

HANDBOOK FOR ASSET RESTITUTION

**GOOD PRACTICES AND
RECOMMENDATIONS FOR
THE RESPONSIBLE RETURN
OF STOLEN ASSETS**



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GLOSSARY

Asset recovery	The process whereby the proceeds of corruption are seized by the destination country and returned to the origin country. This process generally consists of four phases: 1. identification of assets; 2. freezing or seizure of assets; 3. confiscation; 4. return of assets to the country of origin.
Call for proposals / expressions of interest	The process by which destination and origin country authorities allow origin countries' civil society actors to submit concrete project or programme proposals for the use of returned funds.
Call for tenders	A competitive process whereby the destination and origin country authorities select the recipient entities of returned funds to implement the projects or programmes financed by those funds.
Civil society organisations	Non-profit and non-governmental organisations (NGOs) whose purpose is to stimulate public debate and to represent and defend the interests and values of their members or their vision of the general interest. This category includes NGOs, foundations, professional associations, trade unions, community groups, etc.
Confiscation of assets	Confiscation is the permanent deprivation of property rights from the owner of an asset, in accordance with the applicable legal rules.
Destination country	Country in which the proceeds of corruption were laundered.
Evaluation	Systemic, objective and independent review of the asset recovery process (its design, implementation, results), in order to determine, <i>inter alia</i> , the relevance and degree to which the objectives defined upstream have been met, the level of effectiveness of the asset recovery process and the impact and sustainability of the projects or programmes financed with the returned funds.
Freezing / seizing of assets	According to Article 2.f of the UN Convention against Corruption, "freezing" or "seizure" "shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority".
General public	The set of individuals, groups, communities, organisations, etc. that make up a society.
GFAR principles	At the Global Forum for Asset Recovery (GFAR) – held in Washington DC in December 2017 and supported by the Stolen Asset Recovery Initiative (StAR), the United Kingdom, the World Bank and the United Nations Office on Drugs and Crime – six countries (the United Kingdom, the United States, Nigeria, Ukraine, Tunisia and Sri Lanka) adopted 10 principles for the disposition and transfer of stolen assets. These principles are known as the GFAR principles.
In due course	When implemented measures or actions are still likely to lead to the desired effects.
Monitoring	Continuous review by the various stakeholders, as the funded projects or programmes are implemented, of the progress – or lack of progress – made in achieving the expected results, with the aim of monitoring compliance with the upstream implementation plan and taking the necessary decisions to improve performance, if required. Monitoring provides managers and key stakeholders with regular feedback on the consistency or inconsistency between planned and implemented activities, and on the performance and results of funded projects or programmes.
Origin country	Country in which the original offences (embezzlement, bribery of foreign public officials, etc.) were committed. May also be referred to as "country of origin" or "source country".
Proceeds of crime	According to Article 2.e of the United Nations Convention against Corruption, "proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence." Stolen assets are by definition "proceeds of crime" under the United Nations Convention against Corruption.
Recipient entity	Natural or legal person selected to implement the projects receiving all or part of the returned funds.

Restitution agreement	Article 57.5 of the UN Convention against Corruption provides that "where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case- by-case basis, for the final disposal of confiscated property." Principle 8 adopted at the Global Forum for Asset Recovery (GFAR) held in Washington in 2017 states that "case-specific agreements or arrangements should, where agreed by both the transferring and receiving state, be concluded to help ensure the transparent and effective use, administration and monitoring of returned proceeds. The transferring mechanism(s) should, where possible, use existing political and institutional frameworks and be in line with the country development strategy in order to ensure coherence, avoid duplication and optimize efficiency".
Stakeholders	Any person who has a role and/or an interest in the projects or programmes funded with the returned assets.
Without delay	As soon as the acts are issued, subject to the time limit for completing the formalities necessary for their publication.

INTRODUCTION

“Effective and efficient asset recovery will contribute greatly to the reparation of harm and reconstruction efforts in victim States, to the cause of justice and to the prevention of grand corruption by conveying the message that dishonest officials can no longer hide their illegal gains.”

Legislative Guide for the Implementation of the United Nations Convention against Corruption, §674

“Countries that have embraced a policy of openness and transparency in the design of arrangements for the management of returned assets have benefited from this approach.”

StAR, Management of returned assets: policy considerations (2009)

Asset recovery has become a core issue not only in the fight against corruption but also in funding for the implementation of the Sustainable Development Goals and targets, as demonstrated by recent initiatives in this field, such as the Recommended Principles on Human Rights and Asset Recovery issued by the Office of the High Commissioner for Human Rights.¹

When destination countries confiscate assets unlawfully acquired by corrupt officials and return them to the people in origin countries, they send a clear message that crime does not pay and that they are no longer a safe haven for corrupt funds.

Provided that the process is carried out with guarantees of transparency, accountability, and the inclusion of civil society organisations (CSOs), returning the confiscated assets and proceeds of corruption also makes it possible to improve the living conditions of the populations in the countries where the proceeds originate.

“Each time opacity has prevailed over transparency, each time independent civil society has been kept out of the process, asset restitution has failed, engendering mistrust and reigniting the vicious cycle of corruption and misappropriation.”

Patrick Lefas, Chairman of Transparency International France

“Asset recovery is not only about returning money, but it is about healing historical wounds, restoring credibility to justice institutions and building a stronger future with less corruption.”

Oscar Solorzano, Basel Institute on Governance

As a cornerstone of the responsible recovery process, the principles of transparency, accountability, and inclusion of CSOs, already enshrined in the 2003 United Nations Convention against Corruption,² were reaffirmed at the GFAR held in Washington DC in December 2017 under the auspices of the World Bank and the United Nations Office on Drugs and Crime. At the Forum, six countries – the United States, the United Kingdom, Nigeria, Sri Lanka, Tunisia, and Ukraine – adopted the Principles for the Disposition and Transfer of Stolen Assets Confiscated in Corruption Cases (the GFAR Principles).³

Building on the GFAR principles, several CSOs developed their own principles for the responsible return of misappropriated assets.⁴ Some CSOs also developed a methodology to assess and measure the implementation of the GFAR principles by destination and origin countries.⁵

These initiatives have led a growing number of countries – although still too few – to commit to returning assets derived from corruption to the origin countries in compliance with principles of transparency and accountability. In December 2021, the United States released its strategy on countering corruption in which it commits to strengthening its work with partners and foreign jurisdictions leading to “asset recovery, and asset returns consistent with Global Forum on Asset Recovery principles”.⁶ In the summer of 2021, France adopted a law establishing an asset recovery framework enshrining principles of transparency, accountability, and inclusion of CSOs.⁷ In January 2022, the United Kingdom published a policy paper introducing its framework for transparent and accountable asset return.⁸ In February 2022, the Swiss Federal Audit Office examined the practice of recovering illicit assets and called for greater transparency in the use of frozen and confiscated funds and closer involvement from civil society organisations.⁹

Some countries have made significant progress by incorporating principles of transparency, accountability, and inclusion of CSOs in their legal frameworks and restitution agreements. But these are only a first step towards building a responsible asset recovery system. Now that these principles feature prominently in many countries’ asset return strategies, the focus should shift to their effective implementation. Several questions remain. How can each of these principles be translated into action? How can we ensure that these principles are properly enforced throughout the asset recovery process?

So far, destination countries and origin countries alike have failed to address these issues properly, insofar as no country has adopted a comprehensive, consistent, and systematic asset recovery policy. On the contrary, asset recovery experiences and practices remain disparate, with major discrepancies from one recovery process to another, even in recent cases. Transparency International France has focused particularly

on these issues when producing this handbook, with the aim of providing a methodological foundation for a comparative approach to asset recovery processes.

This handbook also aims to dispel several misconceptions: that returning confiscated stolen assets is tantamount to providing official development assistance; that involving a CSO in the asset recovery process is enough to satisfy the inclusiveness requirement; and that involving an intergovernmental organisation in the recovery process fulfils transparency and accountability requirements. Countering these myths makes it possible to move beyond a paternalistic or neo-colonial vision and place the origin countries’ populations – the primary victims of corruption – at the heart of asset recovery. Given that both destination and origin countries have obligations of transparency and accountability, the argument that imposing such principles is similar to conditionality falls short.

Drawing on lessons learnt from past experiences in asset recovery and based on several studies carried out abroad, Transparency International France has developed several indicators to measure the degree of transparency, accountability, and inclusiveness at each stage of the asset recovery process.

⁶ [United States strategy on countering corruption](#) pursuant to the national security study memorandum on establishing the fight against corruption as a core United States national security interest, December 2021

⁷ [Loi n° 2021-1031 du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales](#) (French language)

⁸ [UK Framework for transparent and accountable asset return](#), January 2022

⁹ [Swiss Federal Audit Office \(SFAO\) evaluation of the Federal Department of Foreign Affairs \(FDFA\) strategy for the restitution of illicit assets](#), January 2022

¹ OHCHR, Recommended Principles on Human Rights and Asset Recovery, Mars 2022

² See for instance United Nations Convention against Corruption Article 10 on public reporting and Article 13 on participation of society.

³ GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases

⁴ See Annex 2, p. 136.

⁵ See Annex 3, p. 139

Overview of chapters

Transparency International France has written this handbook for public decision-makers and practitioners who develop and implement the process of recovering stolen assets. It can also be used by any actors, whether public officials or members of civil society, who may be involved in recovering illegally obtained funds for the benefit of origin countries' populations.

Chapter I details the methodology used to design the indicators that determine the degree of transparency, accountability and inclusiveness in the asset restitution processes. Asset restitution processes are divided into four main stages. Each stage is unique and requires customising and adapting parameters of transparency, accountability and inclusiveness.

Chapter II presents the indicators and their specifications at each stage of the restitution process.

Chapter III presents a series of good practices in asset restitution. Drawing on good practices developed in other areas, they serve as a guide for implementing transparency, accountability and inclusiveness principles. They come with

concrete practical examples illustrating how the lack of transparency, accountability and inclusiveness has impacted past asset recovery processes.

Chapter IV provides an overview of case studies and assesses the degree of transparency, accountability and inclusiveness of past and ongoing asset restitution processes following the methodology and indicators outlined in Chapter II. This assessment aims to draw lessons from the failures and successes of these experiences.

The handbook concludes with a series of recommendations for public decision-makers, practitioners, and actors from CSOs who are involved in asset restitution processes.

01 METHODOLOGY

The principles of **transparency**, **accountability**, and **inclusiveness**, inspired by principles promoted at the international level by states¹⁰ and CSOs,¹¹ guarantee the **integrity** and **effectiveness** of the asset restitution process. To ensure that these principles are implemented effectively, Transparency International France has developed the following methodology to measure the degree of transparency, accountability, and inclusiveness at each stage of the asset restitution process.

Transparency International France proposes to:

1. Divide every restitution process into four main stages, each of which presents its own specific challenges to the three principles of transparency, accountability and inclusiveness;
- and
2. Draw up a colour-coded series of indicators for each of these principles in order to determine whether they are properly applied at each stage of the asset restitution process.



1. Presentation of the main stages of an asset restitution process

Restitution encompasses any form of repatriation of stolen assets that have been subject to civil or criminal confiscation in the destination country. The allocation of confiscated funds to humanitarian projects must also be considered as asset restitution, even if it does not involve a process of cooperation or negotiation with the host country. Similarly, when the destination country pays a sum of money to the origin country to compensate for the loss suffered, this must be regarded as asset restitution if the sum of money comes from the sale of confiscated assets.

Each asset restitution process is unique and shaped by political and economic issues, among others. Nevertheless, a study of past asset restitution experiences makes it possible to identify a typology of the different stages of an asset restitution process. For instance, the conclusion of restitution agreements between the destination and origin countries generally precedes the allocation and disbursement of funds.

It is important to identify the population's needs and select recipient entities through calls for tenders, in order to guarantee the transparency and accountability of the asset restitution process, as highlighted by the GFAR principles and the good practices established from previous asset recovery experiences. This also applies to monitoring and evaluation measures that strengthen the transparency and accountability of the asset restitution process.

In the light of the above, Transparency International France has identified four main stages in the asset restitution process:

- Negotiating the restitution terms between states
- Selecting the projects to be financed with the recovered funds
- Selecting recipient entities and allocating funds
- Monitoring and evaluation

A preliminary stage, which is the deposit of confiscated funds pending their allocation, usually precedes these four main stages. During this preliminary stage, assets must be clearly and distinctly identified. The need for traceability requires the origin country to give the confiscated funds a separate accounting treatment, for example by creating a separate account within the general state budget or an escrow fund to hold the confiscated funds pending their recovery.

Earmarking the confiscated funds **should also ensure that they are not misleadingly labelled as “development aid” by the destination country, which technically never “owned” the recovered assets** and therefore cannot present the asset restitution as a donation under its official development assistance. The recovery of stolen assets should not lead to a reduction in the efforts of the destination country in terms of official development assistance provided to states where confiscated funds are returned.



Stage 1: Negotiating the restitution terms between states

The state-to-state negotiation is a crucial stage where the arrangements for the restitution of the assets are decided. Like any intergovernmental negotiation, this phase involves political and diplomatic issues that generally go beyond the asset restitution framework.

The negotiation phase **starts** the day after the assets are confiscated, or in some cases even earlier when the destination country and origin country anticipate that an asset restitution process will begin.¹² The publication of the confiscation order is crucial. It grants civil society and the general public access to essential information on the future asset restitution process (nature of the case, confiscation order, identity of the natural and legal persons involved, assets involved, charges, etc.).

The negotiation phase often **ends with** the conclusion of one or more restitution agreements that set out the terms for asset restitution, as provided for in Article 57.5 of the UN Convention against Corruption.

Establishing trust with non-governmental actors and the general public in the asset restitution process starts in the negotiation stage. **A culture of secrecy and opacity during this stage can hamper the entire asset restitution process.** The negotiation phase is an opportunity to set the stage for a dialogue with non-governmental actors, which continues throughout the asset restitution process. The dialogue should, at the very least, lead to the publication of the confiscation decision and, if applicable, the restitution agreement.

Stage 2: Identifying needs and selecting recipient projects or programmes

To ensure that the returned assets are used to finance projects that improve the well-being of the victim populations, it is necessary to **identify the needs of the people in the origin country before selecting projects that meet those needs.** Experience shows that allocating funds to specific projects or programmes as soon as restitution agreements are concluded is a **guarantee of efficiency and integrity.** Particularly high levels of inclusiveness, transparency and accountability must be ensured in both steps.

Experience also shows that the proper inclusion of civil society at this stage will **ensure that the use of funds meets the needs of the affected populations.** Indeed, the populations affected by the original offences and their representatives are best placed to know what their needs are. The authorities of both the origin country and the destination country should therefore ensure that their expectations regarding the use of the returned funds are taken into account.

In practice, **the returned funds can be used for a variety of purposes** in different sectors. For example, they may include:

- compensating victims' losses;
- building infrastructure essential to the well-being of the affected populations and to local development;
- making direct cash transfers to vulnerable families;
- financing land reforms;
- financing judicial reforms to promote the rule of law and tackle impunity;
- financing programmes or projects in favour of the ecological transition or having an environmental impact;

¹⁰ See Annex 1, p. 134

¹¹ See Annex 2, p. 136.

¹² Principle 3 of the GFAR encourages the transferring and receiving states to begin a dialogue as early as possible: “It is strongly desirable to commence dialogue between transferring and receiving countries at the earliest opportunity in the process, and for there to be continuing dialogue throughout the process.”

- financing vaccination campaigns or the distribution of medicines to address public health issues;
- funding social services and educational support programmes, etc.

A clear distribution of roles and responsibilities and appropriate selection criteria also help **prevent conflicts of interest**, which ultimately fosters public confidence in the asset restitution process.

Stage 3: Selecting recipient entities and allocating funds

Given that the amounts returned are usually very high – sometimes amounting to tens or even hundreds of millions of US dollars – **there is a considerable risk of misappropriation or embezzlement during this stage.**

Once the countries involved have decided to use the returned funds for one or more specific projects or programmes, they should then focus on implementing the asset restitution process. **Depending on the projects or programmes chosen, third-party entities may be involved in their implementation.**

Depending on the projects or programmes chosen, this stage is likely to involve two phases:

1. **Selecting third-party entities**, or recipient entities, tasked with implementing the projects or programmes financed, and receiving all or part of the returned funds;
2. **Allocating the funds** to the selected recipient entities. In some cases, the destination and origin countries **may provide for the funds to be allocated in instalments.**

Whatever the projects or programmes chosen, or the type of entities selected to implement them (intergovernmental organisations, NGOs, private actors, etc.), the same guarantees of transparency, accountability and inclusiveness apply. Both the destination and the origin countries should ensure that recipient entities are selected through a transparent and competitive process, based on internationally recognised good practices in public procurement. This requirement should apply **to all entities involved in implementing the projects, including those acting as intermediaries** in the final disbursement of funds.

This is to ensure that the recovered funds are used efficiently and the asset recovery process is carried out effectively and with integrity. Effective competitive tendering **avoids conflicts of interest, nepotism and unjustified cost overruns**, all of which are loopholes that create risks of embezzlement, misappropriation and corruption.

Stage 4: Monitoring and evaluating the asset restitution process

This stage is **essential to ensure and measure the integrity and effectiveness of the asset restitution process** and to ensure compliance with the principles of transparency, accountability, and inclusiveness.

Monitoring the implementation of the recipient projects or programmes and evaluating the entire asset restitution process should enable the authorities of the origin and destination countries to ensure that the funds are properly spent on the selected programmes or projects and achieve the objectives of the asset restitution process; that no misappropriation or embezzlement affects the spending process; and that the intended results and objectives are achieved in accordance with the predefined schedule. Should this not be the case, appropriate assessments should be made and corrective measures taken.

The monitoring and evaluation process must be transparent and should include civil society. It has a **dual function**: it is an **essential component of the accountability of the asset recovery process**; and it aims to **improve the performance of the programmes or projects financed and to learn from previous asset restitution experiences.**

In view of this dual objective, monitoring and evaluation should be taken into account at the earliest stages of the process. **No transfer of funds should take place until the arrangements for monitoring and evaluation have been specified.**

2. Presentation of indicators

The principles of transparency, accountability and inclusiveness ensure that the asset restitution process is carried out effectively and with integrity.

These principles should **ensure that all the money recovered benefits the people in the countries where the misappropriated assets originated and that the overall objective of justice in the restitution process is met.**

Transparency International France has developed a series of colour-coded indicators to measure the degree of transparency, accountability, and inclusiveness at each stage of an asset restitution process.

Level 3: The asset restitution process is transparent, accountable, and inclusive.

Level 2: The asset restitution process is not sufficiently transparent, accountable and inclusive.

Level 1: The asset restitution process is not transparent, accountable or inclusive.

This colour code makes it easier to evaluate the various asset restitution processes through a comparative approach that uses past successes and failures to identify good practices that may inspire destination countries and origin countries in future asset restitution processes.

For **each step**, each of the principles and its indicators should be read in conjunction with the others. Indeed, **transparency, accountability and inclusiveness are mutually reinforcing.** As some of the stages of the reporting process may overlap, an indicator developed for one stage should be read in conjunction with some of the other indicators for the other stages of the process. **Indicators should thus be interpreted in a dynamic way**, allowing different practices to be combined according to the particular circumstances of each case, and, if necessary, adapted, while ensuring that they are as close as possible to the good practices listed in Chapter III.

Each set of indicators comes with a **specific objective** adapted to the stage of the asset restitution process concerned.

A list of **verification sources** shows where to find the information needed to determine whether each indicator has been applied, and whether the specific objectives have been met.

The indicators are based on key parameters specifically designed for each principle.

TRANSPARENCY

The degree of transparency of an asset restitution process can be measured by the following three parameters:

- **Conditions of access to information:** Does the public have access to full information on the asset restitution process? What are the terms of access? Is the information easy to read and understand?
- **Level of detail of publicly available information:** What categories of information are publicly available? How specific are they?
- **Timing and frequency of publication:** When is the information available to the public?

ACCOUNTABILITY

The degree of accountability of an asset restitution process can be measured by the following three parameters:

- **Planning and formalising the asset recovery process:** What are the actors in the asset restitution process accountable for?
- **Distribution of roles:** Who is accountable? To whom can CSOs and the general public specifically turn for any request relating to the asset restitution process?
- **Liabilities and remedies:** Is it possible to report potential failures or irregularities? Are remedies and corrective measures offered in the event of a failure or irregularity? What are they and who do they concern?

INCLUSIVENESS

The degree of inclusiveness of an asset restitution process can be measured by the following three parameters:

- **Ability to act:** What means does civil society have to participate effectively in the asset recovery process? Are these means (human, financial) sufficient in order for civil society to take action?
- **Conditions for participation:** To what extent is civil society included in the asset restitution process? Is it simply consulted, or is it really involved? From which stage of the asset restitution process?
- **Selection criteria:** According to which criteria are civil society representatives participating in the restitution process selected?

02

INDICATORS



Stage 1: Degree of transparency, accountability, and inclusiveness during the negotiations of the restitution terms between states



	Transparency	Accountability	Inclusiveness
Objectives	<p>➔ Non-governmental actors and the general public are informed of the main steps in the negotiation timetable and of key information on the nature of the confiscated assets; they have access, where applicable, to the restitution agreements concluded as a result of the negotiations.</p>	<p>➔ At the end of the negotiations, the following aspects are clearly defined: the terms of the restitution; the roles and responsibilities of the authorities of the destination country and the origin country; the objectives of the asset restitution process; and the terms and conditions of the monitoring and evaluation process.</p>	<p>➔ Civil society and the general public have immediate access to information. Their concerns and suggestions are taken into account. Civil society is also allowed, to a certain extent, to participate in negotiations of restitution agreements.</p>
Sources of verification	<ul style="list-style-type: none"> • Confiscation order • Restitution agreements (e.g. Memoranda of Understanding, etc.) • Press releases and similar publications from the destination country and the origin country concerning the negotiations and conclusion of restitution agreements. 	<ul style="list-style-type: none"> • Restitution agreements (e.g. Memoranda of Understanding, etc.) 	<ul style="list-style-type: none"> • Online public consultation document • Summary report of the public consultation • Call for expressions of interest encouraging CSOs to participate in the negotiations • Press releases and similar publications from the destination country and the origin country concerning the negotiation and conclusion of restitution agreements.
Level 3	<ul style="list-style-type: none"> • The information is centrally accessible as open source on a dedicated website or webpage, accessible from both the origin and destination countries, in at least the languages spoken in the origin and destination countries, and by default, i.e. without needing to submit a request. • Essential information on the case (for example, nature of the case, confiscation order, identity of natural and legal persons involved, assets involved, charges, etc.), the general asset recovery framework, the documentation on the sharing of the funds (including the amount of reasonable expenses deducted by the destination state, if any), and the documentation on the terms of the restitution (precise amount of confiscated assets, schedule of the asset recovery process, choice of final allocation of funds, terms and conditions for monitoring and auditing the transfer and use of the funds, etc.), are published as soon as the restitution framework has been defined and the decisions have been taken. 	<ul style="list-style-type: none"> • The intermediate and final objectives of the asset recovery process, as well as the terms and conditions of the monitoring and evaluation process, are determined at the end of the negotiation phase. • The role of the government authorities involved in the asset restitution process and the stage at which they intervene are clearly defined. • Contact points are designated within the various intervening authorities. • Both the destination state and the origin state must be held accountable, where appropriate, for the irregularities identified during the asset restitution process. Where restitution agreements are concluded as a result of the negotiations, they include clauses whereby any suspicion of irregularities or non-compliance with the GFAR principles will result in the suspension of the transfer of assets. 	<ul style="list-style-type: none"> • Civil society has access to all the documentation related to the restitution without delay and throughout the asset restitution process. • A four-way dialogue is established between the destination country, the origin country, destination country CSOs and origin country CSOs. • The authorities of the destination and origin countries select one or more CSOs to be involved in the negotiations in a transparent way, in line with good practices in the selection of civil society actors.¹³

¹³ See Box 3, p. 139

	Transparency	Accountability	Inclusiveness
Level 2	<ul style="list-style-type: none"> • Access to all the information is restricted to stakeholders only. • Only general information on the restitution framework is published (States Parties, amount of money returned, brief reminder of the charges, etc.), shortly before the funds are transferred or at the end of the asset recovery process. The negotiations are not publicised while they are ongoing. 	<ul style="list-style-type: none"> • Only the broad outlines of monitoring and evaluation are defined at the end of the negotiations. • Only the main authorities of the origin country and the destination country involved in the restitution are identified. There is no designated point of contact within the various intervening authorities. • The origin country and the destination country do not provide for their mutual accountability or for the suspension of the asset restitution process in the event of irregularities or non-compliance with the GFAR principles; they may even include a clause in restitution agreements expressly excluding their responsibility. 	<ul style="list-style-type: none"> • Civil society is informed solely about the general restitution framework, and only after the restitution agreement is concluded. • The competent authorities in the origin country and the destination country hold hearings with chosen CSOs on limited issues, with a view to concluding the restitution agreement. CSOs are selected at their own discretion, with no transparency as to the criteria considered.
Level 1	<p>The negotiations take place behind closed doors. Civil society is not informed or given access to the resulting agreements.</p>	<p>Roles and responsibilities, as well as the terms of the asset recovery process, are not defined. No specific accountability mechanism is put in place, and the destination and origin states include a waiver of responsibility clause in the restitution agreements.</p>	<p>Civil society has no role in the negotiations and is not consulted.</p>

Stage 2: Degree of transparency, accountability and inclusiveness when identifying needs and selecting recipient projects or programmes

	Transparency	Accountability	Inclusiveness
Objectives	➔ Civil society and the general public have immediate access to information and documents related to the selection of specific projects or programmes to which the returned funds will be allocated.	➔ Funds are allocated to specific projects or programmes following a selection process that meets the highest standards of transparency, fairness and impartiality, based on objective criteria to ensure that the needs and expectations of the affected populations have been taken into account.	➔ The terms and conditions for selecting recipient projects and programmes guarantee that civil society is included and that the needs and expectations of the affected populations are taken into account regarding the use of returned funds.
Sources of verification	<ul style="list-style-type: none"> • Consultation document for identifying needs and selecting recipient projects or programmes • Summary report on the responses and proposals received • Award decisions 	<ul style="list-style-type: none"> • Consultation document for identifying needs and selecting recipient projects or programmes • Summary report on the responses and proposals received • Award decisions 	<ul style="list-style-type: none"> • Consultation document for identifying needs and selecting recipient projects or programmes • Summary report on the responses and proposals received
Level 3	<ul style="list-style-type: none"> • The information is accessible as described under Step 1, Level 3. • All the information and documentation concerning the selection of recipient projects or programmes, including the total budget allocated to each project or programme, is published in real time throughout the selection process. 	<ul style="list-style-type: none"> • The selection of recipient projects or programmes is made following a public consultation to identify the needs and expectations of the affected populations, organised in accordance with the good practices in this field,¹⁴ and allowing civil society actors to make proposals. • All actors involved in selecting projects are clearly identified. Contact points are designated for these actors. • Stakeholders have access to remedies in the event of irregularities – such as conflicts of interest – in the selection of recipient projects or programmes.¹⁵ 	<ul style="list-style-type: none"> • Civil society and the general public in the origin country and/or, when circumstances warrant, in the destination country, are consulted before recipient projects or programmes are selected, in order to determine the expectations and needs of affected populations. The consultation is organised in accordance with good practices in public consultation¹⁶ and identifies the populations directly affected by the crimes. • The consultation is organised with sufficient notice to allow civil society actors to submit proposals for allocating returned funds. It clearly and plainly specifies the objective criteria taken into account during the selection process.

	Transparency	Accountability	Inclusiveness
Level 2	<ul style="list-style-type: none"> • Only stakeholders are given access to all the information available. • The only material published at the beginning of the implementation phase is a report informing the public of the choice of recipient projects or programmes, containing a brief presentation of the projects or programmes chosen and the main stages of implementation. 	<ul style="list-style-type: none"> • The origin country chooses the recipient projects or programmes on a discretionary basis, in consultation with the destination country, without the selection criteria being made public. • Only the main authorities involved in the selection of recipient projects or programmes are identified. • No specific accountability mechanism is put in place to ensure that recipient projects or programmes are selected according to objective criteria. 	<ul style="list-style-type: none"> • No public consultation is organised. • The involvement of CSOs is limited to hearings with a handful of CSOs selected at the discretion of the origin and destination countries, with no transparency as to the criteria considered.
Level 1	The terms and conditions for allocating the returned funds to specific projects or programmes are not published.	The allocation of the funds to recipient projects or programmes is not subject to a formalised procedure, and roles and responsibilities are not defined. The origin country selects the recipient projects or programmes on a wholly discretionary basis, with no specific accountability mechanism in place to ensure that they are selected according to objective criteria.	Civil society and the general public are not consulted on the selection of recipient projects and programmes.

¹⁴ See Box 2, p. 35 and Box 7 p. 45

¹⁵ See Box 7, p. 45 and Box 15, p. 62

¹⁶ See Box 2, p. 35 and Box 7, p. 45

Stage 3: Degree of transparency, accountability and inclusiveness when selecting recipient entities and allocating funds

	Transparency	Accountability	Inclusiveness
Objectives	<p>➔ Civil society and the general public have access to all the information and documentation concerning the disbursement and allocation of the returned funds.</p>	<p>➔ The process of allocating funds and implementing recipient projects or programmes ensures the best possible use of the funds returned, allows for the clear identification of all actors involved, and provides for appropriate mechanisms to prevent and remedy any potential irregularities.</p>	<p>➔ Civil society can fulfil its role as a guardian of the integrity of the asset restitution process and monitor the legitimacy of the allocation process.</p>
Sources of verification	<ul style="list-style-type: none"> • Calls for tender • Award decisions • Contracts concluded • Press releases and similar publications from the origin and destination countries concerning the allocation of the funds 	<ul style="list-style-type: none"> • Calls for tender • Award decisions • Contracts concluded 	<ul style="list-style-type: none"> • Calls for tender • Award decisions • Contracts concluded • Press releases and similar publications from the origin and destination countries concerning the allocation of the funds
Level 3	<ul style="list-style-type: none"> • The information is accessible as described under Step 1, Level 3. • All the information and documentation concerning the tendering and award process (including the reasons why the successful bids were selected) and the resulting contracts are published throughout the selection process and while the recipient projects or programmes are being implemented. 	<ul style="list-style-type: none"> • The returned funds are allocated to the recipient entities responsible for implementing the recipient projects or programmes following a competitive tender process, in accordance with good practices in public procurement.¹⁷ • There is full disclosure of all actors involved in implementing recipient projects or programmes, in both the origin and destination countries, and the authorities responsible for selecting recipient entities and disbursing funds. • Contact points are designated for these various actors. • Stakeholders have access to remedies in the event of irregularities in the allocation process (including during the tender process).¹⁸ • No transfer of funds can take place until the arrangements for monitoring and control have been defined. 	<ul style="list-style-type: none"> • Civil society and the general public have access to all the information and documentation concerning the allocation of the funds, so that they can monitor and report any potential irregularities. • CSOs may apply for tenders to select recipient entities in charge of implementing recipient projects or programmes, under the same conditions and requirements as those set for other bidders.

