onus of proving the lack of connection between the assets subject to confiscation and the criminal organization, as was confirmed by the Swiss Supreme Court on 7 February 2005.

⁴⁴ Interview with Roberto Balzaretto. See Daniel Finnan, “Swiss Make Deal with Nigeria on Final Payout for Abacha Loot,” RFI, 6 December 2017, <https://www.rfi.fr/en/africa/20171206-swiss-make-deal-nigeria-final-payout-abacha-loot>.

⁴⁵ Bassey Udo, “N23.7 Billion of Abacha Loot Paid to Poor Nigerians, Civil Society Group Says,” Premium Times, 24 April 2020, <https://www.premiumtimesng.com/news/top-news/389627-n23-7-billion-of-abacha-loot-paid-to-poor-nigerians-civil-society-group-says.html>.

For instance, in 2016, it signed an agreement with the British government to facilitate the return of stolen funds recovered by UK agencies to Nigeria.⁴⁶ The first return of assets under this MOU totalled US\$5.83 million, representing the funds recovered from the associates and family of James Ibori, the former governor of Nigeria's Delta State.⁴⁷ The MOU includes a detailed budget plan, including a work and expenditure schedule for each project to which the returned funds will contribute.⁴⁸ More importantly, the MOU stipulates that CSOs should be involved in the monitoring of returned funds.⁴⁹

B. EQUATORIAL GUINEA

The involvement of CSOs in international asset recovery perhaps started in 2007 when the French chapter of Transparency International and another NGO, Sherpa, attained legal standing in asset recovery cases. This was the first time CSOs had initiated a case of asset recovery. The *biens mal acquis* ('ill-gotten gains') affair had its origins in a 2007 report published by a French NGO, the Comité Catholique contre la Faim et pour le Développement (CCFD) to assess the value of the accumulated assets of 23 current and former African heads of state and their families held in Western countries.⁵⁰ As it was based only on public sources of information, the study was non-exhaustive, but the findings were still startling. By CCFD's estimates, the value of foreign assets accumulated by the 23 leading families covered in the report totaled 200 billion US dollars.⁵¹ However, as detailed below, this may be a highly conservative figure.

In March 2007, Sherpa with two other associations, Survie and Fédération des Congolais de la Diaspora, filed a criminal complaint against the presidents of the Republic of the Congo (Denis Sassou Nguesso), Gabon (Omar Bongo Ondimba, now deceased) and Equatorial Guinea (Teodoro Obiang Mbasogo), as well as members of their entourages, including family members and close associates).⁵² The complaint was based on CCFD's research showing that these

⁴⁶ On file with the author.

⁴⁷ Elfredah Kevin-Alerechi, "The Ibori Loot: The Controversy Surrounding the Destination of the Returned Money," Civil Forum for Asset Recovery, 15 June 2021, <https://cifar.eu/ibori-loot-the-controversy-surrounding-the-destination-of-the-returned-money/>.

⁴⁸ United Kingdom Government, *Return of Stolen Assets Confiscated by the UK: Agreement between the UK and Nigeria*, Policy Paper, 19 March 2021, available at <https://www.gov.uk/government/publications/return-of-stolen-assets-confiscated-by-the-uk-agreement-between-the-uk-and-nigeria>.

⁴⁹ Paras 28–33 and schedule 5 of the agreement.

⁵⁰ Antoine Dulin and Jean Merckaert, "Biens mal acquis : à qui profite le crime? [Ill-gotten gains, who benefits from the crime?]," CCFD, June 2009, accessed 20 November 2021, http://ccfd-terresolidaire.org/IMG/pdf/BMA_totalBD.pdf.

