

## Working Paper

### “Asset Recovery and Repatriation of Funds in the Context of the Third International Conference on Financing for Development”

#### Context

**Illicit financial flows (IFF)** are increasingly part of the discussions in the Financing for Development (FfD) process as they represent a challenge for economic and development policy. Illicit financial flows include, on the one hand, money that was *earned legally by its owners*, but transferred abroad in order to avoid paying tax, and on the other hand, capital that was *illegally amassed* through human trafficking, drug dealing, corruption or other criminal activities and transferred abroad to be laundered there.

**Estimates of the magnitude of IFFs from developing countries vary.** One widely cited estimate places the flow from developing or transitional countries between \$539 and \$778 billion annually. IFFs contribute to a reduction in both, the domestic resources and tax revenues available for productive purposes. Indirectly, they can impact domestic investment, interest rates, and inflation. While there is little doubt that such outflows have a pernicious impact on development, the margins of error regarding the estimation of the amount of IFFs show the need for better classification and measurement of these flows.

**The recovery and return of stolen assets to their jurisdiction of origin is a key component to combatting illicit financial flows.** Recovery of stolen assets can serve three distinct purposes. To start with, it has the potential to provide these additional resources to concerned country governments by making additional resources available. Secondly, by signaling that there are consequences to corruption and that corrupt money cannot be hidden, it can have a deterrent effect on corruption and theft by political elites, thereby directly contributing to reducing the amount of future IFFs. Lastly, asset recovery and repatriation can provide justice for victims.

**With the almost global adoption of the UN Convention against Corruption (UNCAC), most if not all countries have expressed their agreement with the principle that stolen assets must be returned to the countries of origin.** There is no global practice in how this is best done. Of the roughly USD 5 billion that have been returned globally during the last 20 years, the methods adopted for each and every return differ, and for good reason. The different nature of the underlying crime as well as development objectives, financing needs and institutional arrangements within countries of origin are, for example, elements that would impact on the nature of the asset return. On the other hand, there are a number of underlying principles that are considered to play an important role in ensuring that asset return achieves the above-cited purposes: As also acknowledged in the UNCAC, the assets should be returned to *the rightful owners*, which in most cases is the population of the country where the assets have been stolen. Also, it needs to be ensured that the assets are *not stolen again*; high levels of *transparency* and *accountability* in the management of returned assets will contribute towards this goal. Finally, consideration needs to be given to the criminal justice and socio-economic development potential of asset return, which in turn influences what is considered *adequate end use* in the concerned countries' context.

**Looking at past practice, different categories of asset return models may be distinguished and may be mixed and further enriched by country-specific features and priorities.** Assets might be given back through different channels such as enhanced country systems, autonomous funds or returned through bilateral or multilateral aid agencies or through non-state actors. Most importantly, success in asset recovery requires coordinated action by all stakeholders involved in both requesting and requested jurisdictions.

**Strengthening the ability of concerned countries to recover assets that have been stolen and hidden in foreign jurisdictions is therefore a key part of the international fight against corruption.** The issue is included as a “fundamental principle” of the UNCAC, which is the first global legally binding international anti-corruption instrument.

**The Doha Declaration on Financing for Development of 2008**, paragraph 20 specifically mentioned that *additional measures be implemented to prevent the transfer abroad of stolen assets and to assist in the recovery and return of such assets, in particular to their countries of origin, consistent with the UNCAC, as well as to prevent capital flows that have criminal intent.* It also noted the *efforts of the*

*Stolen Asset Recovery Initiative (StAR) and other relevant initiatives. And finally, it urged States that have not yet ratified the UNCAC to do so and to implement it without delay (paragraph 21).*

### **Advancing the Stolen Asset Recovery agenda in the context of the Addis Conference**

The forthcoming third conference on financing for development in Addis Ababa could contribute to improved understanding and a global enabling environment for the rightful and adequate return of stolen assets, in particular ensuring that stolen assets contribute to sustainable development in the countries of origin.

In particular, the Addis outcome document should include the following elements:

#### **1. Strengthen implementation and enforcement of the UN Convention against Corruption**

Corruption poses a fundamental challenge to domestic resource mobilization as it hampers the development and expansion of businesses; undermines trust in authorities and the rule of law; and distorts resources away from sustainable development objectives. The Addis outcome document should therefore urge countries that have not yet ratified the UN Convention against Corruption to do so and make it an effective instrument.

#### **2. Promote and accelerate international initiatives that support concerned countries in recovering stolen assets**

International initiatives that support concerned countries in recovering stolen assets such as the StAR initiative, a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC), and the International Centre for Asset Recovery (ICAR) support international efforts to end safe havens for corrupt funds. These initiatives work with requesting countries and financial centres to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets. Addis could boost membership and support to those initiatives and encourage additional countries to join them.

#### **3. Promote standards of best practices for stolen asset recovery**

The Addis Ababa outcome document should promote the use of tailor-made solutions for the return of assets to ensure that returned assets serve distinct social and economic development goals and thus directly benefit the people of the country of origin. Elements to be considered in this context are to protect returned assets from renewed financial crime and broad engagement of all stakeholders in the determination of return mechanisms. The Addis Ababa outcome document could promote standards of best practices for stolen asset recovery that help ensuring that returned assets will indeed benefit in an accountable and transparent way the population of the country of origin. Such standards will have to be elaborated within the appropriate international bodies.

### **How to capture this in the Addis Ababa outcome document**

The current Zero Draft recognizes that achieving the Sustainable Development Goals (SDGs) will require a comprehensive and holistic approach, integrating the economic, social and environmental dimensions of sustainable development, and combining different modalities and instruments. It proposes to strengthen national regulation and international cooperation to combat illicit financial flows, tax evasion and corruption to substantially reduce such flows over the next 15 years. It also urges States to ratify the UN Convention against Corruption and make it an effective instrument to deter corruption, to prosecute corrupt officials and to regain stolen assets.

With respect to asset recovery, the outcome document of the Addis Ababa conference could even go further and capture the elaboration of international best practices which ensure stolen assets to be returned to their countries of origin in a transparent and accountable way. This will build on the efforts required from both, requesting and requested jurisdictions.