¹⁷ See Box 12, p. 56

¹⁸ See Box 12, p. 56 and Box 15, p. 62

	Transparency	Accountability	Inclusiveness
Level 2	<ul style="list-style-type: none"> • Only stakeholders are given access to all the information available. Only tenders are published. The identity of the recipient entities is disclosed when implementation of the recipient projects or programmes begins. 	<ul style="list-style-type: none"> • Recipients of the funds are selected through a tender process organised exclusively by the authorities in the origin country and the destination country, to implement the projects chosen by those authorities. • Only the main actors involved in allocating the funds (state authorities) and implementing the funded projects (recipient entities) are identified. • No specific accountability mechanism is in place. 	<ul style="list-style-type: none"> • Civil society and the general public are only given access to very limited information, and only after the project implementation phase is underway, which does not allow them to flag potential irregularities in time to remedy them. • CSOs are not allowed to apply for tenders for selecting recipient entities.
Level 1	<p>The conditions for allocating funds to recipient entities and implementing recipient projects or programmes are not published.</p>	<p>The allocation of funds to recipient entities is not subject to a formalised procedure, and the roles and responsibilities involved are not defined. The origin country selects the recipient entities on a wholly discretionary basis, with no specific accountability mechanism in place to ensure that they are selected according to objective criteria.</p>	<p>Civil society does not have access to the information necessary to monitor the process for allocating the funds to recipient entities.</p>

Stage 4: Degree of transparency, accountability and inclusiveness during the monitoring and evaluation of the asset restitution process

	Transparency	Accountability	Inclusiveness
Objectives	<p>→ Civil society and the general public have access to all the documentation related to the monitoring and evaluation process and are kept informed of the progress and results of the implementation of recipient projects or programmes.</p>	<p>→ An effective, impartial and independent monitoring and evaluation process is planned and put in place to monitor whether the objectives of the asset recovery process are being achieved. This process is accompanied by appropriate mechanisms to prevent and remedy any problems and irregularities during the project implementation phase.</p>	<p>→ The opinions of civil society and the general public are taken into account in the evaluation of the asset restitution process, and the CSOs of the origin and destination countries have access to all the resources they need to properly monitor and evaluate the process.</p>
Sources of verification	<ul style="list-style-type: none"> • Calls for tender for the selection of monitors and evaluators • Award decisions • Contracts concluded • Mandate for monitors and evaluators • Interim and final monitoring reports • Interim and final evaluation reports • Press releases and similar publications from the origin and destination countries concerning the monitoring and evaluation process 	<ul style="list-style-type: none"> • Calls for tender for the selection of monitors and evaluators • Contracts concluded • Mandate for monitors and evaluators • Interim and final monitoring reports • Interim and final evaluation reports 	<ul style="list-style-type: none"> • Calls for tender for the selection of monitors and evaluators • Contracts concluded • Mandate for monitors and evaluators
Level 3	<ul style="list-style-type: none"> • The information is accessible as described under Step 1, Level 3. • The authorities of the origin and destination countries issue press releases or similar publications, regularly and throughout the implementation phase of the recipient projects or programmes, in order to keep civil society and the general public informed of their progress and results. • All the documentation relating to the transfer and management of the returned funds, the monitoring and evaluation terms and conditions (including for selecting the monitors and evaluators), as well as the interim and final monitoring and evaluation reports is published without delay and throughout the implementation of the recipient projects or programmes. 	<ul style="list-style-type: none"> • The authorities of the origin and destination countries plan and implement an impartial and independent monitoring and evaluation process in accordance with good practices in monitoring and evaluation;¹⁹ interim and final monitoring and evaluation reports are then published according to a pre-determined schedule, depending on the duration of the implementation phase of the recipient projects or programmes. 	<ul style="list-style-type: none"> • Civil society and the general public have access to all information and documentation concerning the implementation, monitoring and evaluation of recipient projects or programmes in order to carry out their own checks and report any potential irregularities. CSOs also have access to relevant sites.

	Transparency	Accountability	Inclusiveness
Level 3		<ul style="list-style-type: none"> • Monitors and evaluators are selected according to criteria that guarantee their impartiality and independence and the quality and reliability of their work,²⁰ following a competitive tender process in accordance with good practices in public procurement,²¹ and they are held accountable to stakeholders for their activities.²² • The recipient entities are subject to specific sanctions if any irregularities are reported by monitors overseeing the implementation of the projects (e.g. suspension of funding, reimbursement of all or part of the funds in the event of misappropriation by recipient entities, etc.). 	<ul style="list-style-type: none"> • Civil society and the general public have the opportunity to flag any problems or irregularities encountered in the implementation of recipient projects or programmes through a complaints and alert mechanism available throughout the implementation phase, set up in accordance with good practices.²³ • The opinions of civil society and the general public, in particular those of victim populations, are taken into account when monitoring and evaluating the impact of recipient projects or programmes, in accordance with good practices.²⁴ • CSOs may apply for tenders for the selection of monitors and evaluators under the same conditions and requirements as those set for other applicants. Where CSOs play a role in monitoring and evaluating, they are allocated a share of the returned funds for the performance of their tasks, on the condition that they will have to account for the expenditure of these funds.
Level 2	<ul style="list-style-type: none"> • Only stakeholders are given access to all the information available. • Only the documentation relating to the transfer and management of the returned funds is published at the end of the asset recovery process, excluding information and documentation relating to the monitoring and evaluation process. 	<ul style="list-style-type: none"> • The authorities of the origin and destination countries draw up the monitoring and evaluation arrangements, which are not made public. • Monitors and evaluators are selected at the discretion of the authorities of the origin and destination countries and are only required to prepare a final report, which is accessible only to these authorities. • No specific accountability mechanism is in place, either for the monitors and evaluators, or for recipient entities. 	<ul style="list-style-type: none"> • Civil society and the general public are only given access to very limited information after the asset recovery process is complete, which does not allow them to flag possible problems or irregularities in time to remedy them. • The monitoring and evaluation process remains opaque to civil society actors, who do not have the opportunity to make their opinions heard. • CSOs do not have the option of applying for tenders for the selection of monitors and evaluators.
Level 1	<p>No material is published on the implementation of recipient projects or programmes, or their monitoring and evaluation.</p>	<p>There is no formalised procedure for monitoring the implementation of recipient projects or programmes or for evaluating the asset recovery. They are exclusively the responsibility of the authorities of the origin country, with no guarantees of independence and impartiality and with no specific accountability mechanisms in place.</p>	<p>Civil society does not have access to the information needed to monitor the implementation of recipient projects or programmes and evaluate the asset recovery process. The opinions of civil society actors are not heard or taken into account in the monitoring and evaluation carried out by the authorities of the origin country.</p>

¹⁹ See Box 17, p. 73 and Box 18, p. 75.

²⁰ See Box 17, p. 69 and Box 18, p. 71.

²¹ See Box 12, p. 56

²² See Box 17, p. 69 and Box 18, p. 71

²³ See Box 15, p. 62

²⁴ See Box 17, p. 69 and Box 18, p. 71

03

GOOD PRACTICES IN ASSET RESTITUTION

At each stage of the asset restitution process, decision-makers and practitioners can draw on a range of good practices, whether learned from past asset restitution experiences or established in areas where there is a high demand for transparency and accountability.



GOOD PRACTICES IN TRACING FUNDS

It is important that the funds to be returned to the origin country are not mixed up with other funds in the destination country. It should be remembered that these assets were acquired with embezzled money or the proceeds of corruption, depriving the people in the origin countries of access to basic public services. Even if the assets have been confiscated by the courts in the destination country, they do not belong to that country. They cannot therefore be returned in the form of grants, much less loans.

While the restitution of misappropriated assets may share common objectives with official development assistance, **it is crucial that these assets are not mixed up with funds labelled as official development assistance**. Rather, **these assets must be clearly identified as “returned assets” at all stages of the asset restitution process, from their confiscation to their final allocation in the origin country**, in order to ensure that these funds are not mixed up with other funds.

Once confiscated, illegally acquired assets should therefore be **isolated from the general budget of the destination state and placed in a special account or dedicated budget line, pending allocation**.

Isolating funds derived from foreign corruption from the general budget of the destination country **makes it easier to trace these funds** from the moment they are confiscated. This practice also bears a symbolic importance as it shows that the destination country does not intend to appropriate the proceeds of grand corruption and is willing to return the funds as quickly and efficiently as possible.

In addition, this practice ensures that confiscated assets do not replace structural expenditure incumbent upon the destination country, such as official development assistance. Indeed, for the destination country, returning misappropriated assets to the origin country should not cause it to reduce its development assistance budget as a result.

Returned funds must also be traceable in the general budget of the origin country, where applicable. Indeed, asset restitution experiences show that it is essential to be able to distinguish returned funds from other funds in the origin country’s budget in order to **ascertain that they are actually being used to implement the recipient projects or programmes**. Conversely, if it proves impossible to trace these funds after they have been transferred to the origin country, there is an increased risk of misappropriation and embezzlement insofar as the returned funds “disappear” when merged with other funds in the origin country’s budget, which also makes it impossible to trace their use retroactively.



MISCONCEPTION #1

BOX N°1

ASSET RESTITUTION = OFFICIAL DEVELOPMENT ASSISTANCE

Grand corruption deprives a state of substantial revenues and hinders transparency in public finance management. It thus erodes public confidence in government institutions and state financial systems. Returning misappropriated assets to the origin countries and developing international cooperation for this purpose not only helps countries to recover stolen assets, but also to develop and strengthen their institutions and build the confidence needed to prevent cases of misappropriation in the future.

In that regard, the restitution of assets to the origin countries shares common goals with development assistance. One of the United Nations Sustainable Development Goals for the period 2015-2030 is to strengthen the recovery and return of stolen assets.²⁵

However, the asset restitution process cannot be conducted through the traditional channels of development assistance.

It should be remembered that the funds returned are neither grants nor loans, but laundered embezzled money or proceeds of corruption. They cannot therefore be included as part of the official development assistance of the destination country, nor can they flow into the destination country’s revenue.

The lack of transparency regarding the origin of funds in an asset restitution process has many adverse consequences. **By not disclosing the criminal origin of the returned assets, both the destination country and the origin country are freed from the scrutiny of the media and civil society**, and thus have more leeway in how they manage the funds. **Concealing the criminal origin of the assets also allows countries to exempt themselves from establishing certain safeguards**, such as involving independent civil society in the asset restitution process.

Several NGOs denounced the opacity of the restitution of almost US\$49 million by Switzerland to Kazakhstan via the World Bank, in particular the fact that the World Bank and the Kazakh government allegedly concealed the origin of the assets, leading the general public to believe that the assets returned to Kazakhstan were part of Swiss official development assistance. This communication strategy had adverse consequences: media and civil society had limited opportunities to monitor the use of the funds, and the opaque asset recovery process made it difficult to trace the returned funds, which were then used for dubious purposes.²⁶

²⁵ Sustainable Development Goal 16.4: “By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”.

²⁶ See Case Study “Switzerland - Kazakhstan (2012-2020): US\$48.8 million returned”, p. 98

GOOD PRACTICES IN INCLUDING CIVIL SOCIETY IN THE ASSET RESTITUTION PROCESS

Involving CSOs in decision-making processes and in assessing the impact of public policies has long been recognised as good practice in the area of public governance.²⁷

In asset restitution processes, CSO involvement is essential to ensure that returned funds are used for the benefit of the affected populations. Involving CSOs in the asset restitution process helps to identify the needs of affected populations and to ensure that civil society representatives are involved in the decision-making process regarding the use of the returned funds. Involving CSOs in the asset recovery process ultimately contributes to increasing the legitimacy of the asset restitution process, creating a consensus around the recipient projects, and generally building public confidence in governing institutions.

In the context of an asset restitution process, civil society can be included by **consulting the public**, but also, where appropriate, by establishing **closer forms of involvement**, enabling **real participation by civil society representatives when drawing up the terms and conditions for restitution**.

It is important to involve CSOs at several stages of the asset restitution process:

- **Before the restitution agreement is adopted** by the origin state and the destination state, in order to identify the expectations of civil society with regard to the asset restitution process.
- **While the recipient projects are being selected**, in order to identify more precisely the needs of the affected populations that the competent authorities will consider when allocating the returned funds, and to allow CSOs to make proposals on how the funds will be used.²⁸



GOOD PRACTICES...

BOX N°2

...IN PUBLIC CONSULTATION

When consulting the public, both the authorities of the origin country and of the destination country should consider several principles and good practices:

- **Effectiveness:** Public consultation should not be a purely formal exercise to create the impression that the asset restitution process is inclusive. On the contrary, public consultation should take place in advance, before any decisions are taken on the issues in question, so that civil society input can influence those decisions. Furthermore, the consultation should be open for a sufficient period of time.²⁹

In addition, for a consultation to be effective, the competent authorities of the origin country and the destination country must provide the public with the documentation necessary to make informed proposals. In the context of an asset restitution process, access to the relevant documentation should be guaranteed under the principle of transparency, including early access to the background to the case, the confiscation decision, information on the total amount of assets returned, etc.

- **Inclusiveness:** The consultation should be as inclusive as possible. In particular, there should be an open consultation with civil society in the origin country and the destination country.

- **Visibility:** All those entitled to participate in the consultation should be informed about the details of the consultation, the deadlines, and the conditions for submitting their contribution. The authorities in both the origin country and the destination country should therefore ensure that people are aware of the consultation through a prior communication campaign.

- **Accessibility:** The authorities in both the origin country and the destination country should ensure that the consultation methods chosen are appropriate for the intended audience. If necessary, they should address any difficulties that certain underrepresented groups may have in accessing the consultation. Preferably, they should conduct an open online consultation, which offers an excellent opportunity to reach a wider audience. However, the authorities in both countries should also ensure that the so-called digital divide does not deprive certain stakeholders of the opportunity to make their voices heard.

²⁷ In 2012, the OECD Council recommended that member states “adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation”: OECD, *Recommendation of the Council on Regulatory Policy and Governance (2012)*, Recommendation No. 2.

According to the OECD Best Practice Principles for Regulatory Policy, “Consultation and user engagement can furnish important information on the feasibility of proposals, on the alternatives considered, and on the degree to which affected parties are likely to comply with the proposed regulation”. See OECD, *Regulatory Impact Assessment, OECD Best Practice Principles for Regulatory Policy (2020)*, p. 27.

²⁸ See Box 7, p. 45.

²⁹ In the words of the EU Commission, “Consultation periods should strike a reasonable balance between the need for adequate input and the need for swift decision-making”. The Commission sets a minimum period of 8 weeks for the reception of responses to written public consultations as a minimum standard and makes the precision that deadlines may be extended if necessary to take account of various circumstances. See EU Commission, *Communication from the Commission, Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, COM (2002) 704 final (2002), Standard D.

BOX N°2 (SUITE)

- **Transparency:** A fully transparent consultation process means not only informing the public about the consultation, the deadlines and conditions for submitting a contribution, and the identity of the agency or entity in charge of the process, but also publishing the responses to the consultation and its results, for which the competent authorities must obtain the prior consent of the authors. More generally, in order for a consultation process to be transparent, the details of its organisation must be made fully public, including the identity of the authorities centralising and analysing the responses, the subsequent decision-making process, and the reasons justifying any decisions taken after the consultation.

With regard to the public that is being consulted, a transparent process also requires the authorities responsible for centralising and examining the responses to be able to identify the authors, so as to determine whether they represent any special interests.

- **Clarity:** Clarity means that any communication regarding the consultation, as well as the consultation document itself, must be drafted in a clear and concise way, and must include all the information needed to help the public submit their responses. The authorities in the origin country and the destination country should also be transparent about any areas where decisions have already been taken and where the public can therefore have no influence.

- **Objectivity:** The information, opinions and proposals gathered during the consultation should be centralised and analysed promptly and objectively after the consultation ends. Decision-makers should not be involved while responses are first being analysed and interpreted; where appropriate, external data analysts may be used at that stage. Where weighting methods are used to help process and interpret the data collected, the methodology used should be disclosed to participants and to the decision-makers who will be relying on the results of the consultation.

- **Publicity:** The results and outcome of the consultation should be made public, in a form accessible to the public being consulted, within a reasonable period of time after the consultation period ends, preferably before any decisions are taken. In this regard, the authorities in the origin country and the destination countries should prepare summary reports of the results, made accessible in open source.

The authorities in the origin country and the destination country could usefully draw on the good practices set out in the following sources:

- OECD, *Recommendation of the Council on Regulatory Policy and Governance* (2012)
- OECD, *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy (2020)
- The Consultation Institute, *The Consultation Charter* (2017)
- EU Commission, Communication from the Commission, *Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission*, COM (2002) 704 final (2002)
- EU Commission, Commission Staff Working Document, *Better Regulation Guidelines*, SWD(2021) 305 final (2021), esp. Chapter II, "Stakeholder Consultation", and the accompanying *Better Regulation Toolbox* (2021), esp. *Chapter 7, "Stakeholder Consultation", Tools #51 to #55*



GOOD PRACTICES...

BOX N°3

...FOR SELECTING CIVIL SOCIETY REPRESENTATIVES INVOLVED IN NEGOTIATING RESTITUTION AGREEMENTS

When the authorities in the origin country and the destination country decide to involve one or more CSOs in negotiating restitution agreements, they should pay special attention to the **legitimacy of the individuals and organisations selected to represent civil society**.

In this regard, the authorities in the origin country and the destination country should consider several **good practices for selecting civil society representatives**, including:

- **Organising a call for interest** and ensuring **broad dissemination** among civil society networks by using appropriate tools (websites, social networks, etc.). The call for interest should be published at least in the languages spoken in both the origin country and the destination country.

- **Defining clear and objective selection criteria**, e.g. the mandate, skills and experience of the CSO in relation to the tasks entrusted to it, its familiarity with the case, its independence from the states involved in the asset recovery process, recognition of the CSO's work, the CSO's ability to invest time in the tasks and maintain regular contact with other stakeholders, etc.

- **Entrusting the reviewing and selecting of applications to an independent nominating committee**, which will interview shortlisted candidates and select the final candidates according to the above-mentioned criteria. At the end of the selection process, **the nominating committee should publish an open-source report on the selection process and disclose the names of the chosen CSOs**.

- **Allowing time for stakeholders to challenge a nomination** before the final candidates are announced.³⁰

- **Providing for a funding policy** and related procedures to enable selected CSOs to carry out their mandates.

The authorities should pay careful attention to the call for interest, which should at least: specify the context and missions for which CSOs are selected and the general conditions for funding; specify the types of organisations which are eligible; specify the selection criteria; clearly indicate how CSOs should submit their application (for example by sending the required documents to an email address, via a platform, etc.); indicate the documents they should send in support of their application (e.g. CV, letter of motivation, statement of interest, letters of support from civil society, etc.); indicate the languages in which these documents

³⁰ See Box 15, p. 62.

BOX N°3 (SUITE)

may be submitted, provide a contact point for candidates to ask questions; describe the selection procedure, and, in particular, specify which entities or agencies are involved in the selection process; specify the timeline for the selection process (opening date of the call for interest, deadline for submitting applications, period for the pre-selection of candidates, period for interviewing pre-selected candidates, date for announcing nominations, deadline for challenging a nomination, date for announcing final nominations, etc.).

Ideally, the competent authorities in both the origin and the destination countries should ensure that all aspects of the selection process are easily accessible and centralised on a dedicated webpage.

The authorities in the origin country and of the destination country should consider drawing from the experience of selecting civil society representatives to the international board of the Extractive Industries Transparency Initiative:

- [Selection process for the 2016-2019 civil society representatives](#)
- [Selection process for the 2019-2022 civil society representatives](#)

CASE STUDY



BOX N°4

SELECTING CSOs TO PARTICIPATE IN THE ASSET RESTITUTION PROCESS, AN ISSUE OF LEGITIMACY AND INTEGRITY: LESSONS LEARNED FROM THE KAZAKHSTAN I AND KAZAKHSTAN II RESTITUTIONS



BOX N°4 (SUITE)

CONTEXT

In 2003, following an investigation by the US Department of Justice, James Giffen, a US citizen, was indicted for money laundering and violating the Foreign Corrupt Practices Act, in particular for paying bribes to Kazakh officials to help Western oil companies obtain oil exploration rights in Kazakhstan. As early as 1999, Switzerland and the United States began negotiations over the freezing of assets and their subsequent use. In 1999, Swiss judges ordered the freezing of US\$84 million in Swiss bank accounts, which the Kazakh government claimed to be their own, as part of a mutual legal assistance procedure with the United States. In 2005, the World Bank joined the negotiations as an intermediary and technical advisor.

In 2007, Kazakhstan, Switzerland and the United States finally reached an agreement and concluded a Memorandum of Understanding setting out the terms of repayment. Under the agreement, the release of funds was conditional on the implementation of three programmes: the BOTA programme, the Public Finance Management Review and Kazakhstan's membership of the Extractive Industries Transparency Initiative. The returned funds were to be used only under the BOTA programme, which had three components: the Conditional Cash Transfer programme, the Social Services programme and the Tuition Assistance programme.

AN UNPRECEDENTED ROLE FOR CSOs IN THE ASSET RECOVERY PROCESS

The parties agreed that the BOTA programme would be implemented through a private philanthropic foundation with no links to the Kazakh government, its agents or any person associated with it, either in a personal capacity or through business relationships. The BOTA Foundation was established in 2008 by the governments of Kazakhstan, Switzerland and the United States, together with five Kazakh citizens, to receive and return a total of more than US\$115 million in assets associated with corruption. The Foundation was overseen by the World Bank.

Unusually, the Kazakh government, although it was a party in the restitution agreement, was kept entirely out of the BOTA Foundation's operations. It had no access to the funds (paid directly and exclusively to the Foundation) and no control over the final use of the funds, as it did not sit on the board.

Thus, **the BOTA Foundation's complete independence from the Kazakh government and the composition of the Foundation's board of directors gave a prominent role to representatives of civil society in the country of origin.**

CSOs have played a particularly important role in implementing, monitoring and evaluating the programme. The management of the Foundation has been entrusted to the International Research and Exchanges Board (IREX), and Save the Children US, two internationally recognised NGOs. They have no links to the Kazakh government and were selected through a competitive bidding process, which provided a monitoring and evaluation report.

SELECTING INDEPENDENT CIVIL SOCIETY REPRESENTATIVES

The restitution agreement stipulated that BOTA should be a local Kazakh organisation created by local people and that Kazakh citizens should sit on the board.

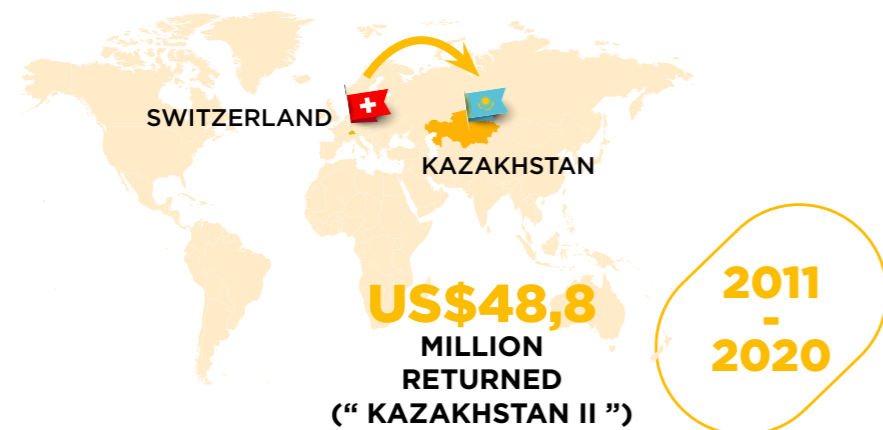
According to the agreement, candidates for “founder” status must have no links to the Kazakh government and had to be respected figures in the community, preferably known for their support of children’s issues. These founders were in turn responsible for nominating candidates for the board of directors, in particular Kazakh citizens, preferably with a reputation for supporting children’s causes.

The **BOTA Foundation’s seven-member board of directors included a representative of the Swiss and US governments, as well as five Kazakh citizens representing civil society.**

Ultimately, the procedures for selecting civil society representatives to actively participate in the asset recovery process, as detailed in the restitution agreement, ensured that participating individuals and CSOs had no connections whatsoever to Kazakhstan.

It should be noted that the BOTA Foundation has conducted its operations with complete transparency and integrity. Indeed, to date, there have been no allegations of corruption or wrongdoing. This was made possible by implementing **selection procedures that ensured the legitimacy, independence and competence of the members of civil society chosen to participate in the asset recovery process.**

In contrast to the Kazakhstan I restitution case, Switzerland’s return of almost US\$50 million in the so-called Kazakhstan II restitution case shows that it is **not enough to formally include CSOs in order to fulfil the condition of inclusiveness.**



CONTEXT

Following an investigation into money laundering, the Swiss authorities confiscated funds worth almost US\$48 million in 2011, which Switzerland decided to return to finance projects benefiting the Kazakh population in the areas of youth policy and energy efficiency.

In **December 2012**, the Swiss Agency for Development and Cooperation reached an agreement with the World Bank, which agreed to act as intermediary and oversee the restitution process. The Agency transferred the sum of US\$48.8 million as a grant to a World Bank Trust Fund. The World Bank then returned this money to Kazakhstan to fund,

in equal parts, an Energy Efficiency Program and a Youth Corps Program. Under this agreement, the returned assets were subsequently managed by the Kazakh government, with the World Bank acting as trustee. A series of agreements were concluded, between Kazakhstan and the World Bank on the one hand (financing agreements) and the World Bank and the implementing entities on the other (project agreements).

SELECTING GOVERNMENT-CONTROLLED CSOs FOLLOWING A TENDER WHOSE LEGITIMACY IS DISPUTED

There was considerable concern about the Youth Programme, which was implemented with the involvement of CSOs. The programme aimed to promote community engagement and develop young people’s skills through community service learning projects.

CSOs were able to help manage and implement the programme as administrative coordinators, and as host organisations or youth groups receiving a grant to implement projects. It was envisaged that the programme coordinator would be selected through a competitive bidding process overseen by the World Bank, and that the host organisations or youth groups would be selected through a competitive bidding process, following procedures approved by the World Bank.

An investigation by the Corruption and Human Rights Initiative found several irregularities.³¹ **The organisations selected to participate in the asset restitution process were reportedly not legitimate representatives of civil society.** The outcome of the call for tenders organised to select the project coordinator raised **serious doubts as to the transparency and legitimacy of the competition procedure, which were exacerbated by the overall opacity of the asset restitution process. Out of three candidates, the tender was won by a consortium of three CSOs that were fully controlled by government-organised NGOs (GONGOs).** In particular, the internationally recognised NGO IREX, which had long experience and a proven track record in the Kazakhstan I restitution, was not selected. The consortium is said to be led by the Congress of Youth, an organisation set up by former president Nursultan Nazarbayev, whose eldest daughter Dariga Nazarbayeva – also a leading member of the ruling political party – is its chairperson.

SUSPICIONS OF MISAPPROPRIATION AND FAVOURITISM IN THE USE OF RETURNED FUNDS

According to the investigation by the Corruption and Human Rights Initiative, based on the limited data available, **several sumptuary expenditures were reportedly made, as well as expenditures for the promotion of the government party and for awards to the youth wing of the ruling party. The main organisations funded under the programme are reportedly controlled by the government,** and some are directly run by public officials and politicians who are strongly committed to supporting the president.

The investigation further pointed out that, as **the identity of the individuals and organisations involved in the Swiss prosecution had not been disclosed, it was impossible to verify whether any individuals or entities involved in the case benefited from the returned funds, in violation of GFAR Principle 9** (“Preclusion of the benefit to offenders principle”).

The experience of the Kazakhstan I and Kazakhstan II restitutions thus illustrates both the importance of including civil society, which legitimises the restitution process and helps to increase public confidence in it, and **the necessity of not simply including CSOs as a formality. Both experiences demonstrate the need to ensure the legitimacy of the selected CSOs. The participation of CSOs controlled by governments and regimes poses significant risks to the integrity and effectiveness of the asset recovery process.**

³¹ Kristian Lasslett and Thomas Mayne (Corruption and Human Rights Initiative), *A Case of Irresponsible Asset Return? The Swiss-Kazakhstan \$48.8 million* (2019).



MISCONCEPTION #2

BOX N°5

INVOLVING A CSO IN THE ASSET RESTITUTION PROCESS IS ENOUGH TO SATISFY THE INCLUSIVENESS REQUIREMENT

The Kazakhstan I and Kazakhstan II restitution experiences show the **importance of selecting independent CSOs** with no links to the governments of the origin country or the destination country.

The acronym GONGO (government-organised non-governmental organisation) is used to refer to an NGO created and supported by a government to advance its own political interests, locally and abroad, while presenting itself as a regular CSO. **In some countries with authoritarian regimes, GONGOs occupy a significant portion - if not all - of the civic space.** The concealed control that governments exercise over these organisations undermines the public debate and the development of the non-governmental sector, as the existence of GONGOs compromises the very spirit and purpose of NGOs by introducing players acting on behalf of the government into the space that civil society should occupy, while masking the government's intentions.

In this regard, **an asset restitution process can only be considered truly inclusive when the civil society actors involved in it really represent civil society and are independent.** The implementation of transparent selection procedures, in line with the good practices outlined above,³² should guarantee the independence and legitimacy of the CSOs involved in the asset restitution process. The CSOs selected through these procedures should also have the choice to freely designate the people who will be specifically entrusted to represent them.

In cases where the civic space in the country of origin is entirely or almost entirely taken over by government-controlled organisations, **there is the option to use foreign-based CSOs dedicated to addressing issues in the origin country, where they can provide the independence that locally-based organisations cannot.** Indeed, many NGOs are created and established by nationals of a country abroad, including organisations founded by people who were exiled because of their opposition to authoritarian regimes.

Where relevant, **consideration should also be given to creating an ad hoc organisation to oversee the asset recovery process,** as was the case for the Kazakhstan I asset recovery process through the creation of the BOTA Foundation. In this case, the conditions for establishing the organisation and selecting its representatives should guarantee the independence of the organisation, in accordance with the good practices outlined above.³³

CASE STUDY



BOX N°6

ENSURING EFFECTIVE INCLUSION OF CIVIL SOCIETY IN THE FUTURE SWITZERLAND-UZBEKISTAN RESTITUTION



CONTEXT

In September 2020, Switzerland and Uzbekistan signed a framework agreement for the return of assets permanently confiscated by the Swiss authorities in the context of criminal proceedings related to Gulnara Karimova, the daughter of former Uzbek president Islam Karimov who died in 2016. The agreement sets out the general principles governing the return of these assets and are followed by separate but related underlying agreements that set out the specific terms of the successive returns, including the use and allocation of the returned assets. The agreement covers, on the one hand, the sum of 131 million Swiss francs (approximately US\$142 million) that has already been permanently confiscated following the 2019 conviction of a relative of Gulnara Karimova, and will apply, on the other hand, to assets that may be permanently confiscated in the context of the criminal proceedings that are still pending.

A NEED TO CLARIFY THE TERMS OF CIVIL SOCIETY'S INVOLVEMENT

Representatives of Uzbek civil society are well aware of the issues of representativeness and independence of the CSOs involved in the asset restitution process, and they have alerted the Swiss authorities and the general public to the risks posed to the future asset restitution process.

³² See Box 3, p. 37.

³³ See Box 3, p. 37.

BOX N°6 (SUITE)

The framework agreement envisages the potential involvement of civil society actors, without further specification.³⁴ This reference to the “potential” inclusion of civil society in the asset recovery process is far from being a real commitment to include civil society by the states concerned. According to the Uzbek Forum for Human Rights, this wording leaves a loophole that the Uzbek government could exploit to ignore the role of civil society.