⁵¹ *Ibid.*

⁵² In an ordinary complaint lodged with the Paris Public Prosecutor's Office in March 2007. It is worth noting, however, that in the Duvalier case, the First Civil Chamber of the French Court of Cassation (the highest court of justice in France) dismissed the restitution claim made by Haiti on the basis that French courts

individuals held considerable real estate assets in France acquired through their known salaries and emoluments.⁵³ The examining magistrates quickly focused on the lifestyle of Teodoro ‘Teodorin’ Nguema Obiang Mangue, the son of Teodoro Obiang Mbasogo. Unlike the other public officials that were targeted, he did not hold any official position to confer personal immunity from criminal prosecution by the French courts. Teodorin was Minister of Agriculture and Forestry in the Equatoguinean government at that time.⁵⁴

The investigation into Teodorin advanced quickly, and in response, series of appeals and other blocking manoeuvres were launched.⁵⁵ In 2021, after 14 years, France’s highest court, the Court of Cassation, upheld Teodorin’s conviction and a ruling concerning the confiscation of assets in France.⁵⁶ The appeal court confirmed confiscating all his seized assets, amounting to approximately 150 million euros. By comparison, 150 million euros was the budget the Equatoguinean government allocated to health in 2011 (the most recent year for which figures are available).⁵⁷

Recovering assets from a corrupt official who is still in office is exceptionally difficult. For example, in September 2019, Swiss prosecutors confiscated and auctioned off a collection of 25 supercars worth nearly US\$27 million belonging to Teodorin.⁵⁸ According to the NGO Human Rights Watch, an anonymous buyer bought 13 of the cars and the collection, including a Koenigsegg One:1 worth \$4.6 million, later turned up back in Nguema’s hands.⁵⁹ Furthermore, when governments repatriate revenues for the benefit

had no jurisdiction to rule on acts committed by a former foreign president and pertaining to the exercise of power (decision of 29 May 1990). Even though there is no other case precedent and French judges would likely rule otherwise today (precisely because of the UNCAC provisions), it illustrates the state of affairs that prevailed in France back in the 1990s.

⁵³ Unfortunately, the court record is not publicly available; details can only be found in reports and the media.

⁵⁴ Maud Perdriel-Vaissière, “France’s *Biens Mal Acquis* Affair: Lessons from a Decade of Legal Struggle,” Open Society Foundation, May 2017, <https://www.justiceinitiative.org/publications/france-s-biens-mal-acquis-affair-lessons-decade-legal-struggle>. This paper is part of a series that was developed from a day of discussions on the worldwide legal fight against high-level corruption organised by the Open Society Justice Initiative and Oxford University’s Institute for Ethics, Law and Armed Conflict in June 2014.

⁵⁵ *Ibid.*

⁵⁶ Transparency International France, “Definitive Conviction of Teodorin Obiang in France Sends Strong Message, Allows Asset Restitution to Equatorial Guinea,” Transparency International, 30 July 2021 <https://www.transparency.org/en/press/teodorin-obiang-conviction-asset-recovery-equatorial-guinea-france#>.

⁵⁷ Sara Brimbeuf, “150 Million Euros Confiscated Following Vice-President Obiang’s Conviction in France,” CHR Michelsen Institute, 2020, accessed 30 July 2021, <https://www.cmi.no/publications/7248-150-million-euros-confiscated-following-vice-president-obiangs-conviction-in-france>.

⁵⁸ Lucinda Pearson, “Ferraris with Matching Socks; Tales of Corruption from Equatorial Guinea,” Transparency International Europe, 10 December 2020, https://transparency.eu/ferraris-with-matching-socks/#_ftn2.

⁵⁹ Sarah Saadoun, “How to Return Stolen Assets Responsibly,” Human Rights Watch, 10 November 2020, <https://www.hrw.org/news/2020/11/10/how-return-stolen-assets-responsibly>.

of the nations to which they are repatriated, they should devise a method to prevent the assets from falling into the hands of unscrupulous authorities.