In addition, after the framework agreement was published, **several Uzbek activists from the Forum issued a statement³⁵ regretting the fact that the framework agreement does not specify that independent civil society representatives will be included in the asset recovery process, in order to avoid the inclusion of CSOs controlled by the Uzbek government.** Indeed, they warn that many local organisations are in fact government-controlled and that the numerous restrictions on the registering of NGOs under Uzbek law are an obstacle to the activities of the non-governmental sector.

As the Kazakhstan restitutions show, it is essential for civil society representatives to be fully independent in order to ensure that civil society’s inclusion in the asset recovery process is not a mere formality. Only the genuine independence of the CSOs involved can bring to light possible shortcomings in the process. The lack of a guarantee of independence from both the country of origin and the destination country may cause conflicts of interest and could lead to the concealment of potential irregularities or misappropriations in the asset recovery process, while the process is claimed to be formally inclusive.

At present, negotiations between the Swiss and Uzbek authorities are ongoing. The Uzbek NGOs of the Uzbek Forum for Human Rights issued a new call for transparency and inclusion of civil society in July 2021, deploring the silence of the Swiss and Uzbek authorities on the ongoing negotiations since the conclusion of the framework agreement.³⁶ In particular, the Swiss and Uzbek authorities will have to specify the terms of civil society’s involvement in the underlying agreements they plan to conclude.



GOOD PRACTICES...

BOX N°7

...WHEN SELECTING PROJECTS THAT MEET THE VICTIMS’ EXPECTATIONS AND NEEDS

Selected to meet the expectations and needs of the affected populations and civil society, projects financed with returned assets can help to achieve sustainable development objectives³⁷ and promote justice and the rule of law.³⁸

With this in mind, experts have stressed the importance of allocating returned assets to **finance specific projects with a visible social impact**, including projects with a direct benefit for the populations, and to compensate victims’ losses. In this regard, experts recommend that states reflect on the **role that CSOs can play in selecting and implementing such projects**, including through **consultations with civil society**.

Analyses of various restitution cases and experiences reported in the field of development aid reveal that **including civil society in the selection of projects helps to guarantee consistency between the use of the funds and the needs of the affected populations**.

A good way to identify the needs and expectations of victim populations and to involve civil society is for the authorities in the origin country and of the destination country to **organise a public consultation, in order to allow civil society actors and the general public to identify their needs, express their expectations and submit proposals for the use of the returned funds, which the authorities of both countries should take into account when selecting the recipient projects or programmes**.

The aim is **to set limits on how much discretion the authorities of the origin country and of the destination country have when selecting the recipient projects or programmes**.

Several good practices can be taken into account for the selection of recipient projects or programmes, which are partly based on the good practices in public consultation outlined above:

- **Ensuring that the public consultation is well publicised** by using appropriate tools (websites, social networks, etc.) and relevant upstream communication (press releases, etc.).
- **Ensuring that the public consultation is transparent:** Civil society must be informed of: the option to submit responses and proposals; the related deadlines and conditions; the agency or entity in charge of organising the consultation; the agency or entity in charge of reviewing responses and proposals and selecting the final funded projects; the criteria for selecting and evaluating projects (including conditions related to costs); the decision-making process following the public consultation; and the reasons justifying any subsequent decisions taken.

³⁴ Memorandum of Understanding on the Framework for the Restitution of Illegally Acquired Assets Forfeited in Switzerland to the Benefit of the Population of the Republic of Uzbekistan concluded between the Swiss Federal Council and the Government of the Republic of Uzbekistan, paragraph 4: “ Consideration should be given to the potential role of the public (civil society or community-based organizations) to fulfil these principles ”.

³⁵ Umida Niyazova, Farida Scharifullina, Azimbay Ataniyazov, Dilmurad Yusupov, Timur Karpov, Murat Ubbiniyazov, Tatyana Rubtsova, Shahida Tulyaganova, Kudrat Babajanov, Alisher Taksanov, Dilobar Erkinzoda, Ulugbek Khaydarov, Bahadir Fayzi, (Uzbek Forum for Human Rights), “ Concerns Remain Despite Step Toward Responsible Return of Stolen Assets to Uzbekistan ” (16 September 2020).

³⁶ Umida Niyazova, Dilmira Matyakubova, Farida Sharifulina, Alisher Toksanov, Dilobar Erkinzoda, Timur Karpov, Shahida Tulyaganova, Kudrat Babajanov, Ulugbek Ashur (Uzbek Forum for Human Rights), “ Call for Transparency and Inclusion in the Return of Gulnara Karimova’s Ill-Gotten Assets to Uzbekistan by the Swiss Government, Statement by Uzbek Civil Society Activists ” (8 July 2021).

³⁷ The contribution of asset recovery to achieving the Sustainable Development Goals (SDGs) and the 2030 Agenda was also highlighted at sessions of the International Expert Meeting on the return of stolen assets held in Addis Ababa in 2017 and 2019.

³⁸ In a Political Declaration adopted by the United Nations General Assembly, it was stated that: “We recognize the importance of asset recovery and return in the fight against corruption and that it, *inter alia*, contributes to fostering sustainable development and promoting justice and the rule of law at all levels and in all States”: Political Declaration adopted by the UN General Assembly at the 32nd Special Session on 2 June 2021, “ Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation ”, (A/S-32/L.1), §42.

BOX N°7 (SUITE)

As far as possible, the authorities in the origin country and the destination country should publish the submitted responses and proposals – having obtained the authors' prior consent – and allow all stakeholders to discuss them freely (for example by publishing them on an online forum).

In accordance with good practices in public consultation, the authorities responsible for centralising and examining the submitted responses and proposals should also be able to identify the authors, in particular to know whether they represent special interests.

• **Defining clear and objective methods and criteria for evaluating and selecting projects**, including:

- the priority needs of victim populations, including directly affected communities;
- the impact of the projects in terms of sustainable development in the medium and long term (social and environmental impact);
- the involvement of local actors and the capacity of projects to boost the local economy and create jobs;
- the opportunities for capacity building among the affected populations;
- the expected costs and benefits (including social and environmental benefits).

The criteria taken into account and the method of analysis must be defined and published before the public consultation is launched;

• **Publicising the results of the consultation and the subsequent decision-making process**: The competent authorities in the origin country and the destination country should prepare and publish a summary report presenting the submitted responses and proposals, the reasons why one or more proposals were selected over the others, the objectives pursued, the budget allocated to each project or programme, the timetable for their implementation, and the monitoring and control arrangements, which should be accessible in an open-source format. Any documents relating to the detailed examination of the selected projects or programmes should also be accessible to the public (feasibility studies, impact studies, cost-benefit analysis, etc.);

• **Enabling stakeholders to bring an appeal or complaint in the event of an irregularity in the selection of recipient projects or programmes**,³⁹ such as conflicts of interest within the agency or entity in charge of selecting the projects, etc.

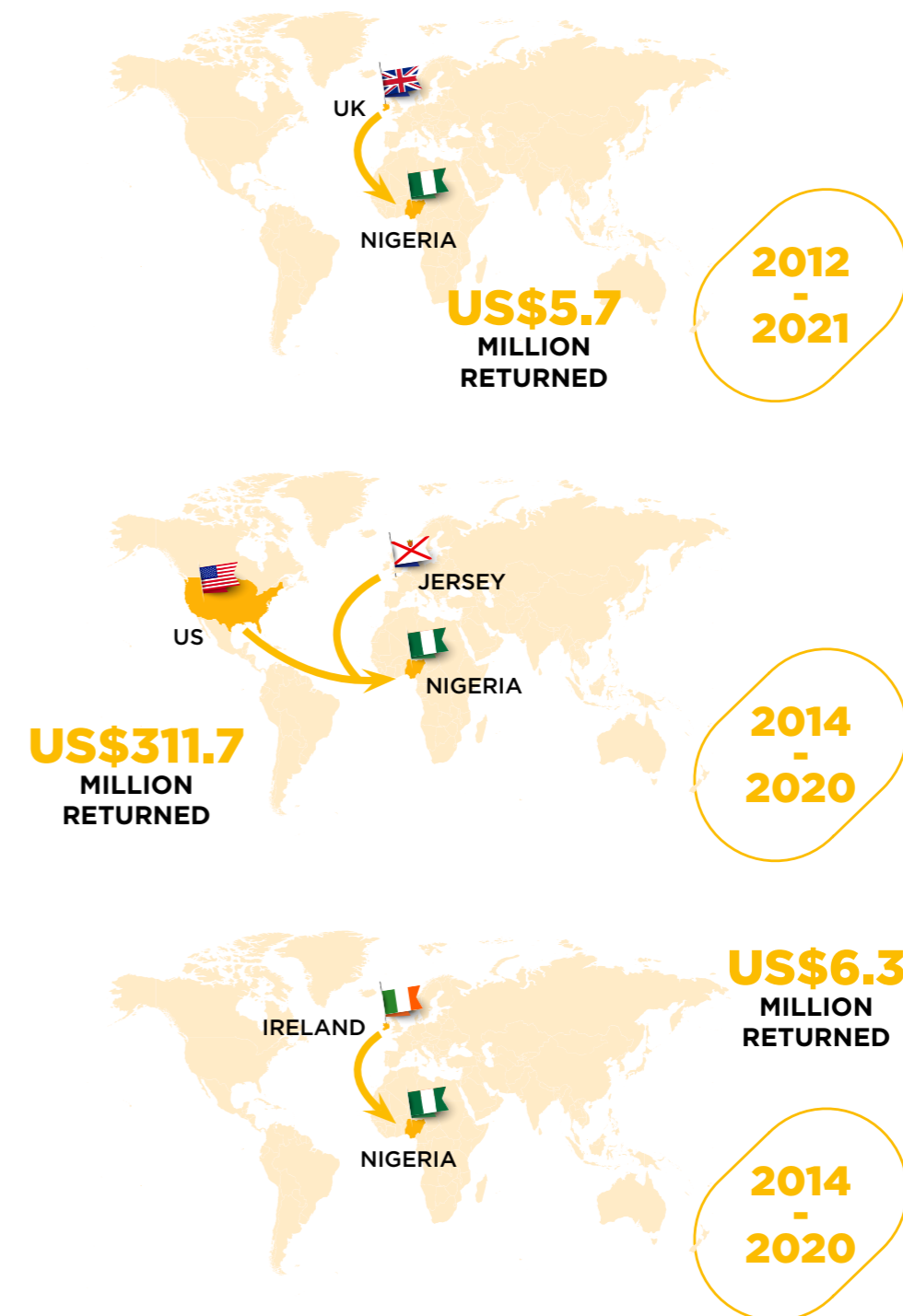
When making the final selection of recipient projects or programmes, the authorities in the origin country and the destination country, in addition to the sources relating to good practices in public consultation set out above, may also usefully draw on the good practices in project appraisal identified by the World Bank:

- Darwin Marcelo, Cledan Mandri-Perrott, Schuyler House and Jordan Schwartz (World Bank), [Prioritizing Infrastructure Investment: A Framework for Government Decision Making](#), Policy Research Working Paper No. 7674 (2016)

CASE STUDY

BOX N°8

THE CONTROVERSIAL USE OF FUNDS RETURNED FROM THE UK, JERSEY, THE US AND IRELAND TO FINANCE INFRASTRUCTURE PROJECTS IN NIGERIA



³⁹ In this respect, reference should be made to the good practices in the management of complaints and alerts: see Box 15, p. 62

CONTEXT

In **2016**, the **United Kingdom and Nigeria** entered into a Memorandum of Understanding, the Framework Agreement, providing for the return of misappropriated assets confiscated by the United Kingdom. Under this agreement, in **March 2021** the United Kingdom and Nigeria negotiated an Annex 1 to the Framework Agreement, for the purpose of returning the sum of £4.2 million (approximately US\$5.7 million) to the Nigerian government in the Ibori case. James Ibori, a former governor of the oil-producing southern Nigerian state of Delta, was sentenced by a British court in February 2012 to 13 years in prison after pleading guilty to money laundering and conspiracy to commit fraud and forgery, offences committed to the detriment of the voters he was supposed to represent.⁴⁰

On **3 February 2020**, the **governments of Nigeria, the United States and Jersey** entered into a restitution agreement for the recovery and management of US\$311.7 million in assets returned in connection with a part of the Abacha case, which also gave rise to restitutions by Switzerland.⁴¹

The investigation into the Abacha case also resulted in the Irish Criminal Assets Bureau freezing €5.5 million (approximately US\$6.3 million) in a Dublin bank account in October 2014. After Nigeria brought an action to claim these assets in 2019, **an Irish court ordered their return in 2020**. This is the first asset restitution process involving Ireland.

NON-INCLUSIVE DECISION-MAKING AND CONTESTED ALLOCATION OF FUNDS

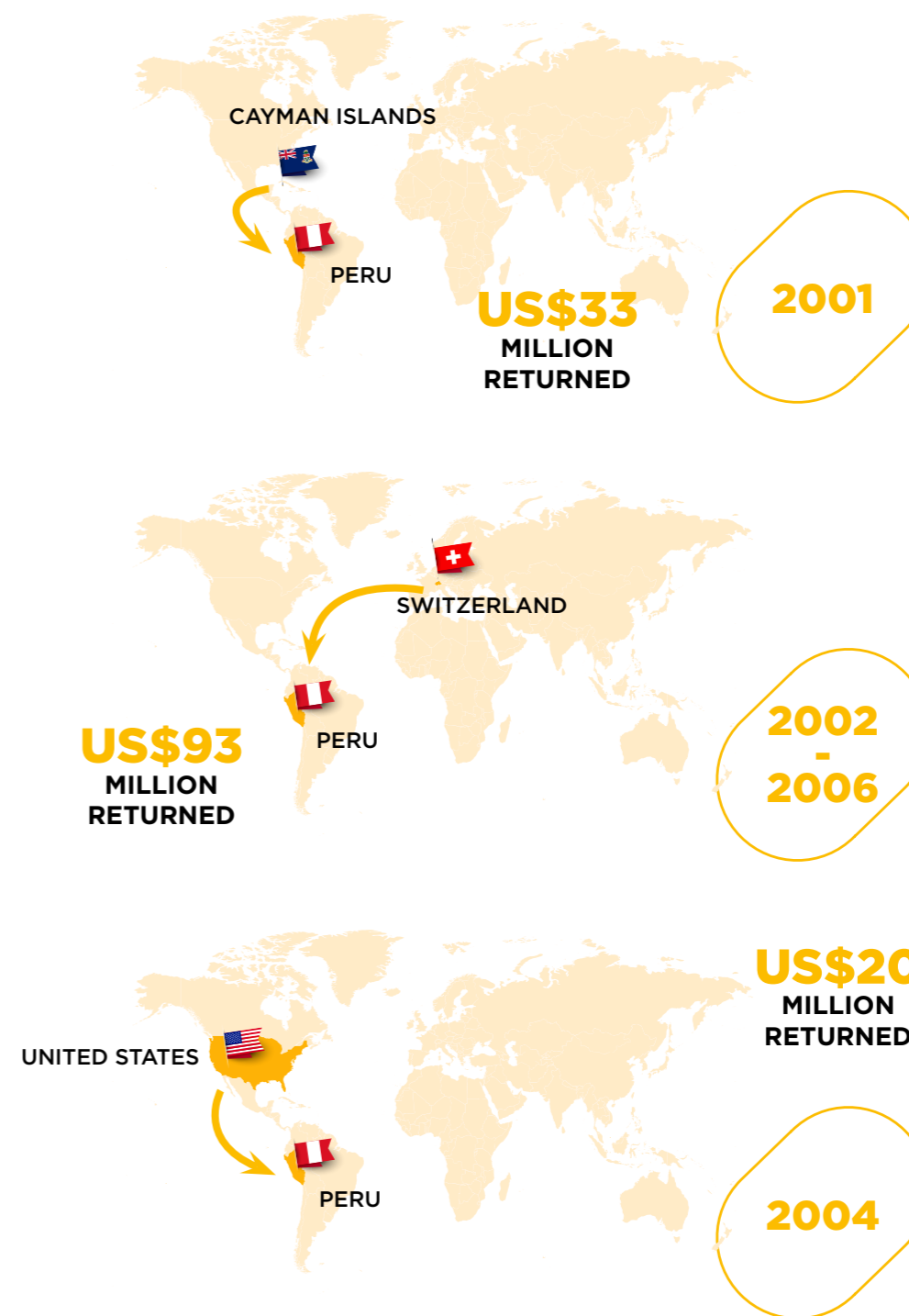
These three asset restitution processes are similar in that the assets returned, in each case, were used to develop the same infrastructure projects of national interest in Nigeria, namely the Lagos to Ibadan Expressway, the Abuja to Kano Road and the Second Niger Bridge. **This decision on the use of the funds, taken without consulting Nigerian civil society, has given rise to numerous and lively disputes.** For example, in the case of the UK restitution, several Nigerian CSOs are contesting the fact that the funds were allocated to the federal government.⁴²

In addition to the lack of transparency and failure to include civil society in the allocation of asset recovery funds, there is also a **risk that the funds will be diverted again**: CSOs have noted that the three recipient infrastructure projects have already been allocated funds from the Abacha restitution between Switzerland, Jersey and Nigeria.⁴³ However, neither the Nigerian authorities nor the restitution partners – the United Kingdom, the United States, Jersey and Ireland – have provided any justification for allocating **the restitution funds to infrastructure projects that are already funded, which creates the risk that the funds will be further diverted** to Nigerian federal officials.

Early consultation with Nigerian civil society to better understand their needs and expectations regarding the use of the returned funds could have ensured that the funds were used for the direct benefit of the affected populations.

⁴⁰ BBC News, "Former Nigeria governor James Ibori jailed for 13 years", BBC (17 avril 2012); Mark Tran, "Former Nigeria state governor James Ibori receives 13-year sentence", The Guardian (17 avril 2012).
⁴¹ See Case Study "US - Jersey - Nigeria (2014-2020): \$311.7 million returned", p. 82
⁴² Civil Forum for Asset Recovery (CiFAR), "The Ibori Loot: The controversy surrounding the destination of the returned money" CiFAR (15 June 2021); Festus Ahon, "REPATRIATED £4.2M: Group vows to drag FG to court" Vanguard Nigeria (12 March 2021); Bridget Edokwe, "4.2m Ibori loot: Niger Delta group drags FG to Court" BarristerNG.com (17 March 2021); Spotlight on Corruption, "James Ibori: Confiscating the corrupt assets of a Nigerian Governor", Spotlight on Corruption; Taiwo Adebulu, "Sagay: Using £4.2m Ibori loot for projects outside Delta unacceptable" The Cable (11 March 2021); Aneej Nigeria, "Return £4.2m Recovered Ibori Assets To Delta State, ANEEJ Tells FG, UK" Africa Network for Environment & Economic Justice (ANEEJ) (9 March 2021)
⁴³ CiFAR, "The Ibori Loot: The controversy surrounding the destination of the returned money", CiFAR (15 June 2021); Eli Moskowitz, "UK Repatriates Millions in Corrupt Assets of Nigerian Ex-Governor" Organized Crime and Corruption Reporting Project (OCCRP) (11 March 2021)

THE RETURN OF THE FIRST INSTALMENTS OF THE "MONTESINOS ASSETS": AN EXAMPLE OF THE DANGERS OF TRANSFERRING FUNDS WITHOUT PRIOR ALLOCATION OF THE FUNDS TO SPECIFIC PROJECTS OR PROGRAMMES



CONTEXT

Vladimiro Montesinos Torres was the head of the Peruvian secret service between 1990 and 2000 and the personal advisor to former Peruvian president Alberto Fujimori. In 2000, footage broadcast by a Peruvian television channel showed Montesinos secretly handing an envelope of money to an opposition member of parliament bribing him to join the Fujimori camp. More than 200 such recordings were seized by the Peruvian justice system.

The investigations that followed the scandal revealed that Montesinos was at the centre of a massive scheme of extortion, embezzlement and corruption linked to the arms trade and drug trafficking. The funds illicitly acquired by Montesinos during the Fujimori regime could be as high as US\$2 billion.^{44 45}

In July 2002, Montesinos was sentenced in Peru to nine years' imprisonment on charges of crimes against the government and abuse of power in his first trial, while more than 60 cases were still open against him.⁴⁶ He has since faced further convictions for other offences.⁴⁷

THE RECOVERY OF MONTESINOS' ASSETS IN SEVERAL JURISDICTIONS

From the outset, Peru sought to recover the assets of Montesinos and his relatives hidden in multiple jurisdictions. In March 2001, the Cayman Islands froze almost US\$33 million, which was repatriated to Peru in August 2001.⁴⁸ In 2002, the Public Prosecutor's Office in Zurich opened criminal proceedings against Montesinos for money laundering, and ordered the freezing of assets belonging to him and his relatives. Judicial cooperation between Switzerland and Peru led to the repatriation of a total of nearly US\$93 million to Peru between 2002 and 2006.⁴⁹ In January 2004, the United States returned funds confiscated from Montesinos and one of his associates amounting to US\$20 million, following the conclusion of a bilateral agreement.⁵⁰

QUESTIONABLE USE OF RETURNED FUNDS WHEN THEIR PRECISE USE IS NOT SPECIFIED IN ADVANCE

In 2001, the Peruvian government created a special fund, FEDADOI, to manage the proceeds of corruption returned to the Peruvian government. These funds have not, therefore, been managed and controlled by the Peruvian Congress but by the FEDADOI board of directors, composed of four members: a representative of the Presidency of the Peruvian Council of Ministers, chairing the board, a representative of the Ministry of Justice, a representative of the Ministry of the Interior, and a representative of the Ministry of Economy and Finance.⁵¹ Although detailed guidelines and procedures were established to ensure transparency in the use of the returned funds, a 2007 joint report by the World Bank and UNODC found that **these resources were ultimately used to supplement the annual budgets of the institutions that had a member sitting on the FEDADOI board.**⁵² While the funds were channelled through the usual budgetary channels, the specific allocation of the funds was left to the discretion of the FEDADOI board members.⁵³

⁴⁴ Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11

⁴⁵ Note: Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

⁴⁶ *Libération*, "Pérou: neuf ans de prison pour Montesinos" *Libération* (2 July 2002)

⁴⁷ *RFI*, "Pérou: 25 ans de prison pour l'ex-bras droit de Fujimori", *RFI* (2 October 2010); *RFI*, "Pérou: deux anciens hauts responsables de l'armée condamnés à 22 ans de prison", *RFI* (29 September 2016)

⁴⁸ UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 20; Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11

⁴⁹ Swiss Confederation, Federal Department of Foreign Affairs, "A dynamic Swiss policy on the restitution of illicit assets" (16 December 2020); *Swissinfo*, "La Suisse restitue les dollars de Montesinos", *Swissinfo.ch* (20 August 2002)

⁵⁰ UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 20; Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11

⁵¹ *Decreto de Urgencia N° 122-2001* of 27 October 2001

⁵² UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 20

⁵³ *Ibid.*, p. 25

Some of the returned assets were allegedly given to the Ministry of the Interior to finance leave for active and retired police personnel for the years 1995 and 1996;⁵⁴ some were used for police reform, including the purchase of uniforms and the financing of life insurance for police officers; and some were given to the Ministry of Justice to support investment in infrastructure and computer technology.⁵⁵ Funds were also reportedly used to pay for the legal cost of extraditing former president Alberto Fujimori from Chile.⁵⁶

Overall, the studies condemned the fact that the lack of available information on the final allocation of returned assets prevented the effective monitoring of the asset recovery processes. The fact that expenditure items and the final allocation of funds were not clearly defined in advance between states parties to the asset recovery processes has been put forward as a key factor in these shortcomings.⁵⁷

Indeed, the states parties to these different asset recovery processes do not seem to have agreed in advance on the terms of restitution, including the allocation of the recovered funds. In the Swiss case, it appears that no agreement was reached on the return of assets. The two countries only agreed that the assets would be recovered through FEDADOI. In the US track, the US and Peru agreed on a deal whereby Peru committed to investing the returned funds in the fight against corruption.⁵⁸

These different restitution processes involving the Montesinos assets and the questionable choices made with regard to their allocation illustrate the importance of specifying upstream how the recovered funds will be allocated. Drawing lessons from this experience as well as from other restitution experiences, Switzerland has thus committed, in the context of the restitution of a second tranche of the Montesinos assets orchestrated with Luxembourg, to providing for more specific terms for allocating the assets in the framework of an agreement concluded between the three states.⁵⁹

⁵⁴ *Ibid.*

⁵⁵ Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11

⁵⁶ *Ibid.*; UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 25

⁵⁷ Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11

⁵⁸ Gretta Fenner and Kodjo Attisso (International Center for Asset Recovery, ICAR), *Returning stolen assets - Learning from past practice* (October 2013), p.2

⁵⁹ See Case study "Switzerland - Luxembourg - Peru (2016-2020): US\$26 million returned", p. 87.



INCLUDING CIVIL SOCIETY IN THE SELECTION OF RECIPIENT PROJECTS OR PROGRAMMES: THE LEGITIMACY AND EFFECTIVENESS OF THE ASSET RECOVERY PROCESS IN THE RETURN OF OBIANG MANGUE'S ASSETS BY THE UNITED STATES TO EQUATORIAL GUINEA



CONTEXT

In 2011, the US Department of Justice seized millions of US dollars' worth of assets belonging to Teodorin Nguema Obiang Mangue, vice president of Equatorial Guinea and son of the country's president. The assets included a beachfront villa in California, a private jet, several luxury cars, and a collection of art, jewellery and other items – of immeasurable value compared with the salary he received as Minister for Agriculture – purchased through a limited company incorporated in the United States.

In **2014**, under the terms of an out-of-court settlement with the Department of Justice, Obiang Mangue agreed to the sale of his villa in Florida, a Ferrari and statues he owned worth more than US\$30 million, in return for dropping various civil forfeiture proceedings against himself and several companies through which he managed his assets, which, according to the US authorities, were acquired with the proceeds of bribery and embezzlement. The funds recovered were to be returned to the people of Equatorial Guinea.

DECISION-MAKING PROCEDURES ON THE ALLOCATION OF FUNDS THAT EXCLUDE EQUATORIGUINEAN CIVIL SOCIETY

Under the terms of the out-of-court settlement, the United States and Obiang Mangue were to jointly select a foundation or other entity to which all funds from the sale of securities and real estate would be transferred. If they failed to agree on the beneficiary entity within 180 days of the sale of the villa, control of the funds would be transferred to a three-member panel, one appointed by the United States, a second appointed by

Equatorial Guinea, with the chairperson appointed jointly by the United States and Obiang Mangue or by a court.

After several years of stalemate in the bilateral negotiations, a three-member panel was formed in accordance with the settlement. The panel was formed by the US Ambassador to Equatorial Guinea, the Ambassador of Equatorial Guinea to the US, and a former US Ambassador to Equatorial Guinea, who served as president of the panel. On 4 May 2021, the panel agreed to fund a vaccination campaign against COVID-19 through the COVID-19 Vaccines Global Access (COVAX) programme. However, the panel member selected by Equatorial Guinea revoked his decision ten days later.⁶⁰

In response to Obiang Mangue's repeated attempts to thwart the many beneficial programmes proposed for the population, in May 2021 the Department of Justice filed a lawsuit with the federal judge in charge of the case to implement the proposed project to fund a COVID-19 vaccination campaign through the COVAX programme, who sided with the United States in **September 2021**.

Decisions on the use of the returned funds were taken exclusively by representatives of the US and Equatoguinean governments, without consulting Equatoguinean civil society, even though Equatorial Guinea is considered by corruption experts to be a kleptocracy with a serious problem of state capture.⁶¹ This situation was illustrated in the restitution negotiations, where it took more than six years – from the conclusion of the non-trial settlement establishing the principle of restitution – for the US and Equatorial Guinea to agree on the use of the funds, due to the paralysis caused by Equatorial Guinea's representatives. **In this context, greater transparency in the negotiations and a formal role for Equatoguinean civil society in the procedures for deciding on the allocation of funds, which would have ensured that the needs and expectations of the Equatoguinean population were identified, could have potentially accelerated the decision-making process and even circumvented the impasse in the inter-state negotiations.**

Consulting representatives of Equatoguinean civil society would also have potentially allowed for a greater alignment of decisions on the allocation of funds with the real issues facing civil society in Equatorial Guinea.

AN ASSET RECOVERY PROCESS THAT COULD HAVE BEEN BETTER ADAPTED TO THE LOCAL CONTEXT AND THE VICTIMS' NEEDS

The agreements between the Department of Justice and Obiang Mangue provided for the transfer of US\$19.25 million to the United Nations for the purchase and distribution in Equatorial Guinea of COVID-19 vaccines, and US\$6.35 million to the charity Medical Care Development International for the purchase and distribution in Equatorial Guinea of drugs and medical equipment.⁶² While Equatorial Guinea, like many countries, is facing a health crisis caused by COVID-19, and while the funding of a COVID-19 vaccination campaign can be considered a beneficial use of funds for the Equatoguinean population, **using the returned funds for those purposes ran the risk of duplicating the resources that the International Monetary Fund had agreed to lend to Equatorial Guinea a few days earlier.**

In a webinar hosted by the Hudson Institute on 30 September 2021,⁶³ Tutu Alicante, Executive Director of EG Justice, a Washington-based NGO promoting rule of law, transparency and civil society engagement in Equatorial Guinea, said that the International Monetary Fund

⁶⁰ Julian Pecquet, "US seeks to force Equatorial Guinea to take Covid vaccine deal as Biden steps up anti-kleptocracy fight", *The Africa Report* (23 August 2021)

⁶¹ Hudson Institute, Virtual event "Obiang's Kleptocracy in Equatorial Guinea" (30 September 2021)

⁶² US Department of Justice, Press Release, "US\$26.6 Million In Allegedly Illicit Proceeds to Be Used To Fight COVID-19 and Address Medical Needs in Equatorial Guinea" (20 September 2021)

⁶³ *Ibid* 61.

BOX N°10 (SUITE)

had provided an emergency loan of US\$67 million to Equatorial Guinea on 15 September 2021 to help the government deal with the consequences of the pandemic and the Bata explosions.⁶⁴ A COVID-19 vaccination campaign and the provision of medical equipment could thus also fall within the scope of policies financed with the loan. Although using a United Nations agency and a charitable foundation to return funds from the sale of assets confiscated from Obiang Mangué limited the risk of misappropriation by bribers, **this dual use increased the risk that International Monetary Fund loan funds or assets returned by the United States could be misused.**

The funds could have been used differently for the benefit of the Equatoguinean population if there had been greater transparency in the negotiations, allowing Equatoguinean civil society or CSOs working with Equatoguinean civil society to alert the US authorities to this risk of duplication. In addition to posing an integrity risk, **this risk of duplication is also contrary to the goal of efficiency in the asset recovery process,** which means that the funds should not just be returned but also put to the best possible use.