There is currently no standard system to guide asset recovery in situations where the victim country is still perceived as highly corrupt. A popular method is to use the money to fund charitable activities where the public funds were stolen.⁶⁰ This mechanism was employed in the 2014 settlement between the US Department of Justice and Teodorin. With regards to civil forfeiture, the United States alleged that Teodorin, who in 2011 was Minister of Agriculture and Forestry and received an official salary of less than US\$100,000. He used his position and influence to amass more than US\$300 million worth of assets through corruption and money laundering, in violation of both US and Equatoguinean law.⁶¹

According to the settlement agreement, the proceeds from the sale of the illicit assets the US had seized would go to a charity to benefit the people of Equatorial Guinea.⁶² The charity was to be jointly selected by the US and Teodorin, or, when they could not agree on a charity within 180 days of the sale of the assets, the proceeds would be controlled and disbursed by a three-person panel.⁶³ The panel would consist of one member selected by the US, the Government of Equatorial Guinea and a chair jointly selected by the US and Teodorin.⁶⁴ As a backstop, the settlement authorized the court that approved the settlement to force the parties to enter mediation or to simply appoint a panel chair when the US and Teodorin could not agree on a chair 220 days after the sale of the assets.⁶⁵

The charity was not selected, and a panel was formed. The panelists are Susan Stevenson and Miguel Ntutumu Evuna (ambassadors for the US and Equatorial Guinea, respectively) and Alberto Fernandez (former US ambassador to Equatorial Guinea), who serves as the court-selected chair.⁶⁶ Recently, the panel agreed on a proposal to pay the money to COVAX, a global vaccine procurement mechanism, through a US NGO, Medical Care Development International (MCDI). On July 8, 2021, US prosecutors

⁶⁰ See for instance the agreement between the US and Nigeria.

⁶¹ *United States v. One Michael Jackson Signed Thriller Jacket, Other Michael Jackson Memorabilia; Real Property Located on Sweetwater Mesa Road in Malibu, California; One 2011 Ferrari 599 GTO*, United States District Court for the Central District of California No. CV 13-9169-GW-SS.

⁶² Paras 27(c) and 28. See also *United States v. One Michael Jackson Signed Thriller Jacket*, No. 2:11-CV-03582, part IV: Distribution of the Settlement Fund, para. 26, 18.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Julian Pecquet, "US Seeks to Force Equatorial Guinea to Take Covid Vaccine Deal As Biden Steps Up Anti-Kleptocracy Fight," *The Africa Report*, 21 August 2021, <https://www.theafricareport.com/118817/usa-equatorial-guinea-forced-to-take-covid-vaccine-deal-as-biden-steps-up-anti-kleptocracy-fight/>.

approached the US courts to enforce the proposed settlement to fund COVAX, citing ‘repeated actions’ by Teodorin to ‘thwart multiple desirable programs.’ The Department of Justice (DOJ) entered into agreements to distribute US\$19.25 million to the United Nations for the purchase and distribution of Covid-19 vaccines. Meanwhile, US\$6.35 million was distributed to MCDI for the purchase and distribution of medicines and medical supplies throughout Equatorial Guinea as part of the implementation of a civil forfeiture settlement resolving the disposition of certain assets.⁶⁷

As outlined in a donor agreement, the UN will use US\$19.25 million of settlement funds to purchase, store, distribute and administer Covid-19 vaccines to at least 600,000 people in Equatorial Guinea. The DOJ transferred US\$19.3 million to the UN to pay for 1.2 million doses of the Moderna vaccine for Equatoguineans through COVAX.⁶⁸ MCDI, a charitable organization based in Silver Spring, Maryland, with an established track record of administering programs in Equatorial Guinea, will receive US\$6.35 million to manage the purchase, storage, distribution and delivery of additional medicines and medical supplies throughout Equatorial Guinea.⁶⁹

C. INDONESIA

As with several countries, Indonesia has faced massive public funds embezzlement by the political leaders. A case in point is Suharto’s excesses committed during his 32 years in power, which ended in 1998. Transparency International, in 2004 declared Suharto to be the world’s greatest-ever kleptocrat, who allegedly embezzled up to \$35bn.⁷⁰ According to the Jakarta-based Global Future Institute, the Suharto family and cronies had reached deals with the administration of former president Susilo Bambang Yudhoyono that kept them immune from prosecution.⁷¹ The Jokowi administration is now renegotiating those deals.

In 2007, the Attorney General’s Office launched a civil lawsuit against Suharto and Supersemar (Suharto’s foundation), demanding compensation for the state of US\$420 million and Rp185 billion. The South Jakarta District Court in 2008 ruled Supersemar had embezzled funds and should repay

⁶⁷ “\$26.6 Million in Allegedly Illicit Proceeds to Be Used to Fight COVID-19 and Address Medical Needs in Equatorial Guinea,” United States Department of Justice, 20 September 2021, accessed <https://www.justice.gov/opa/pr/266-million-allegedly-illicit-proceeds-be-used-fight-covid-19-and-address-medical-needs>.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ Transparency International France, “Definitive Conviction of Teodorin Obiang.”

⁷¹ Avantika Chilkoti and Taufan Hidayat, “Indonesian Court Orders Suharto Foundation to Repay Millions,” Financial Times, accessed 30 November 2021, <https://www.ft.com/content/93701bcc-40f1-11e5-9abe-5b335da3a90e>.

\$105 million and Rp46 billion (US\$3.9 million).⁷² The Jakarta High Court upheld the verdict, which increased the compensation amount to US\$315 million and Rp139.2 million but this decision was appealed.⁷³ On appeal, the Supreme Court's ruling⁷⁴ centred on the Supersemar Foundation established in 1974, ostensibly providing scholarships to university students. The funding came from state banks, which had to submit 2.5% of their total income to Supersemar. State prosecutors found that almost 84% of the foundation's funds had been diverted to a bank and private companies controlled by the Suharto clan and its cronies.

Indonesia is facing challenges in recovering embezzled or stolen assets, which has a negative impact on the country's political, social, and economic development. The provisions on asset recovery are regulated in several laws, such as Law 31/199 in conjunction with Law 20/2001 on the Prevention and Eradication of Corruption and Law number 8/2010 on Prevention and Eradication of Money Laundering. However, the establishment of Asset Recovery Law is still not a priority by the government and the parliament.⁷⁵ Therefore, asset-recovery procedures are complex, time-consuming and require expertise and political will.

However, the problem of asset recovery needs to be fixed, and it needs every possible actor, including civil society. The Indonesian Attorney General's Office established an Asset Recovery Centre (Pusat Pemulihan Aset or PPA) dedicated to managing all asset recovery-related issues and partnered with an Indonesian NGO, *Kemitraan* —the Partnership for Governance Reform.⁷⁶ *Kemitraan* is working with relevant government agencies and international experts on improving the effectiveness of the PPA in performing cross-border asset recovery and mutual legal assistance management. The project was designed to address institutional challenges of the Asset Recovery Centre and to strengthen the human capacity of the Asset Recovery Centre, including other related agencies such as the Ministry of Finance, the Supreme Court, Indonesian National Police, Corruption Eradication Commission (KPK), Financial Intelligence Unit (PPATK), and the Ministry of Foreign Affairs (MoFA).⁷⁷ The project is funded through the Indonesia-Netherlands Rule

⁷² Indonesia, Civil Law Case No. 904/PDT.G/2007.PN.JAK-SEL, *President of Indonesia vs H.M. Soeharto Supersemar Foundation*, South Jakarta District Court, 2008.

⁷³ Indonesia, Jakarta High Court Decision, No. 465/PDT/2008/PT.DKI, 19 February 2009.

⁷⁴ Indonesian Supreme Court, Decision No. 2898/PDT/2009 jo. No. 904/PDT.G/2007/PN.Jkt.Sel, 27 March 2008.

⁷⁵ The draft of Asset Recovery Law has been proposed since 2010 and still not been discussed by the government and parliament.