MISCONCEPTION #3

BOX N°11

STOLEN ASSETS CANNOT BE RETURNED UNTIL THERE IS A CHANGE OF REGIME IN THE ORIGIN COUNTRY

Faced with the difficulties of returning illicit assets to origin countries when there has been no regime change or in the context of a humanitarian crisis, Switzerland has learned the lesson that “if the political will in the country of origin is lacking, the case cannot be resolved”.⁶⁵

Despite these difficulties, it is still possible to consider solutions other than returning the assets directly into the state coffers in the origin country. In such cases, it is important to focus on the purpose of any asset recovery process, namely to reallocate confiscated funds for the benefit of the affected populations. To this end, the destination country should endeavour to remove any obstacles preventing restitution. In particular, **the restitution of illicit assets should not be conditional:** it should not be subject to the fulfilment of certain requirements by the origin country. Clearly, it is not always possible to return the assets directly into the coffers of the origin country, when the individuals from whom they were confiscated are still in power, as the funds would risk falling back into the hands of the corruptors. However, restitution experiences, as well as some alternative avenues currently being explored, show that **even in the riskiest situations, restitution is possible, provided that adapted procedures and arrangements are put in place.**

⁶⁴ EG Justice, press release, “Equatorial Guinea: IMF Approves 67M Loan, Despite Rampant Corruption and Poor Governance” (18 September 2021)

⁶⁵ Swiss Federal Department of Foreign Affairs, *No Dirty Money – The Swiss Experience in Returning Illicit Assets* (December 2016), p.16

BOX N°11 (SUITE)

In some cases, depending on the situation in the origin country, it may be appropriate to shift from a development approach to a humanitarian aid approach, and to choose projects which can be implemented even without the cooperation of the authorities and institutions in the origin country, for example through intergovernmental organisations or NGOs.

In such cases, **even if the destination country cannot engage in dialogue with the origin country to carry out the asset recovery process, it is not absolved from consulting civil society, including CSOs based abroad with members who are nationals of the origin country.** In some instances, engaging in a dialogue with CSOs from the origin country, even if based abroad, could help to speed up the decision-making process when dialogue with the authorities of the origin country is unfruitful.⁶⁶

After the US Department of Justice had confiscated the assets of Obiang Mangué, who is still the vice president of Equatorial Guinea, the decision was made to return nearly US\$26 million – resulting from the sale of the confiscated assets – by funding a COVID-19 vaccination campaign and providing medicines and medical equipment. The returned assets were allocated according to a judge’s decision, after representatives from the United States and Equatorial Guinea had tried for several years to agree on the recipient projects. The choice was finally made to implement the programme through a United Nations agency and a charity.⁶⁷

In Canada, a bill is being debated in parliament that proposes to allocate assets confiscated from foreign perpetrators of human rights abuses or grand corruption offences for the benefit of forcibly displaced persons, refugees and the communities that receive them.⁶⁸

With regard to Venezuela, research has shown that Venezuelan assets could be repatriated through multilateral humanitarian organisations, even in the absence of a political transition.⁶⁹

Whatever solution is chosen, it is essential that the process of returning confiscated illicit assets abides by the principles of transparency, accountability and inclusiveness.

GOOD PRACTICES WHEN SELECTING RECIPIENT ENTITIES

Ensuring that returned assets are used properly is vital for an effective asset recovery process. It is therefore important to focus on the entities responsible for implementing the funded projects or programmes.

The aim is both to **ensure the best possible use of the returned funds** (by acquiring the most cost-effective services) and to **avoid abuses** (in particular, embezzlement or misappropriation). To this end, the competent authorities of the countries involved in the asset recovery process must ensure that all entities – whatever their nature – involved in implementing the recipient projects are selected following transparent procedures, guaranteeing genuine competition between candidates.

⁶⁶ See Box 10, p. 52

⁶⁷ See Box 10, p. 52 and Case study “US – Equatorial Guinea (2014-present): US\$30 million returned”, p. 93

⁶⁸ Bill S-259, *An Act respecting the repurposing of certain seized, frozen or sequestered assets*; Centre for International Governance Innovation, World Refugee Council, WRC Discussion Paper No. 2, *Using Frozen Assets to Assist the Forcibly Displaced: A Policy Proposal for Canada* (April 2018)

⁶⁹ The Inter-American Dialogue, *Corruption and Crisis in Venezuela: Asset Repatriation for Humanitarian Relief* (September 2020)



GOOD PRACTICES...

BOX N°12

...IN PUBLIC PROCUREMENT

The competent authorities should ensure that they follow **international good practices in public procurement**, including:

- **Establishing a clear, fair and transparent system for screening applicants:** Competent authorities should, *inter alia*, **implement mechanisms or procedures to prevent conflicts of interest** (for example by requiring all applicants to submit a declaration of interests and to disclose the identity of their beneficial owners); **check that bidders meet certain ethical requirements** (for example by checking, where appropriate, whether bidders are subject to a ban on bidding for contracts, to legal proceedings for breach of ethical or anti-corruption standards, etc.) and that they **are solvent**, etc. The award procedure should allow the competent authorities to exclude bidders where there is evidence of conflicts of interest, corrupt practices or unethical behaviour.
- **Ensuring that bidding information is fully transparent (ex-ante transparency):** Bidders should have access to all bidding information, including the deadlines for submitting and examining bids, the conditions for submitting a bid and the required documents, the selection and evaluation criteria, the award procedure, the identity of the agency or entity in charge of the selection, the award decisions, etc. The authorities of the origin country and the destination country should give priority to online information, preferably through a dedicated clear and accessible public procurement platform.
- **Making a fair and equitable selection**, by:
 - **Ensuring that the authority responsible for selecting bidders is independent and impartial.** In particular, individual members of this authority should not have a conflict of interest with any other bidders, and the procurement procedure must provide for the disqualification of members who are found to be in a conflict of interest.
 - **Ensuring the equal treatment of bidders:** Bidders must have access to the same information, at the same time, and be able to submit their bids within the same timeframe.
 - **Using clear and objective selection criteria that are communicated before the award decision is made** (for example, absence of conflicts of interest; requirements in terms of technical skills, experience and training; quality of the submitted bid in relation to the contracting authorities' expectations; cost, etc.). The contracting authorities should clearly set out their expectations – particularly in the specifications – as regards the procedures for awarding contracts, the objectives to be achieved, the payment arrangements, and the weighting methods for the selection criteria (i.e. the importance of each criterion in evaluating the bid).
- **Ensuring that all transfers of funds are transparent following the call for tender (ex post transparency):** The contracts concluded should be published; the lines of accountability at each level for authorising expenditures and approving directives under the contract should be clearly defined; and information on expenditures should be published promptly, preferably in real time. Again, all this documentation should ideally be published on a dedicated procurement platform that is clear and easy to access.

BOX N°12 (SUITE)

- **Establishing reporting mechanisms and access to effective remedies for stakeholders enabling them to challenge decisions related to the bidding process and contracts:**⁷⁰

If stakeholders suspect that there have been violations of laws and rules applicable to the various actors involved in the bidding process, they should be able to report them to the relevant authorities without fear of reprisal. Remedies should be available to challenge and redress potential irregularities. These should be available in a timely manner, guarantee the independent review of complaints, be effective, and allow for a quick resolution of disputes. In particular, unsuccessful bidders should be able to challenge award decisions where appropriate. Contracting authorities should provide for a standstill period between the award decision and the entry into force of the contract, so that unsuccessful bidders may still obtain the contract.

The authorities of the origin country and of the destination country may find it useful to draw on internationally recognised good practices in public procurement, including the practices set out in the following sources:

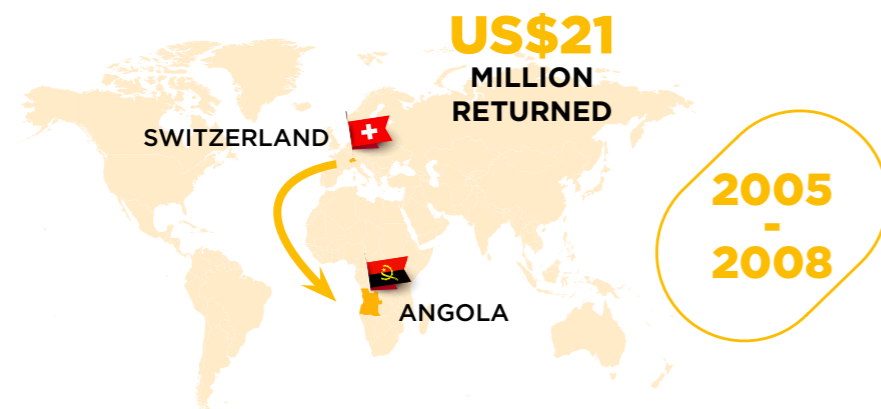
- OECD, *Recommendation of the Council on Public Procurement*, OECD/LEGAL/0411 (2015)
- OECD (2015), *Compendium of Good Practices for Integrity in Public Procurement*, GOV/PGC/ETH(2014)2/REV1 (2015)
- UNODC, *Guidebook on anti-corruption in public procurement and the management of public finances* (2013)
- UNODC, *A Strategy for Safeguarding against Corruption in Major Public Events*, esp. Chapter V, “Public Procurement” (2013)

⁷⁰ See Box 15, p. 62

CASE STUDY

BOX N°13

THE CONTROVERSY SURROUNDING THE APPOINTMENT OF A SWISS ARMS COMPANY TO IMPLEMENT THE DEMINING PROGRAMME USING FUNDS RETURNED BY SWITZERLAND TO ANGOLA: AN ILLUSTRATION OF THE NEED FOR TRANSPARENCY WHEN SELECTING RECIPIENT ENTITIES



CONTEXT

In 2004, Switzerland froze US\$21 million in a criminal investigation into allegations of corruption and money laundering involving Angolan officials. The complex case, known as “Angolagate”, was linked to embezzlement in connection with the restructuring of Angolan debt under a 1996 agreement with Russia. In **November 2005**, the Swiss and Angolan governments reached an agreement to return the money to Angola by means of two humanitarian projects: an agricultural vocational training project and a demining project.

THE NEED FOR TRANSPARENCY WHEN SELECTING RECIPIENT ENTITIES

The bilateral agreement between Switzerland and Angola, and more broadly the final allocation of assets, has been the subject of much criticism. In addition to the fact that the bilateral agreement between the two states was never published, many NGOs in Switzerland and Angola have complained that the funds allocated for demining were used to finance a project carried out by a Swiss arms company, without a public tender. The opportunistic nature of this decision, which favoured Swiss interests, was strongly criticised.⁷¹

⁷¹ Action Place Financière Suisse, the Berne Declaration and Global Witness, joint press release, “Restitution des fonds publics angolais détournés: Complicité entre la DDC et RUAG” (10 June 2008)

BOX N°13 (SUITE)

The Swiss arms company RUAG, which had no experience in demining,⁷² was awarded a contract worth US\$10 million from the returned funds without taking part in a tender. Several NGOs denounced this contract and asked the Swiss Agency for Development and Cooperation, which is responsible for coordinating projects on the Swiss side, to cancel the contract and organise a tender.⁷³ They claimed that RUAG did not have sufficient capacity for demining. The contract would therefore allow RUAG to receive a commission for using subcontractors capable of carrying out the demining, whereas these could simply have been selected directly through a call for tenders.⁷⁴

As the NGOs have pointed out, the intermediation of the Swiss company without any economic rationality, as well as the absence of a transparent call for tenders, prevented the maximum amount of funds from being invested for the benefit of the Angolan population,⁷⁵ thus greatly reducing the effectiveness of the asset recovery process and undermining civil society’s confidence. The Swiss company’s intermediation may have constituted an additional cost that went against the objective of making the best possible use of the restituted funds for the benefit of the victims.

CASE STUDY

BOX N°14

CHALLENGING THE ECONOMIC AND SOCIAL RATIONALITY OF MUCH OF THE EXPENDITURE ON PHILIPPINE LAND REFORM USING THE MARCOS ASSETS: QUESTIONING THE EFFECTIVENESS AND INTEGRITY OF THE ASSET RECOVERY PROCESS



⁷² Ram Etwareea, “Ruag proche d’un contrat de déminage en Angola” *Le Temps* (11 June 2008)

⁷³ Action Place Financière Suisse, Berne Declaration and Global Witness, joint press release, “Restitution of misappropriated Angolan public funds: Complicity between SDC and RUAG” (10 June 2008)

⁷⁴ *Ibid.*

⁷⁵ Simon Bradley, “NGOs attack Angola demining deal”, *Swissinfo* (13 juin 2008).

CONTEXT

Ferdinand Marcos was elected president of the Philippines in 1965. He declared martial law in 1972 in order to stay in power, before finally being forced into exile in the United States in 1986 following a popular uprising. Transparency International estimates that Marcos and his entourage embezzled between US\$5 million and US\$10 billion of public money during his years in power.⁷⁶

In **February 1986**, just hours after the dictator was overthrown, the Swiss government unilaterally ordered the freezing of all Marcos' assets in Switzerland. Shortly afterwards, the Philippine government filed a request for legal assistance with the Swiss authorities. In **1997**, the Swiss Federal Court issued a final decision recognising the illicit origin of the assets held by Marcos and his entourage and authorising the transfer of the funds to escrow accounts in the Philippines. US\$624 million (US\$365 million frozen in Switzerland, plus interest accrued while they were frozen) was finally returned to the Philippine treasury in **February 2004**, following a confiscation decision by the Philippine Supreme Court terminating the mutual legal assistance procedure.

The Swiss and Philippine authorities agreed to allocate the returned funds to land reform for the benefit of landless farmers (two thirds of the funds) and to compensate the victims of human rights violations committed under the Marcos regime (one third of the funds).

MANY OF THE LAND REFORM PROJECT'S EXPENDITURES DEEMED QUESTIONABLE

The implementation of the land reform project has led to numerous allegations of mismanagement and corruption.

Indeed, according to a joint report by the World Bank and the United Nations Office on Drugs and Crime, the Philippine Commission on Audit reportedly found that **a significant portion of the returned funds had been invested in excessive and wasteful spending that did not benefit the designated beneficiaries of the land reform.**⁷⁷

Furthermore, according to a report by the International Centre for Asset Recovery:⁷⁸

- More than US\$45 million covered operating expenses;
- More than US\$10 million was reportedly used to support a hybrid rice distribution programme, but the number of land reform beneficiaries who actually benefited from this assistance was not disclosed;
- More than US\$30 million was used for surveying, which exceeded the cost of land acquisition by more than US\$10 million.

The scale of institutional and survey spending thus contrasts sharply with spending that directly benefitted the poor peasants that the land reform project was intended to support.

In addition, there were allegations of corruption. In March 2006, a press release from the president of the Philippine Senate referred to **potential massive corruption in the purchase of fertilisers for farmers benefiting from agrarian reform**: almost 87% of the sum used to purchase fertilisers (amounting to almost US\$1 million) was allegedly overpriced.⁷⁹

Again, **the many potential cost overruns in the implementation of the land reform project not only go against the objective of making the best use of the funds returned to the affected populations, but also provide opportunities for misappropriation and corruption.**

It is therefore essential to ensure the economic and social rationality of the expenditure of returned funds before they are implemented, in order to guarantee the best possible use of the funds and to mitigate the risks of embezzlement, misappropriation and corruption, which are particularly high while recipient projects or programmes are being implemented.

GOOD PRACTICES IN MANAGING COMPLAINTS AND ALERTS

Complaints and alert mechanisms help to **mitigate risk** and provide **a means for stakeholders and civil society to raise concerns, report potential irregularities in the asset recovery process and remedy them**, where appropriate.

A good complaints and alert mechanism provides **a transparent, predictable, reliable and effective remedy for all stakeholders, leading to fair and equitable outcomes** (including corrective action). It thus helps to build public confidence in the asset recovery process. At the same time, it can help **develop a more systemic approach to identifying problems and finding solutions**, which can provide lessons for improving the restitution practices of both the origin country and the destination country.

These specific mechanisms **should not, however, replace the remedies available under ordinary law, which must remain fully available** to complainants and individuals raising alerts.

It is very important to establish such a mechanism when the project is being implemented, as communities affected by the projects (either materially – for example if the projects involve works that affect their living conditions – or because they are beneficiaries) must be able to report potential irregularities and express their concerns. These concerns must be heard and taken into account by the competent authorities and other stakeholders, including private actors.

As well as establishing this type of mechanism, the authorities must provide proper information to affected communities and raise awareness among stakeholders. Previous experience of complaints mechanisms and whistleblowing during development projects has shown that **it is essential not only for there to be no risk of reprisal for complainants or individuals raising alerts, but also for the entities concerned to encourage people to make complaints and alerts** at their highest level.

⁷⁶ Transparency International, *Global Corruption Report 2004*, p. 15

⁷⁷ UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 25

⁷⁸ Ignacio Jimu (International Center for Asset Recovery, ICAR), *Managing Proceeds of Asset Recovery: The case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009)

⁷⁹



GOOD PRACTICES...

BOX N°15

...IN MANAGING COMPLAINTS AND ALERTS

Several international organisations have developed principles and good practices for handling complaints and alerts, which can be useful for both the origin country and the destination country, as well as for other actors intervening in the asset recovery process:

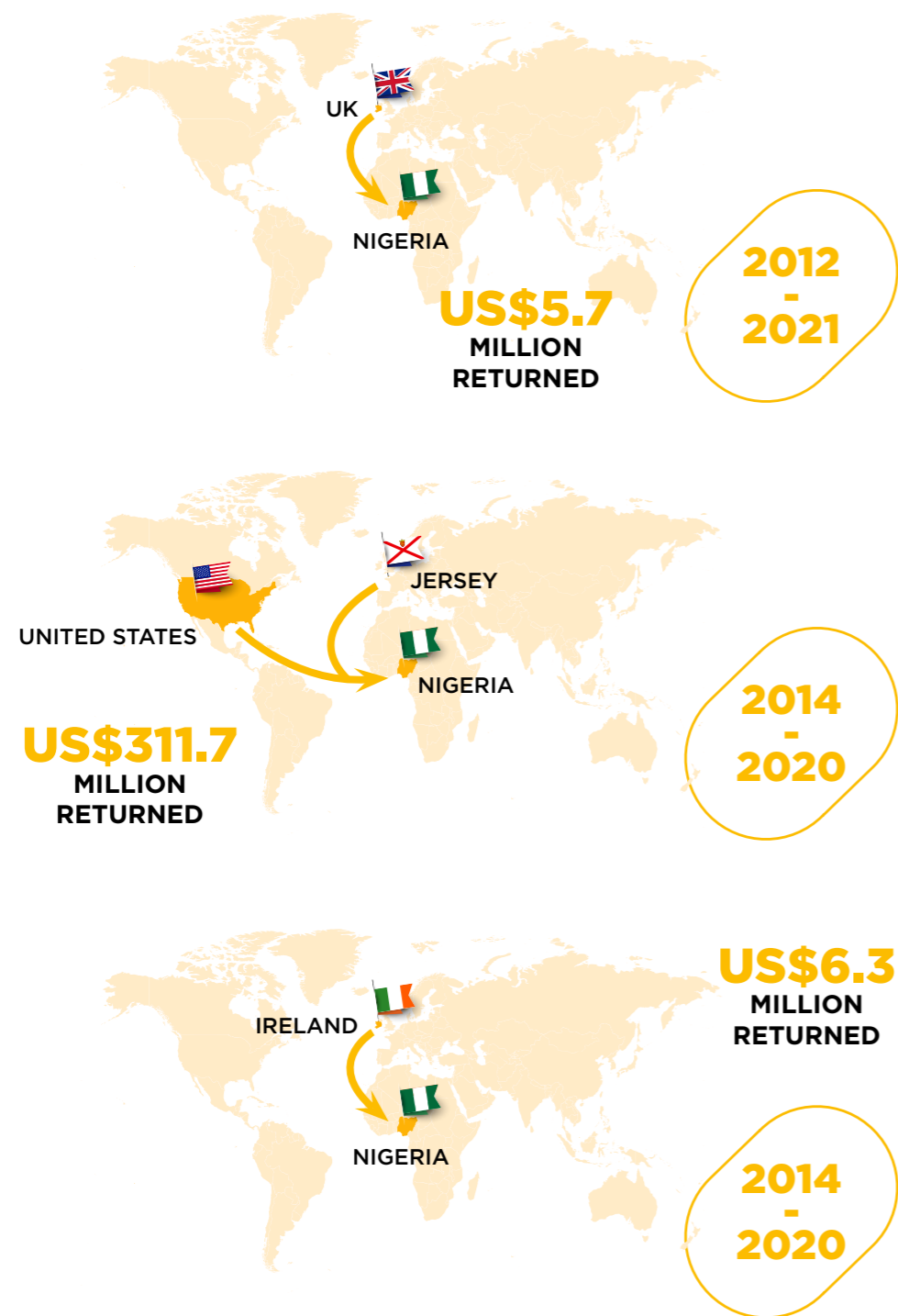
- **Developing procedures that are easily accessible, understandable and appropriate** (including culturally appropriate) for receiving, recording and processing complaints and alerts, in consultation with affected communities. The complaints and alerts mechanisms should be tailored to the risks and potential impact of the project, and traditional methods of dispute resolution within the origin country should be taken into account when they are designed. These mechanisms should be available throughout the asset recovery process.
- **Ensuring that the mechanism is accessible** to all sectors of the affected population, including vulnerable groups, and informing stakeholders and the general public affected by the asset recovery process (both in the origin country and in the destination country) that the mechanism exists.
- **Ensuring that there are no reprisals for complainants and other involved parties who file a complaint or raise an alert.**
- **Ensuring that there are clear criteria for admitting and assessing complaints and alerts**, so that they are not at risk of undergoing a subjective assessment.
- **Sharing out responsibilities** so that complaints and alerts are not handled by an isolated department. This helps to increase accountability and resolve the issues that are raised through complaints and alerts, in consultation with the affected communities where appropriate.
- **Entrusting the handling of complaints and alerts to qualified and experienced staff.**
- **Establishing remedies** so that complainants who are dissatisfied with the way their complaint or alert is handled or resolved can ask for it to be reviewed by an independent external body; and ensuring that affected stakeholders and communities are made aware that such remedies exist.
- **Recording complaints and alerts and the responses to them, while guaranteeing that the complainants or persons raising alerts remain anonymous, and reporting regularly on them.** Reports should be accessible to the public affected by the asset recovery process. Reports should also be regularly prepared and published on the problems identified through the complaints and alerts mechanism.

BOX N°15 (SUITE)

There is no ideal model or one-size-fits-all approach to complaints, grievances and alert mechanisms. The specific issues, cultural context and local customs should be taken into account when designing mechanisms, as well as the conditions and scale of the projects or programmes. However, the practices outlined above have been identified as key aspects to consider. To learn more, the competent authorities in the origin country and destination country, as well as other actors involved in the asset recovery process, may consult the following sources:

- Compliance Advisor Ombudsman, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects, Advisory Note* (2008)
- International Finance Corporation, *Addressing Grievances from Project-Affected Communities. Guidance for Projects and Companies on Designing Grievance Mechanisms*, Good Practice Note (2009)
- Compliance Advisor Ombudsman, *Grievance Mechanism Toolkit* (2016)

THE CHALLENGES FACED BY CIVIL SOCIETY ACTORS WHEN VOICING THEIR CONCERNS OVER THE FINANCING OF INFRASTRUCTURE PROJECTS WITH RETURNED FUNDS IN NIGERIA: AN ILLUSTRATION OF THE NEED TO SET UP SPECIFIC CHANNELS



As discussed above, there has been widespread controversy over decisions to allocate funds returned by the United Kingdom, the United States, Jersey and Ireland to the Lagos to Ibadan Expressway, the Abuja to Kano Road and the Second Niger Bridge, particularly in view of the fact that Nigerian civil society was not consulted.⁸⁰

Nigerian CSOs challenging the allocation of funds to the federal government through the UK restitution have indicated that they are considering legal action.⁸¹ A coalition of anti-corruption CSOs has also written an open letter to the UK High Commissioner.⁸² The CSOs are disputing the fact that two of the projects that were allocated funds are located outside of Delta State, where the returned funds were originally stolen.

Although the three restitution agreements with the United Kingdom, the United States and Jersey, and Ireland, respectively, generally contain safeguards to ensure that funds do not fall back into corrupt hands, they do not seem to provide for specific accountability mechanisms.

These safeguards are criticised as being particularly inadequate because, as one US senator has pointed out,⁸³ there is a significant risk that the returned funds will fall into corrupt hands. The effectiveness of these safeguards depends to a large extent on whether Nigerian law is applied, in particular public procurement procedures. However, some have pointed to the inadequacy of these procedures⁸⁴ as a breeding ground for corruption.⁸⁵

Indeed, the Nigerian press recently echoed the **concerns of the House of Representatives**, which questioned several senior officials in May 2021, including the Accountant General of the Federation, because funds from Ireland were reportedly not credited to the Nigeria Sovereign Investment Authority account.⁸⁶

Ultimately, the difficulties in tracing UK, US, Jersey and Irish restitution funds, given that they were allocated to infrastructure projects already financed by Swiss restitution funds, and the multiple challenges that followed, **illustrate the need for effective ad hoc accountability mechanisms for handling challenges, claims and whistleblowing in order to take timely corrective measures or actions** before the rendered money is permanently misappropriated. **In the absence of such mechanisms, the various challenges have been made through a variety of channels, but so far without success.**

⁸⁰ See Box 8, p. 47. See also Case studies "UK - Nigeria (2012-2021): \$5.7 million returned", p. 96, "US - Jersey - Nigeria (2014-2020): \$311.7 million returned", p. 82, and "Ireland - Nigeria (2014-2020): \$6.3 million returned", p. 80.
⁸¹ Civil Forum for Asset Recovery (CiFAR), "The Ibori Loot: The controversy surrounding the destination of the returned money", CiFAR (15 June 2021); Festus Ahon, "REPATRIATED £4.2M: Group vows to drag FG to court", Vanguard Nigeria (12 March 2021); Bridget Edokwe, "4.2m Ibori loot: Niger Delta group drags FG to Court", BarristerNG.com (17 March 2021); Spotlight on Corruption, "James Ibori: Confiscating the corrupt assets of a Nigerian Governor", Spotlight on Corruption; Taiwo Adebulu, "Sagay: Using £4.2m Ibori loot for projects outside Delta unacceptable", The Cable (11 March 2021); Aneej Nigeria, "Return £4.2m Recovered Ibori Assets To Delta State. ANEEJ Tells FG, UK", Africa Network for Environment & Economic Justice (ANEEJ) (9 March 2021)
⁸² Africa Network for Environment and Economic Justice (ANEEJ), HEDA Resource Centre, Civil Society Legislative Advocacy Centre (CISLAC), Actionaid Nigeria, Resource Centre for human Rights & Civic Education (CHRICED), Centre for Democracy and Development (CDD), Policy Alert, Africa Centre for Leadership, Strategy and Development (LSD Centre), 21st Century Community Empowerment for Youth and Women Initiative (CEYWI), Community Empowerment and Development initiative, Delta State Civil Society Roundtable on Grand Corruption Open Letter to the UK Government on the Return of Chief Ibori Loot to Nigeria (20 April 2021)
⁸³ Libby George, "Nigeria rejects U.S. senator's query over \$300 million Abacha loot repatriation", Reuters (10 April 2020)
⁸⁴ Rachael Hanna, "The Trilateral Nigeria-US-Jersey Agreement to Return Nigerian Dictator Abacha's Assets: A Preliminary Assessment", The Global Anticorruption Blog (24 April 2020)
⁸⁵ Emmanuel Onwubiko, "Weak public procurement breeds corruption", The Guardian Nigeria News (7 March 2018)
⁸⁶ Hassan Muaz, "Reps query 'missing' 5.5 million Euro recovered fund", The Eagle Online (26 May 2021); Bakare Majeed, "Recovered Loot: Reps give Accountant General 48 hours to account for 'missing' €5 million", Premium Times Nigeria (25 May 2021); Tordue Salem, "Reps summon AGF over alleged missing £5.5m", Vanguard Nigeria (27 May 2021)

GOOD PRACTICES IN MONITORING AND EVALUATION

Monitoring the implementation of recipient projects and evaluating the asset recovery process are important steps for both the origin country and the destination country. They are both responsible for the proper use of the returned funds.

Monitoring and evaluation should be fully integrated into the project cycle and be an integral part of the asset recovery process from the outset. Monitoring and evaluation are linked to the fulfilment of the intermediate and final objectives of the asset recovery process, which should be identified when the ad hoc agreements have been fully negotiated. It is therefore recommended that the destination country and the origin country adopt the monitoring and evaluation arrangements as early as possible. **No transfer of funds should take place until the monitoring and evaluation arrangements have been defined.**

Monitoring and evaluation have two general objectives:

- **To ensure that the actors involved in the asset recovery process are held accountable,** whether they are the entities receiving the funds, responsible for implementing the recipient projects or programmes, or the public authorities involved in the various stages of the asset recovery process.
- **To learn from the restitution experience** (both failures and successes) in order to improve the performance of recipient projects or programmes, and more generally to improve practices, in view of future asset recovery processes.

What is monitoring?

Monitoring is continuous review by the various stakeholders, as the funded projects or programmes are implemented, of the progress – or lack of progress – made in achieving the expected results, with the aim of monitoring compliance with the upstream implementation plan and taking the necessary decisions to improve performance, if required. Monitoring provides managers and key stakeholders with regular feedback on the consistency or inconsistency between planned and implemented activities, and on the performance and results of funded projects or programmes.

What is evaluation?

The purpose of evaluation is to provide a systemic, objective and independent examination of the asset recovery process (its design, implementation and results), in order to determine, *inter alia*, whether the objectives defined beforehand are relevant and have been fully achieved, whether the asset recovery process is effective, and whether the projects or programmes being funded are sustainable.

Monitoring and evaluation are closely linked.

Good monitoring will provide relevant and reliable data that should be used to evaluate projects. Monitoring and evaluation share common objectives: to provide information to aid decision-making, to improve performance, and to achieve the expected results and objectives. If projects are not monitored and evaluated properly, it is difficult to know whether the expected results have been or are being achieved within the planned timeframe, to identify the corrective actions needed to achieve these results, and to know whether the asset recovery process is actually contributing to improving the well-being of the affected populations.

They must therefore be planned at the same time and meet certain shared requirements:

- **Defining objectives:** The intermediate and final objectives of the asset recovery process must have been defined before the monitoring and evaluation phase: monitoring and evaluation always relate to predefined results and objectives.
- **Precondition for transferring funds:** No funds should be transferred until the arrangements for the monitoring and evaluation process have been defined.

- **Planning:** Monitoring and evaluation should be **planned and scheduled**. In particular, monitoring activities should be planned with the evaluation process in mind, as the existence of a clear monitoring model (defining the expected results, the data that monitors should collect, etc.) will determine the focus of the evaluation.

The monitoring and evaluation plan should be included, where appropriate, in the mandates given to monitors and evaluators, and should specify:

- o The composition of the monitoring and evaluation teams (including the roles and responsibilities assigned to the entities and individuals in charge of the monitoring and evaluation process) and the partners involved;
- o The objectives of the monitoring and evaluation process and their respective scope of activity (the activities monitored or evaluated);
- o The names of the recipients of the findings, conclusions and recommendations;
- o The methods used for the evaluation (the qualitative and/or quantitative evaluation methods chosen, etc.);
- o The baselines, indicators and criteria used, and the sources of verification;
- o The time and financial resources (and their source) that will be needed to carry out the monitoring and evaluation process;
- o The conditions for implementing the monitoring and evaluation process.

Depending on the situation, specific monitoring and evaluation sub-plans can also be drawn up, for example in the framework of sub-projects.

- **Accountability:** Roles and responsibilities, as well as the place of monitoring and evaluation in the asset recovery process, should be clearly defined. In addition, it is essential that monitors and evaluators are held accountable for their activities, and the authorities of the destination country and the origin country should be able to trigger the appropriate mechanisms when monitors and evaluators have failed to fulfil their reporting obligations (for example, termination of contract) or when they have failed to report certain irregularities (for example, contractual penalty clause, or legal action by the competent authorities of the origin country and the destination country if the failure is the result of fraud or wilful omission).

- **Transparency:** The monitoring and evaluation process should be as open as possible and its results as widely disseminated as possible. To this end, reporting obligations should be imposed on monitors and evaluators. They should publish the results of their work, in the form of reports or other types of clear and understandable documents (so that the public can understand them), containing at least an executive summary, a reminder of the activities and items monitored or evaluated, a description of the monitoring or evaluation methods used, the main findings, the lessons learned, and, where appropriate, the conclusions and recommendations.

- **Usefulness:** The results of the monitoring and evaluation process should be used to improve project or programme performance (including during implementation, especially when funds are disbursed in stages) and to design better restitution policies. To this end:

- o Monitoring and evaluation should be implemented at the right time: they should not be a simple *ex post* exercise, but rather have a place while recipient projects or programmes are being implemented. The schedule of the monitoring and of the evaluation should be adapted to the objectives pursued. For example, where the evaluation of a specific outcome is used to determine whether a change in strategy is required at a specific stage of the project, the evaluation of that outcome should take place early enough to allow that change to be applied;

o The results should not only be accessible to the public at large, but should also receive feedback from all actors involved.

• **Access to resources:** Monitors and evaluators should have the means to carry out their tasks. The necessary financial resources should be allocated to the monitoring and evaluation, and monitors and evaluators should have access to all necessary information and relevant sites.

• **Independence and impartiality:** The monitoring and evaluation process must be impartial, with no links to the authorities in the destination country or the origin country, or more generally to any actors involved in the asset recovery process. In particular, the evaluation team should not include any staff directly or indirectly involved in the activities evaluated or their results. The requirement of impartiality and independence must be complied with at all stages of the monitoring and evaluation process. It has several goals:

o Impartiality ensures that analyses, conclusions and results are not biased or distorted, thus yielding more reliable results;

o The independence of monitors and evaluators with regard to stakeholders, including the destination country and the origin country, is intended to prevent the conflict of interests that would necessarily arise if those responsible for designing and implementing the asset recovery process were solely responsible for monitoring and evaluating their own actions.

• **Reliability:** Both the origin country and the destination country should take steps to ensure that the monitoring and evaluation process is both reliable and legitimate. Reliability depends on the expertise, independence and impartiality of monitors and evaluators, the transparency of the monitoring and evaluation process, and the methods used. It also requires monitors and evaluators to report on both successes and failures in the implementation of recipient projects or programmes and in the overall asset recovery process.

• **Quality control:** Monitoring and evaluation should be subject to quality control, both when the monitoring and evaluation process is designed (*ex-ante* control) and when it is completed (*ex post* control):

o *Ex-ante* quality control ascertains, in particular, whether the monitoring and evaluation arrangements are appropriate to the objectives pursued; whether the monitors and evaluators meet the requirements (for example, being impartial and independent, having no conflicts of interests, and having sufficient expertise) and were selected following a competitive process; and whether the arrangements taken will guarantee that the monitoring and evaluation process is reliable and that the findings are credible;

o *Ex post* quality control ascertains, *inter alia*, whether monitors and evaluators have followed the predefined methods and processes (and whether action has been taken to correct any deviations from these methods and processes, if necessary); whether the findings, conclusions and recommendations issued are consistent and of high quality, and comply with the terms of reference set out beforehand; whether there has been sufficient consultation with all stakeholders, including civil society, and whether monitoring and evaluation reports have been written in an appropriate style and format.

While the monitoring and evaluation processes have some similarities in their objectives and, to that extent, share some common requirements, a distinction should still be drawn between them.

In doing so, the authorities of the destination country and the origin country will need to ensure that they take into account the critical points specific to each of the two processes.



GOOD PRACTICES...

BOX N°17

...IN MONITORING

Monitoring should help **identify progress and problems as they occur**, in order to report them (in monitoring reports), draw lessons from past experiences, support decision-making processes based on the empirical data collected, and adapt and redefine strategies and guidelines for implementing recipient projects or programmes. Monitoring – rather than evaluation – is **geared towards the project implementation process**.

In order to be effective, monitoring should:

- Be based on **the prior identification of risks and assumptions that justify the monitoring activities** and that are likely to influence these monitoring activities or the quality of the data collected;
- **Be continuous**, i.e. be carried out throughout the implementation phase of the recipient projects or programmes. Thus, monitoring must allow information to be collected in real time;
- **Be implemented at several levels:** monitoring must be the work of all stakeholders involved in selecting, planning and implementing recipient projects or programmes. Effective monitoring should therefore be carried out by designated monitors within each of the entities – public and private – involved at each of these levels;
- **Provide for data collection, feedback to decision-makers, analysis and use of the collected data** to inform decision-making, thereby enabling objectives and outcomes to be met, including by taking corrective measures where necessary;
- Enable any **progress made to be assessed against specific baselines and based on clear and objective criteria and indicators**, defined beforehand;
- **Involve different stakeholders, including civil society, by using participatory monitoring mechanisms**, such as focus groups (made up of stakeholders with diverse perspectives), stakeholder meetings, steering committees, surveys and field missions. These mechanisms should involve civil society, including the beneficiaries of recipient projects or programmes;
- Plan **regular visits to relevant sites**;
- Identify **the progress made and the problems encountered, and any contributing factors**. It is helpful to make an **overall analysis of the context** (including any economic, societal and political developments that may be beneficial or detrimental to the recipient projects or programmes);
- Identify, where appropriate, any issues that need to be addressed in the evaluation phase.

BOX N°17 (SUITE)

Stakeholders may find the following template useful for planning the monitoring phase, based on the planning matrix developed by the United Nations Development Programme,⁸⁷ which outlines the key aspects to consider:

Baselines	What are the baselines used to measure progress? Based on which criteria?
Indicators	What are the expected results and objectives? What are the targets used to measure progress? The expected results (by stages of implementation) are determined when the projects or programmes are in the planning phase. The intermediate and final objectives are defined at the outset of the asset recovery process. Progress (or lack of progress) is measured against the expected results, taking into account the pre-determined implementation schedule and the predefined objectives.
Expected results	
Objectives	
Activities to be monitored	What data should be collected?
Method of data collection	How/when is the data collected (for example, by means of a survey, at a stakeholder meeting, etc.)?
Timing and frequency	When and how often should data collection take place? The level of detail included in the timeline depends on the specific needs of the asset recovery process.
Risks	What are the risks and assumptions that justify the monitoring activities? How might these risks and assumptions affect monitoring activities or the quality of data collected?
Resources	What resources should be mobilised to conduct monitoring activities?
Responsibilities	Who is responsible for collecting the data and analysing its quality and sources?
Sources of verification (data source and type)	Where can the data be found? This means indicating the sources and location where the necessary data can systematically be found.
Feedback	Who should the findings be reported to?
How the findings are used	How are findings taken into account in decision-making? What is their impact on strategies and guidelines for implementing recipient projects or programmes?



GOOD PRACTICES...

BOX N°18

...IN EVALUATING

Evaluating the asset recovery process allows for a systemic and objective examination of its design, implementation and results, while ensuring that the various actors involved are performing the tasks assigned to them. It **guarantees a responsible process that draws lessons for future asset recovery processes**. To this end:

- An evaluation policy with clear guidelines and methods should be developed to produce **reliable and useful information** that will allow both the destination country and the origin country to draw lessons for their asset recovery policies. **Evaluators should strive to identify the reasons behind any successes or failures.**
- In addition to the aspects common to the planning of both monitoring and evaluation, as outlined above, the evaluation plan and the evaluation team's mandate should **identify the norms and standards used to measure the project or programme's performance and establish the issues that will be examined during the evaluation, which will form the basis for the conclusions and recommendations made.** However, the mandate should be flexible enough to allow the evaluation team to choose the appropriate methods for collecting and analysing data.
- **Both the destination country and the origin country should be involved in the evaluation process.** The evaluators' mandate should allow them to address the concerns of both countries.
- Where relevant, **the evaluation should incorporate feedback collected from the groups affected by the projects**, because it will be of higher quality if the affected populations and civil society are allowed to participate.

With regard to the evaluation objectives, evaluators may wish to consider an approach based on the six criteria developed by the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee for evaluating development assistance:

- **Relevance:** The evaluation should assess whether the decisions taken in the context of the asset recovery process meet the priority needs of victim populations.
- **Consistency:** The evaluation assesses the extent to which decisions taken during the asset recovery process are consistent with other actions undertaken in the origin country or the destination country. This includes whether other actions support or undermine the objectives pursued by the recipient projects or programmes, and conversely whether these projects support or undermine the objectives pursued by other policies.
- **Effectiveness:** The evaluation assesses the extent to which the objectives of the asset recovery process have been or are being achieved. Where relevant, the evaluation investigates whether the projects have been differentially effective for the groups concerned.

⁸⁷ UNDP, *Handbook on Planning, Monitoring and Evaluating for Development Results* (2009), Table 14, p. 85.

BOX N°18 (SUITE)

- **Efficiency:** The evaluation measures whether the returned funds are or were used optimally, i.e. whether the results were achieved in the best possible way, with the best value for money and on time (considering the original timeframe or any adjustments made to take account of changed circumstances). The evaluation should identify and report any irregularities in tendering processes that may have limited the efficiency of the asset recovery process.
- **Impact:** The evaluation examines the extent to which the asset recovery process has generated or is likely to generate long-term effects, whether positive or negative, expected or unexpected. The aim is to measure the scope (in terms of time, space, etc.) and possible transformative effects of the asset recovery process, from a social, environmental and economic point of view, beyond the immediate effects measured through the effectiveness criterion. This evaluation criterion makes it possible to determine the indirect, secondary or potential impacts of the asset recovery process through an analysis of the global and sustainable changes it generates in the origin country and its possible effects on the well-being of the affected populations.
- **Sustainability:** The evaluation examines the extent to which the benefits of the asset recovery process will or are likely to last. Depending on when the evaluation is carried out, this criterion measures the benefits of the asset recovery process or the likelihood that these benefits will continue in the medium to long term.

The practices outlined above are based on the following sources, which may be useful for the authorities in the destination country and the origin country, as well as for the other actors in the asset recovery process involved in monitoring and evaluation:

- OECD, Development Assistance Committee (DAC), *DAC Principles for the Evaluation of Development Assistance* (1991)
- OECD, DAC Network on Development Evaluation (EvalNet), *Evaluation Criteria*
- OECD, *Quality Standards for Development Evaluation*, DAC Guidelines and Reference Series (2010)
- OECD, *Applying Evaluation Criteria Thoughtfully* (2021)
- UNDP, *Handbook on Planning, Monitoring and Evaluating for Development Results* (2009)
- United Nations Evaluation Group, *Norms and Standards for Evaluation* (2016)
- UNDP, Independent Evaluation Office of UNDP, *UNDP Evaluation Guidelines* (2021)

CASE STUDY

BOX N°19

FROM ABACHA I TO ABACHA II, LESSONS LEARNED FROM 15 YEARS OF ASSET RECOVERY EXPERIENCE: FORMALISING THE ROLE OF CIVIL SOCIETY IN MONITORING AND EVALUATING THE ASSET RECOVERY PROCESS TO ENSURE ITS EFFECTIVENESS AND INTEGRITY



CONTEXT

Between 1993 and 1998, General Sani Abacha, former head of state of Nigeria, is alleged to have embezzled between US\$3 billion and US\$5 billion of public funds.⁸⁹ These funds were laundered through family members and close associates in several countries, including the United Kingdom, Switzerland, France, Luxembourg and Liechtenstein.

When Abacha died, some of this money was located in Switzerland, where almost US\$700 million was frozen. In **2005**, a Swiss court authorised the return of US\$458 million to Nigeria, irrespective of any confiscation order issued in Nigeria. In April **2004**, Switzerland had already returned some US\$200 million.⁹⁰ A third tranche, totalling US\$44 million, was returned in **2006**.⁹¹ Finally, a further US\$7 million was returned in March **2010**.⁹² These first transfers from Switzerland to Nigeria of assets embezzled by Abacha are commonly referred to as the Abacha I case. In total, more than US\$700 million was returned.

⁸⁸ See Case Study "Switzerland - Nigeria (2005-2006): US\$723 million returned", p. 107.

⁸⁹ Transparency International, "Returning Nigerians' Stolen Millions" (3 August 2018).

⁹⁰ Stéphanie Germanier, "La Suisse restitue l'essentiel des fonds Abacha au Nigeria", *Le Temps* (17 February 2005).

⁹¹ RTS, "La Suisse restitue les fonds Abacha au Nigeria", *RTS* (28 June 2010).

⁹² *Ibid.*

THE MONITORING OF THE ASSET RECOVERY PROCESS

The Abacha funds returned to Nigeria were used to finance development projects for the poor and rural population in public health and education, and to build public infrastructure (roads, water and electricity supply).

According to a 2006 World Bank report, the agreements governing the return of the Abacha funds did not provide for specific budget implementation arrangements and did not require the Nigerian government to disclose the projects receiving the funds.⁹³ The Nigerian government decided to implement the projects financed with the returned funds as part of its regular budget programming.

Furthermore, **the terms for monitoring the use of the returned funds were only determined after the first transfers had been made.**⁹⁴ Indeed, **the World Bank was only mandated to monitor the use of the funds after the fact.**

This ex-post control prevented the Abacha assets from being properly monitored and created opportunities for the budget to be manipulated.⁹⁵ Indeed, while the Abacha assets were returned by Switzerland to Nigeria between 2005 and 2006, these funds were actually used to finance projects which were part of the 2004 budget year. According to the World Bank report, due to insufficient budgetary allocations in 2004, spending agencies used part of the Abacha assets to clear delays in payments that should have been made in 2004. As a result, some projects completed in 2004 were financed by Abacha assets returned between 2005 and 2006.

The independent monitoring conducted by CSOs has led to even more far-reaching conclusions. According to some CSOs, the returned funds were only used to cover shortfalls in existing projects, and half of the projects due to be financed with the returned funds were never implemented.⁹⁶ Some of the funds reportedly “disappeared” from the Nigerian government’s accounting system, and it was impossible to trace all expenditures made with the funds.⁹⁷ In an independent report, Nigerian CSOs even indicated that several projects were never completed or were abandoned along the way.⁹⁸ The authors of the report noted that contractors involved in implementing the projects, such as government officials, had been uncooperative during their monitoring activities, and called for an investigation into alleged corruption.⁹⁹



⁹³ World Bank, *Utilization of Repatriated Abacha Loot: Results of the Field Monitoring Exercise* (December 2006).

⁹⁴ *Ibid.*, p. 6.

⁹⁵ *Ibid.*

⁹⁶ RTS, “La Suisse restitue les fonds Abacha au Nigeria”, *RTS* (28 June 2010).

⁹⁷ Julia Crawford, “Is the Abacha accord a model for returning ‘dictator funds?’”, *Swissinfo* (15 March 2018).

⁹⁸ Nigerian Network on Stolen Assets (NNSA), *Shadow Report on the PEMFAR Monitoring Exercise* (2006).

⁹⁹ *Ibid.*, p. 64; Public Eye, press release, “Abacha funds: catastrophic repatriation by Swiss authorities” (19 April 2002).

¹⁰⁰ See Case study “Switzerland – Nigeria (2015-present): US\$321 million returned”, p. 90.

CONTEXT

The Swiss judicial authorities also investigated the assets of Abba Abacha, the son of the late Nigerian dictator. Through mutual legal assistance, funds illicitly acquired by the Abacha clan, deposited in Luxembourg, were seized and repatriated to Switzerland in 2014.¹⁰¹ In **February 2015**, the Geneva Public Prosecutor’s Office ordered these funds to be confiscated, and US\$321 million returned to Nigeria.¹⁰²

On **4 December 2017**, Switzerland concluded a tripartite Memorandum of Understanding with Nigeria and the World Bank on the terms and conditions for the return of the Abacha clan’s assets, in the context of the Global Forum on Asset Recovery (GFAR).¹⁰³

MONITORING THE ASSET RECOVERY PROCESS

The restitution agreement concluded by Switzerland and Nigeria with the World Bank specifies that the funds will be returned “for the benefit of the people of Nigeria”, as part of a project supported and supervised by the World Bank, aimed at strengthening the social security of the poorest sectors of the Nigerian population. The money returned was to be used exclusively to fund a Conditional Cash Transfer programme.¹⁰⁴

The Swiss and Nigerian governments made the transfer of funds conditional on the World Bank monitoring the asset recovery process. The World Bank was asked to monitor the return process under the same conditions applied when the International Development Association – one of its agencies – monitors the use of loaned funds. It was also asked to prepare monitoring reports for both Nigeria and Switzerland, review the financial reports provided by the Nigerian government, and forward them to Switzerland, along with any comments.

In addition to being monitored by the World Bank, the Abacha II process, drawing on the lessons learned from the Abacha I case, made sure that civil society was involved in monitoring the use of the returned funds, as Nigeria had committed to doing in the restitution agreement. Nigerian CSOs were able to participate in the negotiations,¹⁰⁵ and were also given a formal role in the monitoring process. The participation of Nigerian CSOs in monitoring the asset recovery process was fully funded by the UK government’s Department for International Development. **Nigerian civil society, coordinated by the African Network for Environment and Economic Justice in a coalition of NGOs, developed its own monitoring and tracing tool known as the MANTRA project.**¹⁰⁶ The project had two objectives: to raise public awareness of the Nigerian government’s management of returned assets, and to train local organisations and citizens in monitoring and overseeing the return of misappropriated funds. **More than 500 monitors were deployed in all Nigerian states where the funds were to be returned.**¹⁰⁷

¹⁰¹ Sylvain Besson, “Affaire Abacha: la Suisse rend 321 millions de dollars au Nigeria”, *Le Temps* (5 December 2017).

¹⁰² Swiss Federal Department of Foreign Affairs, *No Dirty Money – The Swiss Experience in Returning Illicit Assets* (December 2016).

¹⁰³ Swiss Federal Council, press release, “Restitution of USD 321 million by Switzerland to Nigeria under World Bank oversight: signing of a tripartite agreement” (4 December 2017).

¹⁰⁴ Conditional Cash Transfer programmes (CCTs), also known as conditional programmes, aim to combat poverty by making the payment of social assistance conditional on the recipient fulfilling certain obligations or criteria. These criteria can be, for example, to send their children to school, to have them undergo regular medical check-ups, or to have them vaccinated. According to the World Bank, these transfers provide money directly to poor families as part of a social contract, while allowing for long-term investment in human capital.

¹⁰⁵ Julia Crawford, “Is the Abacha accord a model for returning ‘dictator funds?’”, *Swissinfo* (15 March 2018).

¹⁰⁶ For more information on the MANTRA project, see ANEEJ, *Role of Citizens in the Implementation of Conditional Cash Transfer Programme* (September 2018).

¹⁰⁷ ANEEJ, “ANEEJ Launches Report on the Implementation of 2016 London Anti-Corruption Summit and GFAR Commitments in Nigeria” (13 February 2019).

BOX N°19 (SUITE)

According to several NGOs, the MANTRA project has been a success. The monitoring carried out by Nigerian civil society helped to prevent the misappropriation of part of the returned funds, particularly in the first half of 2019 in a tense electoral context. The MANTRA project has also helped to train nearly 500 Nigerian citizens in the control and monitoring of the transfer of these funds, thus enabling them to develop practical and technical knowledge in this area, while preventing any further embezzlement of the funds.

Moreover, while the monitoring carried out by the World Bank was conducted according to standard terms and conditions – for the Abacha II case, the same terms and conditions were applied as used to monitor the use of funds lent by the International Development Association – **the monitoring exercise conducted within the framework of the MANTRA project, specific to the asset recovery process, made it possible to highlight specific aspects and make practical analyses based on data collected on the ground and in consultation with civil society, in order to make specific recommendations to improve the asset recovery process.** The monitoring conducted by CSOs through the MANTRA project has highlighted several persistent obstacles, including delays and shortcomings in reporting on the use of funds, the number of beneficiaries and the processing of claims; in the provision of information to beneficiaries; and more generally in the publishing of information on the programme for the general public, including breaches of confidentiality rules. As a result, the African Network for Environment and Economic Justice has made various recommendations to improve practices and procedures in these areas.¹⁰⁸

Overall, the MANTRA project reports that the Conditional Cash Transfer programme has been successful in improving the living conditions of the beneficiary households. The programme is still ongoing to date. According to the World Bank's implementation status and results report of February 2021, over 1.3 million households were registered in the programme.¹⁰⁹ **The developments in monitoring and evaluation that occurred between Abacha I and Abacha II demonstrate the real added value of involving CSOs in the monitoring and evaluation process.**

BOX N°20 (SUITE)

This approach may lead some destination countries to show more flexibility with regard to transparency and accountability standards, thereby increasing the risk of misappropriation.

Over the past decade, the World Bank has overseen several asset recovery processes in Nigeria and Central Asia. A study published by the Bank Information Center identified several problems inherent in the way the World Bank monitors the processes¹¹⁰ and raised the issue of why the World Bank was selected as the supervisory body.¹¹¹ The study also noted that the success of some restitution experiences in which the World Bank has been involved were due to CSOs' ability to independently monitor and report on the asset recovery process.

For example, the World Bank's role in the so-called Kazakhstan II asset recovery process, in which Switzerland returned almost US\$49 million to Kazakhstan following a 2012 agreement between Switzerland and the World Bank, has been heavily criticised. Because of the restitution terms chosen by Switzerland, the integrity of the asset recovery process depended exclusively on whether applicable World Bank project financing instruments were implemented, and on the agreements between the World Bank and the Kazakh entities in charge of the recipient programmes. However, the report by the Bank Information Center showed that these World Bank instruments, and the nature of the World Bank itself, proved inadequate,¹¹² particularly as they failed to guarantee that stakeholders had no links to the Kazakh government. These failings led to various irregularities and the questionable allocation of part of the returned funds, which were not all used for the benefit the poorest sectors of the Kazakh population.¹¹³

When selecting the actors that will play a role in the asset recovery process, be they intergovernmental organisations, NGOs or private sector actors, the highest standards of transparency and accountability must be maintained in order to prevent conflicts of interests and guarantee the integrity and effectiveness of the asset recovery process.



MISCONCEPTION #4

BOX N°20

THE TRANSPARENCY AND ACCOUNTABILITY REQUIREMENTS ARE SUFFICIENTLY SATISFIED WHEN AN INTERGOVERNMENTAL ORGANISATION IS INVOLVED IN THE ASSET RECOVERY PROCESS

Involving an intergovernmental organisation in the asset recovery process is often seen as a guarantee of integrity, and is promoted as such by states affected by the process. However, its involvement does not necessarily protect against irregularities.

Intergovernmental organisations are often seen by destination countries as best placed to design and manage the programmes that will benefit the citizens of the origin countries, and as neutral intermediaries whose involvement in the process alone is sufficient to ensure the proper management of returned funds.

¹⁰⁸ ANEEJ, *Monitoring Report of the Utilization of The Recovered Abacha Funds in the August-September 2018 Payment Round of the Conditional Cash Transfer Programme* (2019), pp. 36-40.

¹⁰⁹ World Bank, National Social Safety Nets Project (P151488), *Implementation Status & Results Report* (February 2021) (Report No. ISR45236).

¹¹⁰ Bank Information Center, *World Bank Oversight of Asset Return: Lacking a Clear Vision?* (October 2019).

¹¹¹ *Ibid.*, p. 20: "The World Bank's oversight does come at a cost. Despite the importance of minimizing the costs of asset return, there is no evidence that the World Bank has faced any competition from other multilateral development banks to provide supervision and project management services for projects funded by recovered assets. According to publicly available information, no other multilateral development bank has taken on the responsibility for facilitating and overseeing asset return projects."

¹¹² *Ibid.*, p. 13-14.

¹¹³ See Case Study "Switzerland – Kazakhstan (2011-present): US\$48.8 million returned", p. 98.

04

CASE STUDIES



IRELAND - NIGERIA US\$6.3 MILLION RETURNED



CONTEXT

The international investigation into the Abacha case resulted in the Irish Criminal Assets Bureau freezing €5.5 million in a Dublin bank account in October 2014. After Nigeria brought an action to claim these assets in 2019, an Irish court ordered them to be returned in 2020. This is the first time Ireland has been involved in an asset recovery process.

TERMS OF RESTITUTION

The restitution agreement between Ireland and Nigeria provides for the funds to be transferred to a Central Bank of Nigeria account held in Nigeria. Intended to benefit the “poorest sectors of the population”, the funds will finance the Lagos to Ibadan Expressway, the Abuja to Kano Road and the Second Niger Bridge infrastructure projects, similar to the restitutions made by the US and Jersey in the Abacha case and by the United Kingdom in the Ibori case (see Annex 6). They are intended to be used under the Presidential Infrastructure Development Fund managed by the Nigeria Sovereign Investment Authority. Details of the three infrastructure projects are contained in a short description attached to the agreement, with provisional completion dates.

The agreement reflects the intention of the parties to “enable the transparent and efficient transfer and disposition of the Assets for the benefit of the people of Nigeria”.¹¹⁴ While the parties recognise the need to ensure the highest standards of transparency and accountability in the return and use of assets, the agreement contains limited specific provisions on how to implement these standards, and no reference is made to the role of civil society.

- **Transparency:** A report on how the assets have been used will be published by the Nigerian government on a website – unspecified at this stage of the asset recovery process – and a copy will be sent to the Irish government. However, the agreement does not specify which entity will be responsible for drafting this report or the timeframe for its publication.

- **Accountability:** The Nigeria Sovereign Investment Authority is the designated authority in charge of implementing the restitution agreement. The government of Nigeria is committed to ensuring the highest standards of probity and integrity and that activities financed by the returned funds meet anti-corruption standards. The government of Nigeria undertakes to inform the government of Ireland of any credible allegations of fraud or corruption in relation to the returned funds or the agreement, to investigate such allegations and, in the event of proven fraud or corruption, to reimburse the sums seized and to take any other steps needed to remedy the harm caused. Furthermore, the agreement provides that any disputes that may arise between the parties concerning the restitution agreement will be resolved amicably through diplomatic channels.

- **Inclusion of civil society:** No specific role is assigned to civil society.



POSITIVE RESULTS

- The restitution agreement contains commitments by the parties, in particular Nigeria as the country where the assets originated, to comply with the highest standards of transparency, accountability and integrity.
- Nigeria undertakes to investigate any serious allegations of fraud or corruption and to take the necessary steps to remedy any proven irregularities, including by repaying any sums seized as a result of such allegations into the Nigerian government’s account at the Central Bank of Nigeria.
- There are plans to publish a report on the implementation of the projects.



NEGATIVE RESULTS

- The agreement specifies that the Irish government will not assume any responsibility for the use of the assets once they are returned.
- The assets are to be transferred to a bank account held by the Nigerian government before being allocated to the Nigeria Sovereign Investment Authority fund for the three infrastructure projects. However, as the agreement does not make the transfer conditional on this specific use of the funds, nor does it contain any guarantee as to how the funds are used, there is a significant risk that the funds will be misappropriated again, especially as the amount returned is only a small part of the returned funds invested in the infrastructure projects.¹¹⁵ The Nigerian press recently echoed the concerns of the House of Representatives, which questioned several senior officials in May 2021, including the Accountant General of the Federation, because the funds from Ireland were reportedly not credited to the Nigeria Sovereign Investment Authority’s account.¹¹⁶
- More generally, even if the chosen projects have been identified in the restitution agreement and the authority in charge of the expenditure has been designated, mere commitments by the parties to comply with standards of transparency and accountability are not enough to guarantee the integrity and effectiveness of the asset recovery process.
- The agreement does not provide sufficient safeguards or establish a monitoring and independent audit procedure. Only one report is mentioned after the projects have been implemented, but there is no mention of the entity responsible for drafting it or the deadline for publication.
- No role for civil society is planned in the asset recovery process, including when the project implementation phase is being monitored and evaluated.

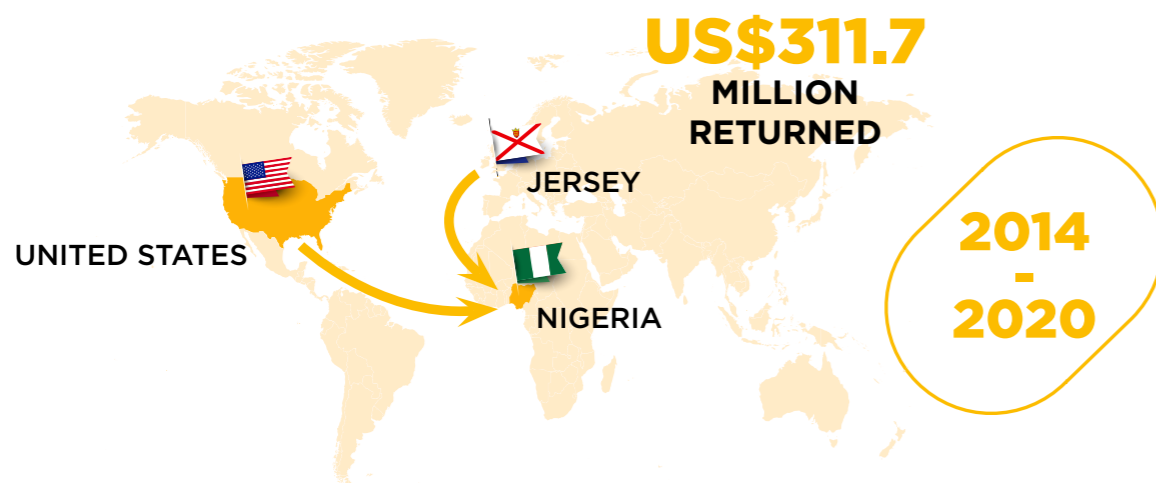
¹¹⁴ Memorandum of Understanding between the Government of the Federal Republic of Nigeria and the Government of Ireland regarding the return, disposition and management of certain forfeited assets, Memorandum of Understanding between the Government of the Federal Republic of Nigeria and the Government of Ireland regarding the return, disposition and management of certain forfeited assets, signed on 11 August 2020, paragraph 2: “The Participants confirm their intention to maintain effective cooperation based on trust and respect in order to enable a transparent and efficient return and disposition of the Assets for the benefit of the people of Nigeria.”

¹¹⁵ See Case studies “USA – Jersey – Nigeria (2014-2020): US\$311.7 million returned”, p. 82 and “UK – Nigeria (2012-2021): US\$5.7 million returned”, p. 96

¹¹⁶ Hassan Muaz, “Reps query ‘missing’ 5.5 million Euro recovered fund”, *The Eagle Online* (26 May 2021); Bakare Majeed, “Recovered Loot: Reps give Accountant General 48 hours to account for ‘missing’ €5 million”, *Premium Times Nigeria* (25 May 2021); Tordue Salem, “Reps summon AGF over alleged missing £5.5m”, *Vanguard Nigeria* (27 May 2021)

UNITED STATES – JERSEY – NIGERIA

US\$311.7 MILLION RETURNED



CONTEXT

General Sani Abacha, the former head of state of Nigeria, is suspected to have embezzled between US\$3 and 5 billion of public funds between 1993 and 1998.¹¹⁷ These assets were laundered through family members and close associates in several countries, including the United Kingdom, Switzerland, France, Luxembourg and Liechtenstein.

The restitution is the result of close collaboration between the Jersey authorities, the US Department of Justice and the Nigerian authorities. In 2014, the federal court in Washington DC ordered the forfeiture of more than US\$500 million held in accounts in various countries as proceeds of corruption committed under the Abacha regime between 1993 and 1998. The use of the US banking system in the money-laundering scheme was the basis for the jurisdiction of the US authorities.

Having ordered in 2014 the freezing of assets deposited in a Jersey bank account opened in the name of Doraville Properties Corporation, owned by the son of the former head of state, the Jersey authorities proceeded to confiscate the assets in 2019 pursuant to the US judgement, which became final in 2018.