⁷⁶ The establishment of Asset Recovery Centre based on Attorney General's Office Regulation No. Per-006/A/JA/03/2014

⁷⁷ Ahmad Qisa'I, "Sustainable Development Goals (SDGs) and Challenges of Policy Reform on Asset

of Law Fund of the Netherlands Embassy in Jakarta, managed by another international NGO, the International Development Law Organization (IDLO), a clear illustration of how CSOs can be instrumental in international asset recovery.

Indonesia also has a program under the Indonesian Corruption Eradication Commission (KPK) called PAKU-INTEGRITAS.⁷⁸ The objective of this program is to mainstream Anti-Corruption issues in Indonesia. KPK as an institution collaborated through “Public-Private Partnership” to provide a regular workshop openly available for CSO, journalists and university students. The workshop topic included, The introduction to corruption law, The social cost of corruption, Between Integrity and conflict of interest, and a Case Study.

V. CONCLUSION

Despite the potential rewards that make asset recovery highly attractive,⁷⁹ private law firms in Zimbabwe cannot deal with asset recovery, and international law firms are too expensive. Legal precedents, increasing international cooperation and enhanced capacities mean there is more potential for CSOs to play a role in asset recovery. Furthermore, asset recovery is an important development issue. Helping a country recover stolen assets, as enshrined in target 16.4 of the SDGs, presents an opportunity to mobilize important resources for financial development or poverty reduction efforts. This goes beyond returning stolen funds to improve the governance of countries, enhances responsible public financial management, contributes to more accountability and transparency, strengthens the rule of law, builds capacity in the judiciary and restores confidence in public institutions. The government should harness the skills in the third sector to the service of the public. This ensures greater collaboration between CSOs and the constitutionally sanctioned bodies dealing with corruption to solving many of the present system’s shortcomings. The public sector may have the right to claim and recover assets under the UNCAC⁸⁰. However, countries may be hesitant to return them, given that Zimbabwe still faces corruption and money laundering challenges. Greater collaboration with CSOs could therefore hold the key.

Recovery in Indonesia, *Indonesian Journal of International Law* 17, no. 2 (2020): 232.

⁷⁸ “PAKU Integritas,” Komisi Pemberantasan Korupsi [Indonesia Corruption Eradication Commission], accessed 24 November 2022, <https://aclc.kpk.go.id/program/paku/paku-integritas>.

⁷⁹ Daniel Scher, “Asset Recovery,” *African Security Review* 14, no.4 (2005): 17 <https://doi.org/10.1080/10246029.2005.9627584>.

⁸⁰ United Nations Convention against Corruption, art. 35 and 53.

The following points describe what is believed to be the most important impediments to the ZACC's asset recovery work: lack of funding, sufficient information, slow response/reluctance from requested countries, lack of technical capacity, and the lack of remedial procedures.

This paper concluded with the following points for further discussion. Firstly, members of the UNCAC Coalition's Civil Society Working Group on Accountable Asset Return, from countries where stolen assets have been found and ones that have requested the return of assets, wrote a letter to a UNCAC conference on asset recovery. It was stated that where a victim country's government is highly corrupt, it should be bypassed: 'Returning and receiving countries should in consultation with a broad spectrum of relevant experts and non-state actors find alternative means of managing the stolen assets.' Secondly, the Human Rights Council has been considering the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights and the importance of improving international cooperation. The council 'invited the Conference of the States Parties to the United Nations Convention against Corruption to consider ways of adopting a human rights-based approach in the implementation of the Convention, including when dealing with the return of the proceeds of crime' (OP 14 HRC/ 40/4 of March 21, 2019). How can the human rights-based approach to asset recovery (chapter V) be integrated into the Government of Zimbabwe's current processes? Thirdly, several CSOs have developed national principles on asset recovery. Based on these principles, some states, receiving countries, and where assets have been stolen have stepped up efforts to involve CSOs in asset recovery processes. According to Article 35 of the UNCAC, any person or entity having suffered damage as a result of corruption should have the right to initiate legal proceedings against those responsible for obtaining compensation. To what extent can this provision support CSOs claims to seek the recovery of assets allegedly misappropriated through corruption?

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