TERMS OF RESTITUTION

In 2018, the governments of Nigeria, the United States and Jersey initiated negotiations for the assets – worth US\$311.7 million – to be repatriated and managed. The restitution agreement was concluded on 3 February 2020.

The returned funds were allocated to three infrastructure projects previously approved by Nigeria, which are part of public-private partnerships: the Lagos to Ibadan Expressway, the Abuja to Kano Road and the Second Niger Bridge. According to the Nigerian authorities, these projects would boost economic growth and reduce poverty by better linking supply chains and people in the east and the west of Nigeria with areas in the north.

In a joint communiqué, the parties stated that the agreement reflects the principles of transparency and accountability as adopted by the Global Forum on Asset Recovery (GFAR).

- **Transparency:** As the restitution agreement has apparently not been published, it has not been possible to ascertain whether the various reporting obligations that were planned have actually resulted in publicly available reports.

- **Accountability:** Funded projects will be managed by the Nigeria Sovereign Investment Authority, which will be required to report quarterly on the anti-corruption due diligence measures implemented by project owners and their subcontractors.

Projects will be subject to an independent financial audit. The monitoring team will be responsible for overseeing the implementation of the projects and will be required to report regularly on their progress, based in part on reports prepared by the Nigeria Sovereign Investment Authority. This Authority is responsible for selecting an independent auditor in accordance with Nigerian law and in compliance with public procurement rules. The agreement also provides that the governments of the United States and Jersey will have the opportunity to review all bids submitted during the award process and to prevent a candidate from being selected by submitting a Notice of Disapproval to the other parties.

The independent auditor will be required to prepare and submit quarterly and annual reports. The United States and Jersey may review these reports and raise any concerns with the Nigeria Sovereign Investment Authority or the Attorney General of Nigeria. If the United States or Jersey considers that Nigeria has not taken appropriate steps to remedy any concerns identified by the audit reports, it may enter into discussions with Nigeria. The agreement does not, however, specify how these discussions will resolve disputes.

The agreement contains a clause prohibiting the use of funds for the benefit of bribes or to pay success fees to lawyers.¹¹⁸

- **Inclusion of civil society:** The government of Nigeria, in consultation with the other parties, will also engage CSOs with expertise in infrastructure projects, civil works, procurement, anti-corruption compliance and anti-human trafficking, to complement the monitoring and oversight processes. As was the case with the auditor, the CSOs involved in monitoring and evaluating the projects will be selected in accordance with Nigerian law and through a public bidding process. Again, the United States and Jersey will have a right to review bids and may exercise their right to reject an applicant by notifying the other parties of the rejection. CSOs will review technical reports, financial audit reports and anti-corruption due diligence reports. They will be allowed to conduct site visits (including unannounced visits) and will publish their own quarterly reports. More generally, CSOs will be required to assess compliance with the terms of the agreement in a transparent and publicly accessible manner.

As with the Abacha II restitution between Switzerland and Nigeria, the coalition of CSOs forming the MANTRA Project, whose work has been considered a major success,¹¹⁹ has been appointed to participate in the monitoring of the US – Jersey restitution with Nigeria.¹²⁰

¹¹⁸ This clause may have been included in response to the scandal caused by the secret payment of US\$15 million – of the US\$321 million returned by Switzerland in the Abacha II case – to two Nigerian lawyers: see *The Cable*, 'Abacha Loot: Despite outcry, FG secretly pays Malami's lawyers 'dubious' \$15m fees', *The Cable* (5 February 2019)

¹¹⁹ Stolen Asset Recovery Initiative, "GFAR Principles in Action: the MANTRA Project's Monitoring of the Disbursement of Abacha II funds in Nigeria" (29 October 2019); Civil Society Legislative Advocacy Centre (CISLAC), *Global Forum for Asset Recovery. Progress Report: Nigeria. Development since December 2017 to June 2019* (2019)

¹²⁰ Aneej Nigeria, press release, "ANEJ, MANTRA Partners Set To Monitor \$308m Abacha 3 Loot From Jersey", Africa Network for Environment & Economic Justice (ANEJ) (6 February 2020)

¹¹⁷ Transparency International, 'Returning Nigerians' Stolen Millions' (3 August 2018)



POSITIVE RESULTS

- The agreement seems to clearly identify the authorities responsible for managing and monitoring the asset recovery process and to provide for an independent audit.
- One or more CSOs have been given a major role in monitoring and auditing the project implementation, and these CSOs have been given access to the information they need to carry out their tasks, and are able to carry out site visits).
- The independent auditor as well as the CSOs involved in monitoring and auditing the process are selected in accordance with the procurement procedures applicable in Nigeria.



NEGATIVE RESULTS

- While there appear to be some safeguards in place to ensure that funds do not fall back into corrupt hands (for example, the parties to the agreement have undertaken to ensure this does not happen), the restitution agreement does not appear to provide for specific accountability mechanisms or a mechanism for resolving potential disputes in the event that one of the parties is dissatisfied with the measures taken to address concerns identified in the audit reports.

- This lack of safeguards is further criticised because, as one US senator has pointed out,¹²¹ there is a significant risk that the returned funds will fall into corrupt hands. Although the restitution agreement provides for certain safeguards, their effectiveness depends largely on whether Nigerian law is applied, in particular public procurement procedures. Some have pointed to the inadequacy of these procedures¹²² as a breeding ground for corruption.¹²³ Furthermore, the misappropriations committed under the Abacha regime implicated many members of the political class, some of whom are still in office.

The difficulties surrounding the potential return of US\$155 million to Nigeria by the United States and the United Kingdom in one part of the Abacha case are an illustration of the difficulties that can arise in this context.¹²⁴ Following a Nigerian plea bargain with Abubakar Bagudu, the governor of Kebbi State, Nigeria planned to return nearly US\$100 million of the restitution to him, while the US Department of Justice considered that Bagudu was himself involved in Abacha's corruption schemes. As a result, the United States and the United Kingdom agreed to freeze the funds in the United Kingdom until the UK courts ruled on the plea agreement.¹²⁵ When safeguards included in a restitution agreement relate to the application of local law, they should therefore take into account any obstacles to their implementation that local law may contain.

- As far as civil society is concerned, it appears to be involved only from the monitoring and audit stages. In particular, civil society has not been involved in selecting the projects to which the assets will be allocated, as these projects are of national interest and were chosen by the Nigerian government prior to the restitution. While the improvement of road infrastructure can undoubtedly benefit the Nigerian population, it is essential that the impact of the projects on the population is measured *ex post* in order to assess progress towards the stated objectives.

- The fact that the restitution agreement was not published is a major obstacle to a transparent asset recovery process. The lack of a published agreement means that it is only possible to make an indirect assessment of the contents of the agreement, and that the parties' levels of commitment to the transparency, accountability and inclusiveness of the asset recovery process cannot be verified at this stage.

SWITZERLAND - UZBEKISTAN UD\$142 MILLION RETURNED



CONTEXT

In September 2020, Switzerland and Uzbekistan signed a framework agreement for the return of assets permanently confiscated by the Swiss authorities in criminal proceedings related to Gulnara Karimova, the daughter of former Uzbek president Islam Karimov who died in 2016. The agreement covers the CHF131 million (approximately US\$142 million) that has already been permanently confiscated following the 2019 conviction of a relative of Gulnara Karimova, and will apply to assets that may be permanently confiscated as part of the ongoing criminal proceedings. The 131 million Swiss francs is a fraction of the nearly 800 million (approximately US\$871 million) blocked by the Swiss Federal Prosecutor's Office since 2012 in criminal proceedings related to Gulnara Karimova.

TERMS OF RESTITUTION

The agreement sets out the principles governing restitution and its various stages. Among these principles, the parties have committed themselves to transparent and accountable restitution that will allow civil society and the international community to exercise control. The parties recognise that, in the context of subsequent restitution agreements, the funds should be used to improve the living conditions of the Uzbek people, strengthen the rule of law and combat impunity, and be allocated to sustainable development projects, in line with the United Nations 2030 Agenda for Sustainable Development and Uzbekistan's development strategy. In addition, the agreement makes explicit reference to the GFAR principles.

The framework agreement is not legally binding. However, for each case, the parties will have to conclude legally binding and linked treaties providing for restitution, and establish the specific terms (use and destination of returned funds, monitoring of the asset recovery process, etc.).

- **Transparency:** The framework agreement states that future agreements should provide that information on the return, administration and use of funds is made available to the public in both the country of origin and the destination country.

- **Accountability:** The framework agreement states that any subsequent agreements will provide for the establishment of mechanisms for monitoring and auditing the use of the funds; such mechanisms will be financed by the funds themselves.

- **Inclusion of civil society:** The framework agreement envisages the potential involvement of civil society actors, without further specification.

¹²¹ Libby George, 'Nigeria rejects U.S. senator's query over \$300 million Abacha loot repatriation', *Reuters* (10 April 2020)

¹²² Rachael Hanna, 'The Trilateral Nigeria-US-Jersey Agreement to Return Nigerian Dictator Abacha's Assets: A Preliminary Assessment', *The Global Anticorruption Blog* (24 April 2020)

¹²³ Emmanuel Onwubiko, 'Weak public procurement breeds corruption', *The Guardian Nigeria News* (7 March 2018)

¹²⁴ Rachael Hanna, 'The Trilateral Nigeria-US-Jersey Agreement to Return Nigerian Dictator Abacha's Assets: A Preliminary Assessment', *The Global Anticorruption Blog* (24 April 2020)

¹²⁵ William Clowes, 'U.S. Opposes Nigeria Plan to Hand Looted Funds to Governor', *Bloomberg* (21 February 2020); Dennis Ezezi, 'US opposes Nigeria's plan to hand Kebbi governor \$100m from Abacha loot', *The Guardian Nigeria News* (21 February 2020); Nicholas Ibekwe, 'How Buhari administration planned to transfer \$110 million Abacha loot to Bagudu', *Premium Times Nigeria* (24 February 2020); Nicholas Ibekwe and Kunle Sanni, 'Like U.S., UK kicks against Buhari gov't's plan to transfer \$110 million Abacha loot to Bagudu', *Premium Times Nigeria* (8 April 2020)



POSITIVE RESULTS

- The framework agreement expresses the parties' commitment to ensuring transparency and accountability in future returns, to using funds for the benefit of the Uzbek people and to promoting the Sustainable Development Goals.



NEGATIVE RESULTS

- The framework agreement is not legally binding.
- The framework agreement does not specify what the principles of transparency and accountability entail in practice, and how compliance with them will be assessed: clear procedures will need to be established to translate these commitments into action.
- The reference to "potential" inclusion of civil society in the asset recovery process opens a loophole that the Uzbek government could exploit to ignore the role of civil society. Moreover, as several Uzbek activists associated with the Uzbek Forum for Human Rights noted in a statement following the publication of the framework agreement,¹²⁶ the framework agreement should specify that "independent" civil society representatives must be included in the asset recovery process, to avoid the inclusion of CSOs controlled by the Uzbek government.
- In addition, there are many structural problems with the Uzbek legal and political system, which prevent successful restitution and have been highlighted by activists from the Uzbek Forum for Human Rights.¹²⁷

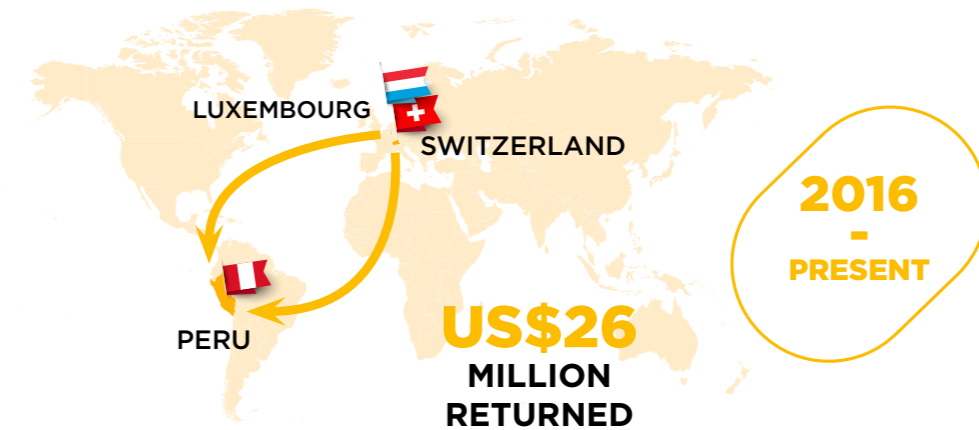
With regard to the inclusion of civil society, the Uzbek NGOs that made a statement on the framework agreement warned that many local organisations are in fact government-organised and that the many restrictions on registering NGOs under Uzbek law are an obstacle to the activities of the non-governmental sector.

With regard to the accountability of the asset recovery process, these NGOs point out that it cannot be met as long as the country does not live under the rule of law. They claim that the legal professions in Uzbekistan remain under the direct control of the Ministry of Justice, the rights of the defence are applied selectively, and there are no transparent and open procedures for public procurement. Furthermore, accountability also requires the Uzbek government to adopt various anti-corruption mechanisms to address the risk of fraud or corruption in the use of returned funds.

According to these Uzbek NGOs, these problems must be resolved before any restitution can be made. Otherwise, there is a risk that the returned funds will fall back into corrupt hands, as occurred when €10 million was returned unconditionally from France to Uzbekistan in 2019.

- Thus, many difficulties can already be identified. They can only be resolved if the parties strictly enforce the provisions of the framework agreement and if far-reaching reforms are made to promote the rule of law in Uzbekistan. In July 2019, Uzbek NGOs made an "appeal for justice" to alert the Swiss authorities in particular to the dangers of returning assets linked to Gulnara Karimova to Uzbekistan at this stage. In September 2020, in their statement on the framework agreement, they noted that the pre-requisites for the return had still not been met. Future implementation agreements and the conditions under which they are concluded will need to be carefully analysed to determine the legitimacy of the asset recovery process.
- At present, negotiations between the Swiss and Uzbek authorities are ongoing. However, the Uzbek NGOs of the Uzbek Forum for Human Rights issued a new call for transparency and the inclusion of civil society in July 2021, deploring the fact that the Swiss and Uzbek authorities have kept silent about the ongoing negotiations since the conclusion of the framework agreement.¹²⁸ Transparency and the inclusion of civil society are essential during the negotiation stage so that civil society can make its voice heard upstream on the envisaged content of the restitution agreements.

SWITZERLAND – LUXEMBOURG – PERU US\$26 MILLION RETURNED



CONTEXT

Thanks to close cooperation with the Peruvian authorities in the framework of mutual legal assistance, Switzerland and Luxembourg succeeded in blocking and confiscating several million US dollars' worth of stolen assets deposited in their respective territories and originating from acts of corruption committed in Peru by members of the criminal organisation headed by Vladimiro Montesinos Torres.

Montesinos was head of the Peruvian secret services between 1990 and 2000 and personal advisor to former Peruvian president Alberto Fujimori. In 2000, leaked footage broadcast by a Peruvian television channel showed Montesinos secretly handing an envelope of money to an opposition member of parliament bribing him to join the Fujimori camp. In total, more than 200 recordings were seized by the Peruvian judicial authorities.

The investigations that followed the scandal revealed that Montesinos was at the centre of a massive scheme of extortion, embezzlement and corruption linked to the arms trade and drug trafficking. The funds illicitly acquired by Montesinos during the Fujimori regime is thought to be as high as US\$2 billion.¹²⁹ In July 2002, Montesinos was sentenced in Peru to nine years' imprisonment on charges of crimes against the government and abuse of power, while more than 60 cases were still open against him.¹³⁰ He has since faced further convictions for other crimes.¹³¹

Between 2002 and 2006, Switzerland returned almost US\$93 million of Montesinos' assets to Peru.¹³² Following the recent conclusion of new confiscation proceedings in Peru, Switzerland, Luxembourg and Peru concluded a trilateral agreement. Under the terms of the agreement,¹³³ signed in **November-December 2020**, Switzerland is to return US\$16.3 million and Luxembourg US\$9.7 million to Peru. While Switzerland has considerable experience in the recovery of stolen assets, this was a first for Luxembourg.

¹²⁶ Umida Niyazova, Farida Scharifullina, Azimbay Ataniyazov, Dilmurad Yusupov, Timur Karpov, Murat Ubbiniyazov, Tatyana Rubtsova, Shahida Tulyaganova, Kudrat Babajanov, Alisher Taksanov, Dilobar Erkinzoda, Ulugbek Khaydarov, Bahadir Fayzi, (Uzbek Forum for Human Rights), *Concerns Remain Despite Step Toward Responsible Return of Stolen Assets to Uzbekistan* (16 September 2020)

¹²⁷ *Ibid.*

¹²⁸ Umida Niyazova, Dilmira Matyakubova, Farida Sharifulina, Alisher Taksanov, Dilobar Erkinzoda, Timur Karpov, Shahida Tulyaganova, Kudrat Babajanov, Ulugbek Ashur (Uzbek Forum for Human Rights), *Call for Transparency and Inclusion in the Return of Gulnara Karimova's Illegally Held Assets to Uzbekistan by the Swiss Government, Statement by Uzbek Civil Society Activists* (8 July 2021)

¹²⁹ Ignacio Jimu (International Center for Asset Recovery, Basel Institute on Governance), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009), p. 11.

¹³⁰ *Libération*, "Pérou: neuf ans de prison pour Montesinos", *Libération* (2 July 2002).

¹³¹ *RFI*, "Peru: 25 ans de prison pour l'ex-bras droit de Fujimori", *RFI* (2 October 2010); *RFI*, "Peru: deux anciens hauts responsables de l'armée condamnés à 22 ans de prison", *RFI* (29 September 2016).

¹³² See Box 9, p. 49.

¹³³ *Accord entre le Grand-Duché de Luxembourg, la Confédération suisse et la République du Pérou sur le transfert d'avoirs saisis*, concluded in Luxembourg on 25 November 2020, in Bern on 4 December 2020 and in Lima on 16 December 2020.

TERMS OF RESTITUTION

In 2016, the Peruvian authorities invited Switzerland to enter into negotiations to determine how the returned assets would be used.¹³⁴

In 2017, Peru created a multi-sectoral working group brought together the various Peruvian authorities involved in the asset recovery process, to ensure internal coordination and facilitate negotiations to recover the assets located in Switzerland and Luxembourg.¹³⁵

The repatriation of Montesinos' assets is intended to strengthen the rule of law and the fight against corruption and impunity in Peru. The returned funds will be allocated to three programmes implemented by Peru, aimed at strengthening Peruvian institutions involved in protecting the rule of law, fighting against corruption and money laundering, seizing assets and combating organised crime. More specifically, these programmes are intended to train staff who are actively fighting against corruption, support efforts to digitise, standardise and harmonise procedures, and accelerate the implementation of the new Peruvian Code of Criminal Procedure. They should thus benefit the Peruvian judicial authorities and the Peruvian Ministry of Justice and Human Rights. The repatriation of Montesinos' assets thus aims to help Peru meet its commitments to the United Nations 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 16 on peace, justice and strong institutions.

The use of the funds is subject to the principles of transparency and accountability. The parties thus pledged to *“use the recovered assets in a transparent and appropriate manner for the benefit of the Peruvian State and its population, in accordance with Article 57 of the United Nations Convention against Corruption, the Global Forum on Asset Recovery’s Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases [...], as well as Targets 16.4, 16.5 and 16.6 of the 2030 Agenda for Sustainable Development”*.¹³⁶ The programmes will be monitored to ensure the quality of implementation and compliance with the terms of the restitution agreement.

- **Transparency:** The entities in charge of implementing the programmes are required to prepare periodic annual reports for each programme, including a financial report on how the funds will be used and a narrative report detailing the activities undertaken and describing any progress made towards meeting objectives, including challenges and constraints. These reports should be submitted annually, within a predefined timeframe, to the National Programme for Seized Assets (Programa Nacional de Bienes Incautados – PRONABI), the authority responsible for managing the funds, which will publish them on its website.

- **Accountability:** The concrete terms for the transfer of the funds are specified in the agreement, which also designates the authority in charge of managing the funds (PRONABI). The tripartite agreement sets out specific priorities for using the transferred assets. The beneficiary institutions are clearly identified. The agreement contains a clause whereby the parties undertake to ensure that the transferred assets will not fall into the hands of corruptors (individuals whose assets have been seized or confiscated; individuals linked to the offences committed by the criminal organisation led by Montesinos; or the heirs, associates or beneficiaries of such individuals). For each programme funded, a technical data sheet is drawn up, specifying the budget allocated, the objectives pursued, the results expected in relation to a baseline, the target groups, the contractual partners, the implementation deadline, etc.

To evaluate the asset recovery process, the Office of the Auditor General of the Republic of Peru, as part of its functions of overseeing government action, is entrusted with ensuring compliance with the agreement and proper implementation of the programmes.

This Office is responsible for appointing an auditing firm to carry out an annual financial audit of the beneficiary entities. It may also, on its own initiative or at the proposal of one of the state parties, commission an external audit, and is responsible for proposing the preventive and corrective actions that the beneficiary entities are to adopt in order to properly implement the programmes.

- **Inclusion of civil society:** No specific role is assigned to civil society.



POSITIVE RESULTS

- The terms for the transfer of the funds and the implementation of financed programmes are specified in the agreement.
- The conditions for the responsible repatriation of the assets were set:
 - o Clear objectives were determined for each project;
 - o The actors involved were appointed and the beneficiary entities were identified;
 - o The budget allocated to each programme was specified and deadlines were set for their implementation;
 - o Monitoring arrangements were defined to ensure there is an independent audit of the use of returned funds;
 - o A technical working group made up of the focal person of each project and a PRONABI staff member was set up to help implement the programmes. It is responsible for ensuring the quality, effectiveness, efficiency and sustainability of the programmes, holds regular internal meetings, and communicates with the states parties (at least once a year);
 - o Some safeguards were provided for, in particular a clause whereby the states parties committed to ensuring that the transferred assets do not fall back into corrupt hands.
- The conditions for a transparent asset recovery process, at least from the programme implementation stage, were established:
 - o The restitution agreement was made public;
 - o At the programme implementation stage, the agreement provides for mandatory annual reporting, and specifies that the reports should be made available to the public.
- Switzerland offered technical assistance to the entities in charge of implementing the programmes.



NEGATIVE RESULTS

- Under the agreement, Switzerland and Luxembourg, as the destination countries, bear no responsibility for the returned assets once the transfer has been made.
- Although the programmes are aimed at strengthening the capacity of judicial institutions and should benefit the Peruvian State and its population, the overall asset recovery process does not seem to give any role to civil society, be it at the stage of negotiating the agreement, allocating the funds, or monitoring and auditing. In particular, the states parties have not planned to measure the effectiveness of the programmes by assessing local perceptions of judicial institutions in Peru, in other words the perspective of those who have recourse to the justice system.
- There is still a lack of safeguards to guarantee the integrity of the asset recovery process, the proper use of public funds and the responsibility of those who fail to comply with the agreement, especially given that the programmes are primarily intended for state institutions and the funds are meant to be spent within the state, with no direct public oversight of their use.

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*, free translation.

SWITZERLAND - NIGERIA

US\$321 MILLION RETURNED



CONTEXT

Between 1993 and 1998, General Sani Abacha, the former head of state of Nigeria, is alleged to have embezzled between US\$3 billion and US\$5 billion of public funds.¹³⁷ These funds were laundered through family members and close associates in several countries, including the United Kingdom, Switzerland, France, Luxembourg and Liechtenstein.

When Abacha died, some of this money was located in Switzerland, where almost US\$700 million was frozen, ultimately leading to a series of transfers that were part of a first restitution phase.¹³⁸ The Swiss judicial authorities also investigated the assets of Abba Abacha, the son of the late Nigerian dictator. Through mutual legal assistance, funds illicitly acquired by the Abacha clan, deposited in Luxembourg, were seized and transferred to Switzerland in 2014.¹³⁹ In **February 2015**, the Geneva Public Prosecutor's Office ordered these funds to be confiscated and US\$321 million returned to Nigeria.¹⁴⁰ This followed the conclusion of an agreement between Nigeria and the Abacha family in **July 2014** to drop criminal proceedings in Nigeria against Abba Abacha in exchange for the confiscation of his assets and their return to Nigeria.¹⁴¹

TERMS OF RESTITUTION

On **4 December 2017**, Switzerland concluded a tripartite Memorandum of Understanding with Nigeria and the World Bank on the terms and conditions for the return of the Abacha clan's assets, in the context of the Global Forum on Asset Recovery (GFAR).¹⁴²

This agreement specified that the funds would be returned *"for the benefit of the people of Nigeria"* as part of a project supported and supervised by the World Bank, aimed at strengthening the social security of the poorest sectors of the Nigerian population. The money was to be used exclusively to fund a Conditional Cash Transfer programme.¹⁴³

In line with the objectives of Switzerland's strategy on the freezing, confiscation and return of kleptocrats' assets, one year after the Swiss Law on Assets of Illicit Origin was adopted in 2016, the agreement recognised the need for transparent and accountable asset repatriation and provided for the involvement of civil society in the asset recovery process. It also built on the lessons learned from the Abacha I case.¹⁴⁴

The Conditional Cash Transfer programme is still ongoing to date. According to the World Bank's implementation status and results report of February 2021, over 1.3 million households were registered in the cash transfer programme. At that time, the World Bank considered that satisfactory progress had been made in implementing and achieving the programme's development objectives.¹⁴⁵

- **Transparency:** The restitution agreement contains provisions on information sharing. The agreement itself was to be published in accordance with the laws and policies on access to information in each of the states involved. It was specified that the states involved in the asset recovery process, particularly the destination country, would have access to all documents relating to the recipient programme, but also that documents and reports relating to the programme would be published on the Nigerian government's website. The publication of documents and reports prepared by the World Bank was subject to its own policies on access to information.

- **Accountability:** The restitution agreement specified the competent authorities that represented each state party for the conclusion of the agreement, as well as the authorities responsible for implementing the programme in Switzerland and Nigeria.

The Swiss and Nigerian governments made the transfer of funds conditional on the World Bank monitoring the asset recovery process. The World Bank was asked to monitor the return process under the same conditions applied when the International Development Association – one of its agencies – monitors the use of loaned funds. It was also asked to prepare monitoring reports for both Nigeria and Switzerland, review the financial reports provided by the Nigerian government, and forward them to Switzerland, along with any comments.

The restitution agreement was accompanied by ancillary documents, including an Implementation Manual with which the Nigerian authorities were required to comply.

Although the returned funds were intended to be used as part of a larger project involving other funding, the restitution agreement specified that the returned funds should be accounted for in an aggregated and disaggregated manner in financial reports, so as not to be mixed up with the other funds.

Switzerland and Nigeria agreed that Switzerland would transfer the funds in US dollars to an account held by the Nigerian government. Afterwards, the funds would be transferred in instalments every six months to a second account in Nigerian Nairas specially set up under the programme to fund Conditional Cash Transfers.

Furthermore, Switzerland and Nigeria committed to preventing any corrupt practices that may affect the asset recovery process and to inform the other state party of any allegations of fraud or corruption that are brought to their attention. Nigeria further undertook to take all appropriate and timely measures to investigate such allegations, and to give the Swiss authorities and the World Bank regular updates on the progress of such investigations and on the subsequent measures taken by Nigeria. In the event that fraud or corruption were believed to have occurred, Nigeria was required to guarantee that the funds would be reimbursed to the Nigerian nairas account and to take the necessary and appropriate measures to remedy the harm caused by such fraud or corruption.

¹³⁷ Transparency International, "Returning Nigerians' Stolen Millions" (3 August 2018).

¹³⁸ See Case Study "Switzerland - Nigeria (2005-2006): US\$723 million returned", p. 107.

¹³⁹ Sylvain Besson, "Affaire Abacha: la Suisse rend 321 millions de dollars au Nigeria", *Le Temps* (5 December 2017).

¹⁴⁰ Swiss Federal Department of Foreign Affairs, *No Dirty Money - The Swiss Experience in Returning Illicit Assets* (December 2016).

¹⁴¹ ATS, "La justice genevoise restitue 380 millions de dollars au Nigeria", *Le Temps*, 17 March 2015; Simon Bradley, "Agreement secured on return of Abacha funds", *Swissinfo*, 9 March 2016.

¹⁴² Swiss Federal Council, press release, "Restitution of USD 321 million by Switzerland to Nigeria under World Bank oversight: signing of a tripartite agreement" (4 December 2017).

¹⁴³ Conditional Cash Transfer programmes (CCTs), also known as conditional programmes, aim to combat poverty by making the payment of social assistance conditional on the recipient fulfilling certain obligations or criteria. These criteria can be, for example, to send their children to school, to have them undergo regular medical check-ups, or to have them vaccinated. According to the World Bank, these transfers provide money directly to poor families as part of a social contract, while allowing for long-term investment in human capital.

¹⁴⁴ See Case Study "Switzerland - Nigeria (2005-2006): US\$723 million returned", p. 107.

¹⁴⁵ World Bank, National Social Safety Nets Project (P151488), *Implementation Status & Results Report* (February 2021) (Report No. ISR45236).

- **Inclusivité:** Under the agreement, Nigeria committed to involving Nigerian civil society in the asset recovery process. The agreement specified that this involvement did not create any financial obligations for the state parties.

The participation of Nigerian CSOs was fully funded by the UK Department for International Development. Nigerian civil society, coordinated by the African Network for Environment and Economic Justice in a coalition of several NGOs, developed its own monitoring and tracing tool, the MANTRA project.¹⁴⁶ The project had two objectives: to raise public awareness of the Nigerian government's management of returned assets, and to train local organisations and citizens in monitoring and overseeing the return of misappropriated funds. More than 500 monitors were deployed in all Nigerian states where the funds were to be returned.¹⁴⁷

Nigerian civil society, represented by ANEEJ, was also involved in negotiating the agreement.¹⁴⁸



POSITIVE RESULTS

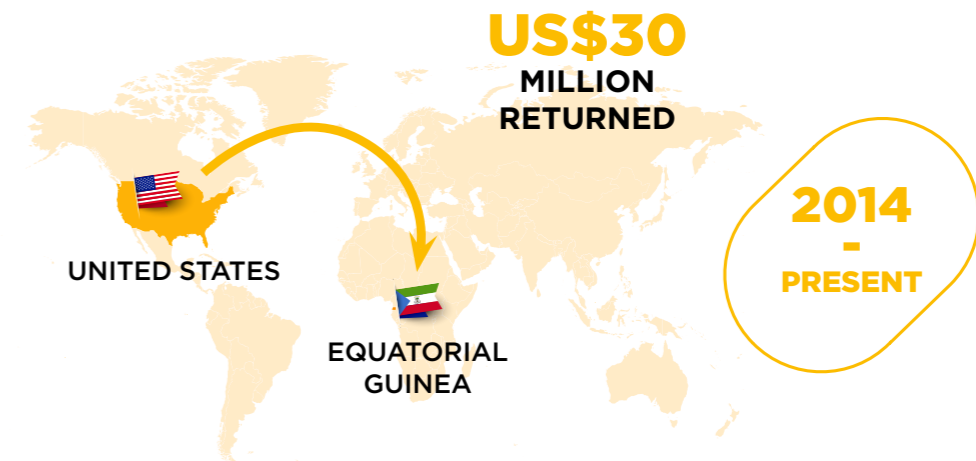
- In the restitution agreement, Switzerland and Nigeria expressly stated that they would continue to exchange information on a regular basis with a view to fulfilling their respective tasks under the agreement, thereby recognising the participation of both states, in particular the destination state, throughout the asset recovery process.
- According to several NGOs, the MANTRA project has been a success. The monitoring carried out by Nigerian civil society helped to prevent the misappropriation of part of the funds, particularly in the tense electoral context during the first half of 2019. Overall, the MANTRA project reports indicate that the Conditional Cash Transfer programme has been successful in improving the living conditions of households benefiting from the programme. The MANTRA project also helped to train nearly 500 Nigerian citizens in the control and monitoring of the transfer of these funds, thus enabling them to develop practical and technical knowledge in this area, while preventing further embezzlement of the funds.



NEGATIVE RESULTS

- The monitoring conducted by CSOs through the MANTRA project highlighted several persistent obstacles, including delays and shortcomings in reporting on the use of funds, the number of beneficiaries and the processing of claims; in the provision of information to beneficiaries; and more generally in the publishing of information on the programme for the general public, including breaches of confidentiality rules. As a result, the African Network for Environment and Economic Justice has made various recommendations to improve practices and procedures in these areas.¹⁴⁹

UNITED STATES - EQUATORIAL GUINEA US\$30 MILLION RETURNED



CONTEXT

In 2011, the US Department of Justice seized millions of dollars' worth of assets belonging to Teodorin Nguema Obiang Mangué, vice president of Equatorial Guinea and son of the country's president. The assets include a beachfront villa in California, a private jet, several luxury cars, a collection of art, jewellery and other items – of immeasurable value compared with the salary he received as Minister for Agriculture – purchased through a limited company incorporated in the United States.

According to the court file, Obiang Mangué received an official remuneration of US\$100,000 but used his position and influence as a minister to amass more than US\$300 million in assets through bribery, embezzlement and money laundering, in violation of both Equatoguinean and US law.¹⁵⁰ Obiang Mangué acquired numerous assets in the United States through intermediaries and companies.

In 2014, under the terms of an out-of-court settlement with the Department of Justice, Obiang Mangué agreed to the sale of a villa in Florida, a Ferrari and statues worth more than US\$30 million, in return for the dropping of various civil forfeiture proceedings against himself and several companies through which he managed his assets, which the US authorities claimed were acquired with the proceeds of corruption and embezzlement. The agreement also prohibited Obiang Mangué from hiding other stolen assets in the United States, which thus required him to disclose the assets he owned in the United States and agree to the removal of any assets still present there and their sale to non-profit organisations.

While the original prosecution sought the forfeiture of more than US\$70 million in assets, US prosecutors had to settle for less than half that amount after Obiang Mangué fled everything he could out of the country, including a jet worth US\$38.5 million.¹⁵¹

The agreement met the objectives of the Kleptocracy Asset Recovery Initiative, namely to deny safe haven to the proceeds of large-scale corruption by foreign officials and to recover these assets for the benefit of the people affected by these abuses. In order to protect the rights of the victims and in the interests of justice, the United States decided to use the confiscated assets for the benefit of the people of Equatorial Guinea.

¹⁴⁶ For more information on the MANTRA project, see ANEEJ, *Role of Citizens in the Implementation of Conditional Cash Transfer Programme* (September 2018).

¹⁴⁷ ANEEJ, "ANEEJ Launches Report on the Implementation of 2016 London Anti-Corruption Summit and GFAR Commitments in Nigeria" (13 February 2019).

¹⁴⁸ Julia Crawford, "Is the Abacha accord a model for returning 'dictator funds'?", *Swissinfo* (15 March 2018).

¹⁴⁹ ANEEJ, *Monitoring Report of the Utilization of The Recovered Abacha Funds in the August-September 2018 Payment Round of the Conditional Cash Transfer Programme* (2019), pp. 36-40.

¹⁵⁰ US Department of Justice, press release, "Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds" (10 October 2014).

¹⁵¹ Julian Pecquet, "US seeks to force Equatorial Guinea to take Covid vaccine deal as Biden steps up anti-kleptocracy fight", *The Africa Report* (23 August 2021).

TERMS OF RESTITUTION

The settlement agreement provided for the proceeds of the sale of the villa to be deposited in an escrow account, while the proceeds of the sale of the movable property, together with a financial contribution from Obiang Mangue to the amount of US\$1 million, were to be deposited in a US bank account.

The United States and Obiang Mangue were required to jointly select a foundation or other entity to which all funds from the sale of securities and real estate would be transferred. In the event that they failed to agree on the beneficiary entity within 180 days of the sale of the villa, control of the funds would be transferred to a three-member panel: one member was appointed by the United States, a second was appointed by Equatorial Guinea, with the chairperson appointed jointly by the United States and Obiang Mangue or by a court.

The transfer of the funds was conditional on their being used for the benefit of the people of Equatorial Guinea after the costs incurred by the recipient entity or panel were deducted. In addition to the deduction of costs paid by the involved parties in the context of the liquidation of the assets, US\$10.3 million of the proceeds came from the sale of the villa to the United States, with the remainder of the funds alternatively going to the recipient entity or the panel.

After several years of stalemate in bilateral negotiations, a three-member panel was formed in accordance with the settlement agreement. On 4 May 2021, the panel agreed that a vaccination campaign against COVID-19 would be funded through the COVAX programme. However, the panel member selected by Equatorial Guinea revoked his decision ten days later.¹⁵²

In response to Obiang Mangue's repeated actions to thwart the many beneficial programmes proposed for the population, in May 2021 the Department of Justice filed a lawsuit with the federal judge overseeing the case to force the proposed project to fund a COVID-19 vaccination campaign through the COVAX programme. The federal judge ultimately sided with the US.¹⁵³ In the end, the agreements between the Department of Justice and Obiang Mangue provided for the transfer of US\$19.25 million to the United Nations for the purchase and distribution of COVID-19 vaccines in Equatorial Guinea and US\$6.35 million to the charity Medical Care Development International for the purchase and distribution of drugs and medical equipment in Equatorial Guinea.¹⁵⁴

- **Accountability:** The settlement agreement provides that the recipient entity or panel receiving the funds must publish an annual report accounting for the expenditure and results of that expenditure until the funds are exhausted, with the final report sent to Obiang Mangue and the US within six months of the last expenditure. It is expected that the funds will be spent within five years of their transfer, subject to agreement by the parties to extend this period.

Under the terms of the agreement, the funds were transferred on condition that they are not used for the benefit of the government of Equatorial Guinea, officials employed by the government (including Obiang Mangue), their direct family members and anyone who has personal or business relations with them; as well as entities or companies owned or controlled by these public officials, their direct family members, or anyone with whom they have personal or business relations. The funds may also not be used for the benefit of organisations, political bodies or groups in opposition to the government of Equatorial Guinea.

- **Transparency:** While the settlement agreement refers to the obligation for the beneficiary entity or panel to publish an annual report on expenditure and its results, it does not specify whether these reports are made available to the public.

- **Inclusion of civil society:** No role has yet been assigned to civil society in the asset recovery process.

¹⁵² *Ibid.*

¹⁵³ US Department of Justice, Press Release, “\$26.6 Million In Allegedly Illicit Proceeds to Be Used To Fight COVID-19 and Address Medical Needs in Equatorial Guinea” (20 September 2021)

¹⁵⁴ *Ibid.*



POSITIVE RESULTS

- The use of an out-of-court settlement agreement did not prevent part of the sums recovered from being returned to the deprived populations.
- The parties to the settlement agreement took care to provide for a procedure guaranteeing that the funds would be managed by a collectively appointed entity, either a non-profit organisation or, in the absence of agreement, a three-member panel. The settlement agreement also provides for strict deadlines for the parties to agree on a beneficiary organisation and, where appropriate, for the appointment of a panel chair. In the absence of agreement on the appointment of the chairperson, the court may order mediation or select a chairperson itself.
- The agreement also provides for a deadline for the use of the returned funds, as well as annual reporting of the entity in charge of managing them.
- The agreement contains specific provisions aimed at preventing the returned funds from falling back into corrupt hands and ensuring that they are actually used for the benefit of the Equatoguinean population. The aim of these provisions is to prevent the funds from being used, directly or indirectly, for the benefit of Equatoguinean public officials or persons close to them. The scope of individuals prohibited from benefiting from the returned funds is relatively broad: not only Equatoguinean public officials, but also their direct family members and anyone who has personal or business relations with them; as well as entities or companies owned or controlled by these public officials, their direct family members, or anyone with whom they have personal or business relations.
- With these provisions and procedures in place, the stakeholders were able to overcome the lack of cooperation from the authorities in the country of origin and the risk of the returned funds falling back into the hands of the bribe-taker, by choosing a project where the funds were channelled through a United Nations programme with no links to the Equatoguinean government.



NEGATIVE RESULTS

- The settlement agreement does not contain provisions to ensure real transparency, leaving public information to be issued at the discretion of the US and Equatoguinean authorities. In particular, there is no explicit provision guaranteeing that the annual reports prepared by the organisation or panel managing the funds will be made available to the public. In addition, limited information has been published on the negotiations between the parties and within the panel in the seven years since the settlement agreement was reached. The US Department of Justice itself has only issued two press releases during this period: the first reporting the conclusion of a non-trial settlement agreement with Obiang Mangue, and the second announcing the imminent return of the funds once it had been decided where they would be allocated. To our knowledge, none of the annual reports referred to in the settlement agreement have been made available to the public.
- No specific liability or sanctions – such as reimbursement – are provided for in case of irregularities in the asset recovery process, in particular, if the returned funds were to be diverted back to Equatoguinean public officials.
- The International Monetary Fund provided an emergency loan of US\$67 million to Equatorial Guinea on 15 September 2021 to help the government deal with the consequences of the COVID-19 pandemic and the Bata explosions.¹⁵⁵ A COVID-19 vaccination campaign and the provision of medical equipment could thus also fall within the scope of policies financed with the IMF loan funds. The allocation decisions made by the US-Equatorial Guinea panel thus risks duplicating the funds that the International Monetary Fund agreed to lend to Equatorial Guinea a few days before the restitution was announced, a risk that is not entirely mitigated by using a UN agency and a charitable foundation to return the funds.¹⁵⁶
- The settlement agreement does not assign any role to civil society, either in the selection of recipient projects or in the monitoring and evaluation of expenditures. If civil society had been included in negotiations and decision-making on the allocation of funds, and if the negotiations had been more transparent, Equatoguinean civil society and CSOs working with Equatoguinean civil society would have been able to alert the US authorities to the risk that funds lent by the IMF could be duplicated, a risk that could undermine the effectiveness of the asset recovery process.¹⁵⁷
- The funds returned under the restitution agreement is a very small fraction of the assets that Obiang Mangue is alleged to have obtained through corruption and misappropriation. However, in the agreement, the US authorities undertake not only to drop all pending cases against him, but also to refrain from prosecuting for any subsequent facts or circumstances. It is feared that this waiver will permanently deprive the Department of Justice of the possibility of bringing legal action for any further corruption, laundering or embezzlement by Obiang Mangue.
- Obiang Mangue still has numerous illicit assets in the United States, which he will be able to continue to enjoy under the reserve that he moves them out of the United States in accordance with the agreement. This provision of the agreement, the waiver of future prosecution and the small amount of money recovered in relation to the total value of the illicit assets all create the impression that Obiang Mangue will continue to enjoy impunity in relation to his remaining wealth.

¹⁵⁵ EG Justice, press release, “Equatorial Guinea: IMF Approves 67M Loan, Despite Rampant Corruption and Poor Governance” (18 September 2021)

¹⁵⁶ See Box 10, p. 52

¹⁵⁷ See Box 10, p. 52

UK – NIGERIA US\$5.7 MILLION RETURNED



CONTEXT

This asset recovery process is part of the James Ibori case. The former governor of Nigeria's southern oil-producing Delta State was sentenced by a British court in February 2012 to 13 years in prison after pleading guilty to money laundering and conspiracy to commit fraud and forgery. These offences were committed to the detriment of his fellow citizens.¹⁵⁸ The £4.2 million (approximately US\$5.7 million) returned to Nigeria is only a small fraction of the money embezzled by Ibori. He has admitted embezzling nearly £50 million (US\$79 million), but the British police estimated that he could have embezzled as much as £157 million (US\$250 million) from the Nigerian state.

TERMS OF RESTITUTION

The United Kingdom and Nigeria concluded a Memorandum of Understanding in 2016 setting out the terms for the return of misappropriated assets confiscated by the United Kingdom. This framework agreement specifies in particular the principles governing the asset recovery. The parties recalled the need to ensure that the returned funds are not at risk of being misappropriated again and that the highest standards of transparency and accountability need to be complied with. They further agreed that the funds should be used to benefit the poorest social groups and to improve access to justice for Nigerians. It was expected that the specific terms of restitution, for each case, would be set out in an annex to this agreement.

In accordance with this agreement, in **March 2021** the United Kingdom and Nigeria negotiated an Annex 1 to the Framework Agreement, for the purpose of returning the sum of £4.2 million to the Nigerian government. The annex describes the following aspects in detail: the projects to which the returned funds are to be allocated; the budget; the arrangements for transferring, managing and tracking the funds, informing the public, and monitoring and evaluating the projects, including the involvement of CSOs.

- **Transparency:** All project documents will be accessible to stakeholders, including participating CSOs. Information on the projects and the use of returned funds will be published on a dedicated webpage of the Nigeria Sovereign Investment Authority, whose reports will also be made public. Monitoring and final reports from the monitoring body and participating CSOs will also be publicly available.

- **Accountability:** The annex designates the Nigeria Sovereign Investment Authority as the competent authority to oversee the management and use of the funds, describes the composition of the project management team and the monitoring and audit team, and specifies contact points in the origin and destination countries. An anti-corruption mechanism is expected to prevent any misuse of the funds. The Authority, the monitoring team and participating CSOs will be required to publish regular reports on how the funds are being used.

- **Inclusion of civil society:** One or more CSOs will be included on the monitoring team and will be expected to publish regular reports. The participation of civil society monitors is subject to a call for tender, the terms of which are specified in the annex. CSOs are selected primarily on the basis of their area of expertise and experience. Selected CSOs will be able to raise any concerns they might have. However, no government funding is provided to assist them with their tasks.



POSITIVE RESULTS

- The framework agreement and the annex specifying the terms of restitution make explicit reference to the principles of transparency and accountability and provide for the inclusion of civil society on the monitoring team.
- The projects to which the funds are allocated are precisely described and budgeted for.



NEGATIVE RESULTS

- Arrangements have been made by the destination and origin countries to ensure that the principles of transparency, accountability and inclusion of civil society are complied with while the project is being implemented. However, these principles were not complied with when the restitution agreement was being negotiated and the funds were being allocated. In particular, it seems that civil society was not informed or consulted on the selection of projects. As a result, the selection did not take sufficient account of the priority needs of the affected populations.
- The funds were earmarked for several infrastructure projects of national interest: the construction of the Second Niger Bridge, the Abuja to Kano Road, and the Lagos to Ibadan Expressway. However, two of these three projects are located outside Delta State, where the money was originally stolen. As a result, several Nigerian CSOs are challenging the fact that the funds were awarded to the federal government and are considering legal action.¹⁵⁹ A coalition of anti-corruption CSOs has also written an open letter to the UK High Commissioner.¹⁶⁰
- As well as a lack of transparency and a failure to include civil society when allocating the funds, there is also a risk that the funds will be diverted again: CSOs have noted that the three infrastructure projects to which the funds are allocated have already been allocated funds from the Abacha restitution between Switzerland, Jersey and¹⁶¹ Nigeria. However, the United Kingdom and Nigerian authorities in the Ibori restitution have not provided any justification for allocating the recovered funds to previously funded infrastructure projects, which increases the risk that the funds will again be diverted to federal officials.

¹⁵⁹ Civil Forum for Asset Recovery (CiFAR), "The Ibori Loot: The controversy surrounding the destination of the returned money" CiFAR (15 June 2021); Festus Ahon, "REPATRIATED £4.2M: Group vows to drag FG to court" Vanguard Nigeria (12 March 2021); Bridget Edokwe, "4.2m Ibori loot: Niger Delta group drags FG to Court" BarristerNG.com (17 March 2021); Spotlight on Corruption, "James Ibori: Confiscating the corrupt assets of a Nigerian Governor", Spotlight on Corruption; Taiwo Adebulu, "Sagay: Using £4.2m Ibori loot for projects outside Delta unacceptable" The Cable (11 March 2021); Aneej Nigeria, "Return £4.2m Recovered Ibori Assets To Delta State, ANEEJ Tells FG, UK" Africa Network for Environment & Economic Justice (ANEEJ) (9 March 2021)

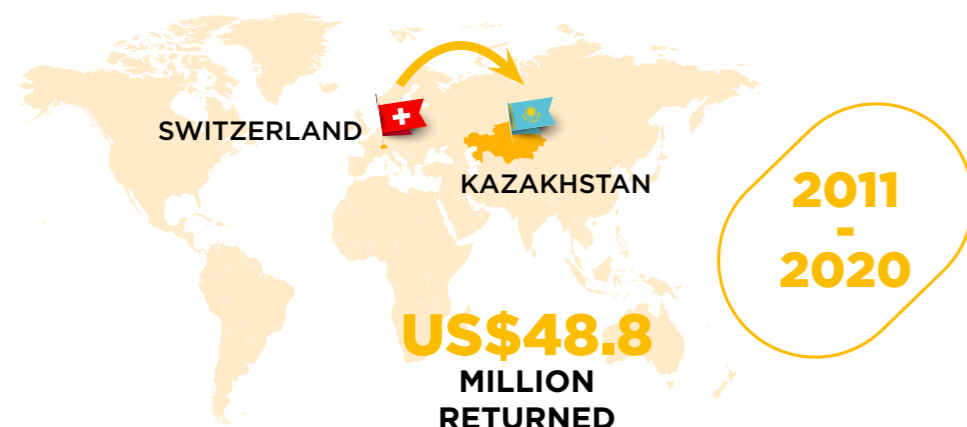
¹⁶⁰ Africa Network for Environment and Economic Justice (ANEEJ), HEDA Resource Centre, Civil Society Legislative Advocacy Centre (CISLAC), Actionaid Nigeria, Resource Centre for human Rights & Civic Education (CHRICED), Centre for Democracy and Development (CDD), Policy Alert, Africa Centre for Leadership, Strategy and Development (Centre LSD), 21st Century Community Empowerment for Youth and Women Initiative (CEYWI), Community Empowerment and Development initiative, Delta State Civil Society Roundtable on Grand Corruption, Open Letter to the UK Government on the Return of Chief Ibori Loot to Nigeria (20 April 2021)

¹⁶¹ Civil Forum for Asset Recovery (CiFAR), "The Ibori Loot: The controversy surrounding the destination of the returned money", CiFAR (15 June 2021); Eli Moskowitz, "UK Repatriates Millions in Corrupt Assets of Nigerian Ex-Governor", Organized Crime and Corruption Reporting Project (OCCRP) (11 March 2021)

¹⁵⁸ BBC News, "Former Nigeria governor James Ibori jailed for 13 years", BBC (17 April 2012); Mark Tran, "Former Nigeria state governor James Ibori receives 13-year sentence", The Guardian (17 April 2012)

SWITZERLAND – KAZAKHSTAN

US\$48.8 MILLION RETURNED



CONTEXT

Following an investigation into money laundering, the Swiss authorities confiscated funds worth almost US\$48 million in 2011, which Switzerland decided to return to finance projects benefiting the Kazakh population in the areas of youth policy and energy efficiency.

TERMS OF RESTITUTION

In December 2012, the Swiss Agency for Development and Cooperation reached an agreement with the World Bank, which agreed to act as intermediary and oversee the return of the funds. The Agency transferred the sum of US\$48.8 million as a grant to a World Bank Trust Fund. The World Bank then returned this money to Kazakhstan to fund, in equal parts, an Energy Efficiency Program and a Youth Corps Program. Under this agreement, the returned assets were subsequently managed by the Kazakh government, with the World Bank acting as trustee.

A series of agreements have been concluded between Kazakhstan and the World Bank on the one hand (financing agreements), and between the World Bank and the implementing entities on the other (project agreements).

The Kazakh Ministry of Education and Science and the JSC Institute of Electricity Development and Energy Saving have been designated as the implementing authorities for the Youth Programme and the Energy Efficiency Programme respectively.

The Energy Efficiency Programme aims to improve the energy efficiency of public and social facilities and create an enabling environment for sustainable energy efficiency financing. The project focuses on reducing the energy consumption of public infrastructure such as schools, hospitals and street lighting, with the aim of achieving energy cost savings and other social benefits.¹⁶² The designated implementing authority for this programme is the Institute of Electricity Development and Energy Saving. Under the terms of the financing agreement with the World Bank, the Institute was responsible for implementing the project, including procurement, financial management, monitoring, reporting and evaluation.

The Youth Programme aims to promote community engagement and skills development through community service learning projects. It is aimed in particular at vulnerable young people. The funding agreement specified that it would be managed by a project coordinator selected through a tender process, under the supervision of the Kazakh Ministry of Education

and Science, specifically a specialist unit responsible for programme implementation, financial management, procurement, monitoring and evaluation. Projects should be conducted in accordance with a World Bank-approved operational handbook.

- **Accountability:** The Kazakh Ministry of Education and Science and the JSC Institute of Electricity Development and Energy Saving are the implementing authorities for the Youth Programme and the Energy Efficiency Programme respectively.

Both programmes were generally subject to the applicable World Bank financing instruments. In particular, the agreements provided that the authorities implementing the programmes should ensure compliance with the World Bank's Anti-Corruption Guidelines.¹⁶³

For the Energy Efficiency Programme, the Institute should select bidders according to criteria and procedures detailed in an operational handbook, and ensure that these bidders provide the World Bank, the Institute and the government of Kazakhstan with access to the sites and all project information.

In the case of the Youth Programme, the financing agreement provided for the involvement of chosen host organisations and young people in certain projects, which would be selected by the coordinator after a competitive process in accordance with the procedures laid down in the operational handbook. More generally, the agreement details the procedures that will have to be applied for the acquisition of goods and services needed for the projects, and specifies in particular that the contracts concluded will have to specify that the World Bank reserves the right to impose sanctions on any individual or company guilty of fraud or corruption.

The programme implementing authorities, as part of their monitoring and evaluation role, were required to submit periodic reports on the projects, based on performance indicators approved by the World Bank. They were also required to provide the World Bank with periodic financial reports and organise an independent financial audit in accordance with the World Bank's Standard Conditions, while Kazakhstan, as the recipient state, was required to provide a final report to the World Bank.

- **Transparency:** The agreement between Swiss Agency for Development and Cooperation and the World Bank does not appear to have been published.

In contrast, successive agreements between the World Bank and Kazakh implementing authorities can be consulted on the World Bank's project website (projects.worldbank.org), as are documents relating to the World Bank's monitoring and evaluation of programmes (including procurement plans, audit documents and World Bank reports on implementation status and results).

The World Bank has issued several press releases on the launch of these programmes. However, according to several NGOs, misleading press releases and public statements, including from the World Bank, have led to the funds being passed off as development aid provided by Switzerland, rather than as the return of assets that had been misappropriated.¹⁶⁴

- **Inclusion of civil society:** The agreements with the World Bank do not explicitly provide for the inclusion of civil society. However, several projects under the Youth Programme could involve CSOs, both as programme coordinators and as host organisations or youth groups receiving a grant to implement projects.

The Youth Programme coordinator who manages the programme was to be selected through a competitive bidding process supervised by the World Bank. Similarly, the host organisations or groups of young people were to be selected through a competitive process, following procedures approved by the World Bank. Young people participating in a community service learning project, whether through a host organisation or a group, were to receive a living allowance.

¹⁶³ Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by International Bank for Reconstruction and Development Loans.

¹⁶⁴ Kristian Lasslett and Thomas Mayne (Corruption and Human Rights Initiative), *A Case of Irresponsible Asset Return? The Swiss-Kazakhstan \$48.8 million* (2019), p. 13

¹⁶² World Bank, press release, "Kazakhstan Launches Energy Efficiency Project" (14 September 2015)



POSITIVE RESULTS

- Despite an initial lack of transparency regarding the origin of funds, the implementation of programmes under the auspices of the World Bank has achieved a certain degree of transparency at the monitoring and audit stage due to the communication policy applicable within the World Bank. For example, agreements with programme entities, procurement plans approved by the World Bank, audit reports to the World Bank, and monitoring reports on the status of implementation and results of projects prepared by the World Bank are all publicly available.
- The instruments applicable to World Bank project financing, while not sufficient to guarantee the integrity of the asset recovery process, provide a basis for a minimum framework for restitution.



NEGATIVE RESULTS

- Overall, the asset recovery process has been highly criticised. According to several NGOs, the assets were returned through a series of operations and transactions that served to conceal their origin. The opacity of the asset recovery process has made it difficult to trace the returned funds and has allowed the funds to be used for dubious purposes. An investigation by the Corruption and Human Rights Initiative also points out that the failure to disclose the identity of the individuals and organisations involved in the Swiss prosecution has made it impossible to verify whether any of the individuals or entities involved in the case benefited from the returned funds. Due to the communication strategy adopted – presenting the returned funds as development aid and not as restitution – media and civil society scrutiny of the use of the funds has been limited.
 - In particular, there were real concerns over the management of the Youth Programme. An investigation by the Corruption and Human Rights Initiative, based on the limited data available, found that several sumptuary expenditures were made, as well as expenditures for the promotion of the ruling party and for awards to its youth wing. The main organisations funded under the programme are reportedly controlled by the government, and some are directly run by public officials and politicians with strong ties to the president.
 - Furthermore, while CSOs were able to play a role in implementing projects, the Corruption and Human Rights Initiative's investigation showed that the organisations selected were not really legitimate representatives of civil society. The management and implementation of the Youth Programme was particularly criticised on this point. The project coordinator managing the project was selected through a tender process supervised by the World Bank. However, the outcome of the tender raised serious doubts about the transparency and fairness of the bidding process, which was further fuelled by the overall opacity of the process. Out of three candidates, the tender was won by a consortium of three CSOs that were fully controlled by the government, described by NGOs as government-organised NGOs (GONGOs). In particular, the bid submitted by the internationally recognised NGO IREX, which has long experience and a proven track record in the Kazakhstan I restitution (Switzerland – United States – Kazakhstan), was not selected. The consortium is said to be led by the Congress of Youth, an organisation founded by former president Nursultan Nazarbayev, whose eldest daughter Dariga Nazarbayeva is its chairperson. Dariga Nazarbayeva is also a prominent member of the ruling political party.
 - Finally, the role of the World Bank in the asset recovery process has been heavily criticised. Due to the mechanism chosen by Switzerland, the integrity of the asset recovery process was based exclusively on the implementation of the World Bank's project financing instruments and the agreements between the World Bank and the Kazakh entities in charge of the programmes. However, a report by the Bank Information Center showed that these World Bank instruments, as well as the nature of the Bank itself, were inadequate,¹⁶⁵ in particular because they did not guarantee stakeholders' independence from the Kazakh government, which led to certain expenditures that directly or indirectly benefited the ruling party rather than the disadvantaged sectors of the Kazakh population.
 - For the second part of the restitution to the Kazakh population, the Swiss government rejected the solutions adopted for the first part through the creation of the BOTA Foundation because of the administrative red tape involved.¹⁶⁶ While channelling the funds through an independent ad hoc foundation is not the only possible solution to guarantee the integrity of an asset recovery process, the Kazakhstan II restitution highlights the need for any restitution to be accompanied by mechanisms that ensure the transparency and accountability of the process, as well as the legitimacy of the organisations that are to represent civil society. Even though the various solutions adopted in the framework of the Kazakhstan I case (Switzerland – United States – Kazakhstan)¹⁶⁷ may not constitute ready-made solutions that can be transposed to all situations, they nevertheless constitute useful approaches to ensure the integrity of the process.
- ➡ Thus, overall, this asset recovery process has suffered from a severe lack of transparency and accountability. Its failures demonstrate the need to clearly state the origin of the funds used to finance the projects, namely the fact that it is a restitution of stolen assets; to include civil society by ensuring that the individuals and entities designated to represent it are legitimate and have no links to the country of origin; and to provide instruments and mechanisms adapted to the restitution in question, not relying exclusively on pre-existing mechanisms, particularly those of the World Bank.

SWITZERLAND – UNITED STATES – KAZAKHSTAN US\$115 MILLION RETURNED



CONTEXT

In 2003, following an investigation by the US Department of Justice, James Giffen, a US citizen, was indicted on charges including money laundering and violations of the Foreign Corrupt Practices Act for paying bribes to Kazakh officials to help Western oil companies to obtain oil exploration rights in Kazakhstan.

As early as 1999, Switzerland and the United States began negotiations over the freezing of assets and their subsequent use. In 1999, Swiss judges ordered the freezing of US\$84 million in Swiss bank accounts, which the Kazakh government claimed to own, as part of a mutual legal assistance procedure with the United States. In 2005, the World Bank joined the negotiations as an intermediary and technical advisor.

In 2007, Kazakhstan, Switzerland and the United States finally reached an agreement and concluded a Memorandum of Understanding setting out the conditions for the transfer of US\$84 million.

TERMS OF RESTITUTION

Under the agreement, the release of funds was conditional on the implementation of three programmes: the BOTA programme, the Public Finance Management Review and Kazakhstan's membership of the Extractive Industries Transparency Initiative.

The returned funds were to be used solely for the BOTA programme. The parties agreed that the BOTA programme would be implemented through a private philanthropic foundation with no links to the Kazakh government, its agents or anyone associated with it, whether in a personal or business capacity, and would be supervised by the World Bank. The BOTA Foundation was established in 2008 by the governments of Kazakhstan, Switzerland and the United States, together with five Kazakh citizens, to receive and return a total of more than US\$115 million in assets associated with corruption.

The restitution agreement locked in the implementation of the three transfer programmes with strict deadlines.

The BOTA programme had three components: a Conditional Cash Transfer programme, a Social Services programme and a Tuition Assistance programme. Through these programmes, the returned assets were used to improve the lives of disadvantaged Kazakh citizens, especially children, young people and their families, by investing in their health, education

¹⁶⁵ Bank Information Center, *World Bank Oversight of Asset Return: Lacking a Clear Vision?* (October 2019), pp. 11-12

¹⁶⁶ Swiss Federal Department of Foreign Affairs, *Pour que le crime ne paie pas – L'expérience de la Suisse en matière de restitution d'avoirs illicites* (December 2016), pp. 26-27

¹⁶⁷ See Box 5, p. 42 and Case study "Switzerland – United States – Kazakhstan (1999-2014): US\$115 million returned", p. 101

and social welfare through Conditional Cash Transfers, scholarships and grants to local and international NGOs to pursue the programme's objectives.

The BOTA Foundation began operating in February 2009. On 31 December 2014, having fulfilled all the tasks for which it was established, the Foundation was dissolved.

- **Accountability:** The agreement provided for a detailed procedure for designating all stakeholders and their contact points. The stakeholders were to be notified about these contact points, but the agreement does not expressly provide for public information on this point.

The agreement provided for funds to be disbursed in instalments (based on progress reports and according to a budget and annual action plan approved by the BOTA Foundation board, the World Bank and the three governments involved in the restitution). The United States and Switzerland reserved the right to veto any disbursement if they were not satisfied with the way the Foundation was conducting its operations, but also if the World Bank did not see any progress from Kazakhstan in complying with the Public Finance Management Review and the Extractive Industries Transparency Initiative, which was a condition of the asset transfer.

The parties also agreed that the funds would not be used to make payments in connection with corruption or for the benefit of the Kazakh government, its agents or anyone who has personal or business relations with them.

The Swiss and US governments had the right to demand at any time – including after the agreement had been implemented – the repayment of any funds that had been used in violation of the conditions, procedures and objectives of the agreement. The agreement provided for a detailed procedure and a time limit for repayment, after which the Kazakh government itself would be obliged to return the funds (subject to exercising a right of appeal).

The assets were blocked in a Swiss account and returned in increments directly to the Foundation's bank account. The restitution agreement stipulated that the Foundation should adopt a financial management system and prepare financial statements in accordance with accounting standards. Financial audit reports, prepared by an independent auditor, were to be provided to the World Bank and the states parties every six months.

With regard to the overall monitoring and auditing process, the agreement provided for the selection of auditors by the World Bank subject to approval by the parties. The auditors were required to submit an annual financial report to the World Bank and the parties. The World Bank, responsible for monitoring the activities of the BOTA Foundation, contracted an international NGO to oversee the Foundation's operations, provide administrative support and ensure that the Foundation's objectives were met. In addition, the local World Bank financial manager periodically checked the Foundation's accounting records. Under the agreement, the World Bank was also required to prepare regular progress reports on the BOTA programme.

- **Transparency:** It was clearly expected that the restitution agreement would be made public.

With regard to monitoring and auditing reports, the World Bank and the states parties were provided with financial reports on BOTA's activities. The handover agreement specified that these reports should be kept and made available to them for at least five years after the final report was issued.

The contract with the World Bank regarding the performance of its tasks stipulated that the Bank could publish information on its activities under the agreement.

- **Inclusion of civil society:** The agreement stipulated that BOTA should be a local Kazakh organisation created by local people and that Kazakh citizens should sit on the board.

Under the terms of the agreement, candidates for “founder” status must have no links to the Kazakh government and had to be respected figures in the community, preferably known for their support of children's causes. All three states parties to the restitution had the opportunity to nominate candidates, and the candidates were ultimately selected by unanimous agreement by all three states parties.

The founders were in turn responsible for proposing candidates for the board, in particular Kazakh citizens, preferably those known for their support of children's issues.

For example, the BOTA Foundation's seven-member board of directors included a representative of the Swiss and US governments, as well as five Kazakh citizens representing civil society.

BOTA's statutes specified that the two representatives of the Swiss and US governments could dismiss the local board members (which they declined to do) and that all important decisions taken by the board had to be approved by the three governments.

Management of the Foundation was entrusted to two internationally recognised NGOs with no links to the Kazakh government, selected after a tender process: IREX and Save the Children.



POSITIVE RESULTS

- The effort made by the states parties to agree on a restitution agreement containing provisions to ensure a high degree of accountability and inclusiveness are to be welcomed.
- Unusually, despite being a party to the restitution agreement, the Kazakh government was kept entirely out of the BOTA Foundation's operations. The Kazakh government had no access to the assets (paid directly and exclusively to the Foundation) and no power over how they were used, as it did not sit on the board of directors. Thus, the BOTA Foundation's desire to remain fully independent from the Kazakh government and the composition of the Foundation's board of directors gave a prominent role to representatives of civil society in the country of origin of the assets.
- Civil society played a particularly important role in implementing, monitoring and evaluating the programme. In addition, the selection procedures for civil society representatives to actively participate in the asset recovery process, as detailed in the restitution agreement, ensured that the individuals and CSOs involved had no links whatsoever to the origin country.
- The specific obligations of the various BOTA bodies, the supervision by the World Bank as detailed in the agreement, and the use of independent auditors ensured that the asset recovery process was fully accountable.
- The BOTA Foundation carried out its duties with noteworthy transparency and integrity. Indeed, to date, there have been no allegations of corruption or wrongdoing.
- According to the final report by IREX and Save the Children, the BOTA programme has benefited 208,000 people. In addition, as part of its operations, BOTA recruited and trained over 100 local people. The asset recovery process has also built the capacity of some local workers, who have subsequently been able to share their experience with various international organisations and put it to use for new projects at the local level. For example, one former BOTA staff member created a new organisation called Shabyt, which aims to improve the lives of the poor in the Akmola region by mobilising local communities to resolve social issues.¹⁶⁸
- A qualitative evaluation of the BOTA Foundation's work, commissioned by the parties and conducted by the Oxford Policy Management consultancy, concluded that the Foundation's activities had been extremely useful to the people who had benefited from them.¹⁶⁹

¹⁶⁸ IREX and Save the Children, *The BOTA Foundation: Final Summative Report* (February 2015), pp. 49-50

¹⁶⁹ Oxford Policy Management, “Evaluating the BOTA Foundation's social sector programmes in Kazakhstan” (2011 to 2014)



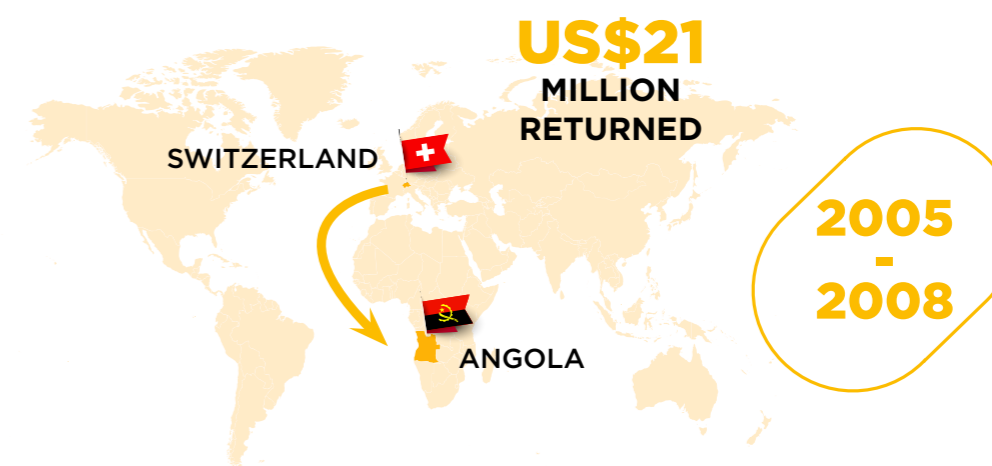
NEGATIVE RESULTS

- While the BOTA Foundation has been very transparent in its activities, it is still recommended that obligations to publish information on the recovery process should be included in the restitution agreement so as to ensure that the transparency principle is properly applied. On this point, however, it should be noted that the restitution agreement concluded by the United States, Switzerland and Kazakhstan, while it provides for detailed monitoring and auditing leading to the preparation of various reports, only stipulates that this data should be made available to stakeholders, and not to civil society. Informing civil society at an early stage makes it possible to identify and address any irregularities in good time, rather than after the assets have been returned.

- Some experts and CSOs found the monitoring mechanism to be excessively bureaucratic and costly. For these and other reasons, Switzerland decided to move away from the model of restitution through an independent ad hoc foundation in the framework of the Kazakhstan II restitution,¹⁷⁰ although, in the end, the terms of the restitution were heavily criticised.¹⁷¹

➔ In any case, several parameters, including the administrative cost and effectiveness of a multi-level control procedure, need to be taken into account when selecting the most appropriate mechanisms, depending in particular on the conditions of transparency, accountability and inclusiveness that the country of origin can offer outside of the restitution framework.

SWITZERLAND - ANGOLA US\$21 MILLION RETURNED



CONTEXT

In **2004**, Switzerland froze 27 million Swiss francs (US\$21 million) in a criminal investigation into allegations of corruption and money laundering involving Angolan officials. The complex case, known as “Angolagate”, was linked to embezzlement in connection with the restructuring of Angola’s debt under a 1996 agreement with Russia. The Geneva judicial authorities eventually closed the case in December 2004, considering that no irregularities had occurred in the settlement of Angola’s debt with Russia.¹⁷² In **November 2005**, the Swiss and Angolan governments reached an agreement to return the assets to Angola by means of two humanitarian projects for the benefit of the Angolan population. To this end, the Geneva judicial authorities released approximately US\$21 million into four escrow accounts located in Switzerland. The 2005 agreement was preceded by an agreement in principle between the two countries in November 2003.

TERMS OF RESTITUTION

Switzerland and Angola wanted to use the returned funds for projects that would benefit the most vulnerable sections of the Angolan population, in the priority areas of reconstruction, construction and equipping of hospital infrastructure, basic vocational training and water supply, as well as for promoting local capacities, including the social reintegration of people displaced during the civil war.¹⁷³ In the end, an agricultural vocational training project and a demining project were selected. The funds were initially transferred to an account at the Swiss National Bank, managed by the Swiss Agency for Development and Cooperation.¹⁷⁴

- **Transparency:** The restitution agreement between Switzerland and Angola was not published and the negotiations were conducted with the utmost discretion.¹⁷⁵
- **Accountability:** The bilateral agreement provided that the parties would jointly coordinate projects and appoint representatives to approve projects, their budgets and the allocation of funds. The Agency was to establish an executive secretariat that would oversee the administrative and financial monitoring of the programme.¹⁷⁶ In response to

¹⁷⁰ Swiss Federal Department of Foreign Affairs, *Pour que le crime ne paie pas – L’expérience de la Suisse en matière de restitution d’avoirs illicites* (December 2016), pp. 26-27

¹⁷¹ See Box 5, p. 42 and Case study “Switzerland – Kazakhstan (2011-2020): US\$48.8 million returned”, p. 98.

¹⁷² This conclusion has been widely disputed: see, for example, Public Eye, “Angola spolié (Solidaire 183)” (20 January 2006).

¹⁷³ Swiss Federal Department of Foreign Affairs, press release, “La Suisse et l’Angola signent un accord concernant la restitution des fonds provenant de la République d’Angola et actuellement bloqués en Suisse en vue de leur affectation à des projets humanitaires” (1 November 2005).

¹⁷⁴ Claudinê Gonçalves, “La Suisse restitue des fonds à l’Angola” (translated from Portuguese by Olivier Pauchard), *Swissinfo* (1 November 2005).

¹⁷⁵ Sylvain Besson, “La Suisse négocie discrètement la restitution à l’Angola des fonds occultes de ses dirigeants”, *Le Temps* (10 May 2003).

¹⁷⁶ Swiss Federal Department of Foreign Affairs, press release, “La Suisse et l’Angola signent un accord concernant la restitution des fonds provenant de la République d’Angola et actuellement bloqués en Suisse en vue de leur affectation à des projets humanitaires” (1 November 2005).

concerns expressed by CSOs, the Agency also promised to set up a joint Swiss-Angolan commission that would ensure transparency in the asset recovery process.¹⁷⁷

- **Inclusion of civil society:** No role has been assigned to civil society.



POSITIVE RESULTS

- The Swiss authorities decided to undertake the restitution despite the risks involved in managing public money in Angola. It is interesting to note that Switzerland worked to circumvent the obstacles to restitution, as illicit assets stolen from the people they were intended to benefit should always be returned. However, where restitution involves a high degree of risk, stronger safeguards for transparency, accountability and inclusiveness should be adopted.¹⁷⁸ This does not appear to have been the case in the restitution between Switzerland and Angola.



NEGATIVE RESULTS

- The negotiation of the restitution agreement and its implementation suffered from a real lack of transparency and accountability, and civil society was not able to play a role in the asset recovery process. The opacity of the process was also an obstacle to independent monitoring by CSOs.
- The bilateral agreement between Switzerland and Angola, and more broadly the final allocation of assets, has been the subject of much criticism. In addition to the fact that the bilateral agreement between the two states was never published, many NGOs in Switzerland and Angola have complained that the funds allocated for demining were used to finance a project carried out by a Swiss arms company, with no public tender. The opportunistic nature of this decision, which favoured Swiss interests, was strongly condemned.¹⁷⁹
- The Swiss arms company RUAG, which had no experience in demining,¹⁸⁰ was awarded a contract worth US\$10 million from the returned funds without taking part in a tender. The NGOs Action Place Financière Suisse, Berne Declaration and Global Witness asked the Swiss Agency for Development and Cooperation to reconsider its decision to give the contract to RUAG and to put out a call for tender. In their view, RUAG did not have sufficient capacity for demining. The contract would therefore allow RUAG to receive a commission for calling in subcontractors capable of carrying out the demining, whereas these could simply have been selected directly through a call for tenders.¹⁸¹ RUAG itself admitted that it had no experience in demining and that it would subcontract a German company, while RUAG would merely provide logistical support.¹⁸² The economic rationality of the decision to award the contract to RUAG thus seems questionable at the very least.
- More importantly, as some NGOs have pointed out, the intermediation of the Swiss company without any economic justification and the failure to organise a transparent tender process prevented the maximum amount of assets from being invested for the benefit of the Angolan population,¹⁸³ which is an essential component of an effective asset recovery process.
- The Swiss Agency for Development and Cooperation, for its part, denied selecting this service provider, claiming that RUAG had been chosen by the Angolan authorities. To counter criticism, the Agency, while denying any responsibility for the fact that there was no call for tenders, is said to have requested two external audits before the contract was finally signed.¹⁸⁴

SWITZERLAND - NIGERIA US\$723 MILLION RETURNED



CONTEXT

Between 1993 and 1998, General Sani Abacha, the former head of state of Nigeria, is alleged to have embezzled between US\$3 billion and US\$5 billion of public funds.¹⁸⁵ These funds were laundered through family members and close associates in several countries, including the United Kingdom, Switzerland, France, Luxembourg and Liechtenstein.

When Abacha died, some of this money was located in Switzerland, where nearly US\$700 million was frozen. In 2005, a Swiss court authorised the return of US\$458 million to Nigeria, irrespective of any confiscation order made in Nigeria. In April 2004, Switzerland had already returned US\$200 million.¹⁸⁶ A third tranche, amounting to US\$66 million, was returned in 2006. These first transfers by Switzerland to Nigeria of assets embezzled by Abacha are commonly referred to as the Abacha I restitution. In total, more than US\$700 million has been returned.

TERMS OF RESTITUTION

In the spring of 2004, the Nigerian authorities told the Swiss authorities that the Abacha assets returned to Nigeria would be used to fund development projects for the poor and rural population in the areas of public health and education, and to build new infrastructure (roads, water and electricity supply).

In February 2005, when it was announced that an additional US\$458 million would be returned to Nigeria, the Swiss and Nigerian authorities indicated that the funds should be used in a fully transparent manner.¹⁸⁷

However, no agreement between the two governments on the return of the various tranches has been made public. According to a 2006 World Bank report, the agreements governing the return of the Abacha assets did not provide for specific budget implementation terms and did not require the Nigerian government to disclose the recipient projects. The World Bank, mandated after the start of the transfers to monitor the use of the funds, concluded that these shortcomings were at the root of many of the problems identified.¹⁸⁸

¹⁷⁷ Serge Enderlin, 'Projet suisse inédit en Angola', *Le Temps* (3 December 2005)

¹⁷⁸ See Box 11, p. 54

¹⁷⁹ Action Place Financière Suisse, Berne Declaration and Global Witness, joint press release, "Restitution of misappropriated Angolan public funds: Complicity between SDC and RUAG" (10 June 2008)

¹⁸⁰ Ram Etwareea, "Ruag close to a demining contract in Angola", *Le Temps* (11 June 2008)

¹⁸¹ Action Place Financière Suisse, Berne Declaration and Global Witness, joint press release, "Restitution of misappropriated Angolan public funds: Complicity between SDC and RUAG" (10 June 2008)

¹⁸² Ram Etwareea, "Ruag close to a demining contract in Angola", *Le Temps* (11 June 2008)

¹⁸³ Simon Bradley, "NGOs attack Angola demining deal", *Swissinfo* (13 June 2008)

¹⁸⁴ *Swissinfo*, "Angola: Crossfire against Swiss humanitarian agency", *Swissinfo* (12 June 2008)

¹⁸⁵ Transparency International, "Returning Nigerians' Stolen Millions" (3 August 2018)

¹⁸⁶ Stéphanie Germanier, "La Suisse restitue l'essentiel des fonds Abacha au Nigeria", *Le Temps* (17 February 2005); *RTS*, "La Suisse restitue les fonds Abacha au Nigeria", *RTS* (28 June 2010)

¹⁸⁷ Swiss Federal Office of Justice, "Abacha Funds returned to Nigeria" (16 February 2005)

¹⁸⁸ World Bank, *Utilization of Repatriated Abacha Loot: Results of the Field Monitoring Exercise* (December 2006)

- **Transparency:** In February 2005, when it was announced that an additional sum of US\$458 million would be returned to Nigeria, the Swiss and Nigerian authorities indicated that the funds should be used in a fully transparent way.¹⁸⁹ However, the two governments did not appear to make any specific arrangements to guarantee transparency.

- **Accountability:** The arrangements for monitoring the use of the assets were only decided after the first transfers had been made.¹⁹⁰ The World Bank was mandated *ex post* to monitor the use of the returned funds. The Nigerian government decided to include the projects financed with the returned funds in its regular budget programming. Furthermore, there were no specific arrangements for selecting and monitoring projects.

- **Inclusion of civil society:** No role seems to have been assigned to civil society in the first restitution of the Abacha funds.



POSITIVE RESULTS

- The monitoring process – supervised by the World Bank, albeit belatedly – had several positive aspects that should be mentioned. The projects were monitored with the help of several Nigerian government agencies and a group of 20 field monitors, representing six ministries and various Nigerian CSOs (coordinated by the African Network for Environment and Economic Justice, which later became involved in the Abacha II restitution), who received training prior to the field mission. The monitoring process was funded by a grant from Switzerland administered by the World Bank and a financial contribution from a German private foundation, which enabled CSOs to be involved in the monitoring process.



NEGATIVE RESULTS

- Despite this, Nigerian CSOs reported a lack of cooperation from government agencies, a lack of access to information, and a failure to involve them when designing monitoring methods.¹⁹¹

- The overall asset recovery process suffered from a lack of transparency in the restitution terms agreed between Switzerland and Nigeria. This was an obstacle to measuring the effectiveness of the asset recovery process.¹⁹² Some Swiss CSOs were critical from the outset of Switzerland's failure to take steps to monitor the use of the funds before they were transferred.¹⁹³

- It was only after the first transfers that the governments of Nigeria and Switzerland agreed on how to monitor the use of the funds.¹⁹⁴ This a posteriori control prevented the final allocation of the Abacha assets from being properly monitored, and created opportunities for the budget to be manipulated.¹⁹⁵ Indeed, while Switzerland returned the Abacha assets to Nigeria between 2005 and 2006, the assets were actually used to finance projects included in the budgetary term for 2004. According to a World Bank report, insufficient allocations in 2004 meant that spending agencies used part of the Abacha assets to clear delays in payments that should have been made in 2004. As a result, some projects completed in 2004 were financed by the Abacha assets returned between 2005 and 2006.

- According to some CSOs, the returned funds were only used to cover shortfalls in existing projects, as half of the projects to be financed with the assets were never implemented.¹⁹⁶ Some of the assets reportedly “disappeared” from the Nigerian government's accounting system, and it was impossible to trace the full expenditure of the assets.¹⁹⁷ In an independent report, Nigerian CSOs even indicated that several projects were never completed or were abandoned along the way. They also highlighted a failure to involve local communities in designing and implementing projects. According to the report,



such a vertical approach to development does not address the priority needs of beneficiaries or build their capacity.¹⁹⁸ The authors of the report noted that both project implementers and government officials had been uncooperative in monitoring projects, and called for an investigation into potential corruption.¹⁹⁹

However, in its December 2006 monitoring report, the World Bank concluded that the funds had been used to finance development projects, although the lack of transparency had led to several irregularities. However, it found wide disparities in project portfolios across sectors, noting a failure to complete some projects at the time of its report or to implement projects according to schedule.

- The lack of pre-established terms for selecting and monitoring projects and treating returned funds within the framework of regular budget programming made it difficult to trace the returned funds, given the weakness of the general budget control system. Implementing ministries and departments were not able to distinguish retroactively between regular budget expenditures and expenditures that use returned funds. The World Bank also pointed out the inadequate reporting by these ministries and departments, which were unable to account for expenditure on a project-by-project basis. This prevented them from monitoring the funds received by contractors for the year 2004, the competence of the various contractors involved in implementing projects, and the planned implementation schedule.

- The monitoring process, supervised by the World Bank, revealed that due to a general lack of transparency, 98% of respondents were unaware that the projects under review had been financed with Abacha funds. The World Bank stated that greater transparency with regard to these projects – including the origin of the funds and progress made in their implementation – would have allowed the Nigerian government to increase the visibility of its anti-corruption policy and clearly demonstrate to the Nigerian public the benefits associated with the proper use of returned funds.

➡ Learning from this experience, in the second round of the Abacha assets restitution, the Swiss and Nigerian governments adopted good governance safeguards prior to the restitution and Nigeria included a line item for asset recovery in its budget.²⁰⁰

¹⁸⁹ Swiss Federal Office of Justice, “Abacha Funds returned to Nigeria” (16 February 2005)

¹⁹⁰ World Bank, *Utilization of Repatriated Abacha Loot: Results of the Field Monitoring Exercise* (December 2006), p. 6

¹⁹¹ David Ugolor (ANEEJ), “Non-State Actors Monitoring of Returned Assets”, presentation at the Multi-Stakeholder Workshop on the United Nations Convention against Corruption and its Review Mechanism held in Addis Ababa from 8-11 April 2019 (2019)

¹⁹² Civil Forum for Asset Recovery (C/FAR), “Asset recovery in Nigeria: the good and the bad” (12 September 2018)

¹⁹³ Stéphanie Germanier, “La Suisse restitue l'essentiel des fonds Abacha au Nigeria”, *Le Temps* (17 February 2005)

¹⁹⁴ World Bank, *Utilization of Repatriated Abacha Loot: Results of the Field Monitoring Exercise* (December 2006), p. 6

¹⁹⁵ *Ibid.*

¹⁹⁶ *RTS*, “La Suisse restitue les fonds Abacha au Nigeria”, *RTS* (28 June 2010)

¹⁹⁷ Julia Crawford, “Is the Abacha deal a model for the return of ‘dictators’ funds?”, *Swissinfo* (15 March 2018)

¹⁹⁸ Nigerian Network on Stolen Assets (NNSA), *Shadow Report on the PEMFAR Monitoring Exercise* (2006)

¹⁹⁹ *Ibid.*, p. 64; Public Eye, press release, “Abacha funds: catastrophic repatriation by Swiss authorities” (19 April 2002)

²⁰⁰ *Report* of the International expert meeting on the management and disposal of recovered and returned stolen assets, including in support of sustainable development, held in Addis Ababa from 14 to 16 February 2017

SWITZERLAND - PHILIPPINES

US\$684 MILLION RETURNED



CONTEXT

Ferdinand Marcos was elected president of the Philippines in 1965. In 1972, he declared martial law in order to remain in power despite term limits. Following a popular uprising, he was finally forced into exile in the United States in 1986. Transparency International estimates that Marcos and his entourage embezzled between US\$5 million and US\$10 billion of public money.²⁰¹

In **February 1986**, just hours after the dictator was overthrown, the Swiss government ordered the freezing of all Marcos assets in Switzerland. Shortly afterwards, the Philippine government filed a request for judicial assistance with the Swiss authorities. In **1997**, the Swiss Federal Court issued a final decision recognising the illicit origin of the assets held by Marcos and his entourage and authorising the transfer of the funds to escrow accounts in the Philippines. A total of US\$624 million (US\$365 million frozen in Switzerland, plus interest accrued while they were frozen) was finally returned to the Philippine treasury in **February 2004**, following a confiscation decision by the Philippine Supreme Court ending the mutual legal assistance proceedings.

TERMS OF RESTITUTION

While the funds were blocked in escrow accounts in the Philippines, the Swiss authorities, through the Zurich Cantonal Prosecutor, oversaw the choice of projects to which the assets were allocated.²⁰²

Two thirds of the restitution money was spent on land reform to benefit landless farmers. The assets were first returned to the Philippine treasury and then transferred to a specific off-budget fund for land reform, where the restitution funds were combined with other revenues.

The last third was dedicated to compensating victims of serious human rights violations committed during the Marcos regime. On 25 February 2013, former Philippine president Benigno Aquino III signed the Compensation Act into law, which recognises and compensates victims of human rights violations perpetrated by the Marcos regime. In 2014, the Human Rights Victims' Claims Board was established and Switzerland provided technical assistance.

- **Accountability:** The 1997 decision of the Swiss Federal Court made restitution subject to a double condition: the Philippines' commitment to decide on the confiscation or restitution of the assets to the rightful claimants following a judicial procedure in accordance with the procedural principles set out in Article 14 of the International Covenant on Civil and Political Rights; and the country's commitment to keep the Swiss authorities informed of the current status and significant developments in the confiscation or restitution of assets and of the measures taken and procedures initiated to enable the victims of human rights violations under the Marcos regime to be compensated.²⁰³

- **Transparency:** The Swiss Federal Court's 1997 decision was published in German. However, no provision was made by Switzerland or the Philippines for public access to information on the other stages of the asset recovery process. The only information requirement included concerned information provided between states.

- **Inclusion of civil society:** No role is assigned to civil society in the asset recovery process.



POSITIVE RESULTS

- The restitution of the Marcos assets by Switzerland to the Philippines was a pioneering achievement, as it was the first time that such large sums of money had been successfully recovered. The impact of the asset recovery process was significant because it directly influenced the negotiations of the United Nations Convention against Corruption, which devotes an entire chapter to restitution.
- In this first restitution case in Switzerland, the Swiss judicial authorities were sensitive to the issue of compensation for victims of human rights violations committed under the Marcos regime and took into account the legal framework in the Philippines in order to potentially subject the restitution to conditions.



NEGATIVE RESULTS

- However, while the Swiss Federal Court noted the shortcomings of the Philippine judicial system, the restitution decision did not include the condition that the Philippines provided real guarantees as to how the recovered assets would be used. The conditions for restitution set out in the Swiss Federal Court's 1997 decision, in particular the condition that the Swiss authorities be informed of the measures and procedures implemented to compensate the victims, in no way served as concrete guarantees.
- Apart from the provisions of the 1997 decision to inform the Swiss authorities and the reference to a review of this information by the Federal Council - which could lead to inter-state procedures being initiated in the event of non-compliance by the Philippines with the victims' rights provisions contained in the International Covenant on Civil and Political Rights and the Convention against Torture - no provision was made for transparency and accountability. The role of civil society was not even mentioned.
- Moreover, in practice, once the restitution was made, many irregularities were uncovered in the use of the funds, in particular with regard to the funds allocated to the Philippine land reform project.
- With regard to **the land reform project**, there were numerous allegations of mismanagement and corruption surrounding the spending of allocated funds.²⁰⁴ The conflation of the Marcos assets with other revenues of the special fund established to undertake this reform project has also allegedly prevented the final allocation of the returned assets from being properly monitored.

²⁰³ The 1997 decision of the Swiss Federal Court also requires the Philippines to keep the Swiss authorities regularly informed of the status of the proceedings and of all important developments relating to the asset recovery and the measures taken to compensate the victims. The Swiss Federal Court's decision also provides that the Swiss Federal Council may take action in accordance with Article 41 of the International Covenant on Civil and Political Rights and Article 30 of the UN Convention against Torture (through a referral to the Human Rights Committee or an arbitral tribunal).

²⁰⁴ See Box 14, p. 59. According to a joint report by the World Bank and the United Nations Office on Drugs and Crime, the Philippine Commission on Audit reportedly found that a significant portion of the returned funds was invested in excessive and wasteful spending that did not benefit the designated beneficiaries of the land reform (UNODC and World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), p. 25).

A report by the International Center for Asset Recovery has also identified many transactions that are considered questionable (Ignasio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* October 2009).

In addition, a March 2006 press release from the President of the Philippine Senate referred to potential massive corruption in the procurement of fertilisers for agrarian reform beneficiaries: almost 87% of the amount spent on fertilisers (amounting to almost US\$1 million) was allegedly overpriced (http://legacy.senate.gov.ph/press_release/2006/0328_drilon1.asp).

²⁰¹ Transparency International, *Global Corruption Report 2004*, p. 15

²⁰² Ignasio Jimu (International Center for Asset Recovery, ICAR), *Managing proceeds of Asset Recovery: the case of Nigeria, Peru, the Philippines and Kazakhstan* (October 2009)



• **Secondly, with regard to compensation for victims of human rights violations committed under the Marcos regime,** several limitations were highlighted.

• 10 billion Philippine pesos (approximately US\$224 million) of the Marcos funds were allocated to compensate victims, from which the operating costs of the Human Rights Victims' Claims Board were deducted.²⁰⁵

• A total of 11,103 victims of human rights violations had their applications accepted by the Board,²⁰⁶ while 75,730 applications were filed nationwide.²⁰⁷ More than 64,000 applicants had their applications rejected.

• According to representatives of Philippine civil society, the procedural arrangements were an obstacle to the compensation of victims.²⁰⁸ Furthermore, the Board was given very limited resources that did not allow it to process claims efficiently.²⁰⁹

• Finally, representatives of Philippine civil society also highlighted the problem of the composition of the Board, which included representatives of the police force.²¹⁰

➡ This example of restitution shows the importance of pre-establishing the specific terms of restitution and providing real guarantees as to how the funds will be used, including effective accountability mechanisms. To ensure these guarantees are made, a detailed agreement between the two countries is vital. In this case, not only accountability but also transparency and the inclusion of civil society were key factors which, if taken into account, could have allowed better tracing of funds, timely warning of suspected irregularities, and appropriate preventive measures, so that the returned funds would have truly and fully benefitted the affected populations.

²⁰⁵ Republic Act No. 10368: "Philippines law gives compensation to Marcos victims", *BBC* (25 February 2013)

²⁰⁶ Website of the Human Rights Violations Victims' Memorial Commission

²⁰⁷ Patty Pasion, "What the gov't still owes Martial Law victims", *Rappler* (31 August 2016)

²⁰⁸ See Krixia Subingsubing, "Marcos victims push for second claims board", *Philippine Daily Inquirer* (19 October 2020):

- Many victims were unable to satisfy the required degree and manner of proof of violations committed by the police force. In particular, the requirement of material evidence was a serious obstacle, as many victims could not legitimately obtain documents attesting to the violations suffered.
- Many of the victims of the Marcos regime's abuses are poor peasants who are unfamiliar with the legal technicalities, and who have been unable to pursue their claims because of the lack of adequate support.
- There was a time limit for submitting the application, which many victims in some provinces were unable to meet.
- Inexplicably, the Board rejected some claims by victims who had already been recognised in a class action in Hawaii against Marcos' beneficiaries.

²⁰⁹ Patty Pasion, "What the gov't still owes Martial Law victims", *Rappler* (31 August 2016)

²¹⁰ In particular, the first Board was headed by a former police general who had started her career while the Philippines was still under martial law. While human rights groups challenged the appointment at the time, the Attorney General justified the appointment on the grounds that the police officer had never been complicit in a human rights violation committed under martial law.

In light of the many limitations of this victim compensation process, groups representing victims of the Marcos regime have pushed for a second Board to be created. A bill was tabled by a parliamentary group in September 2020 to this effect. The bill sought to establish a fairer process for victims, including reducing the evidentiary burden on victims, allowing for more automatic compensation for victims whose injuries have already been recognised by Hawaii's courts, and excluding any current or former police officers from the new Board. See Krixia Subingsubing, "Marcos victims push for second claims board", *Philippine Daily Inquirer* (Oct. 19, 2020); Proposed legislation introduced in the Philippine Parliament (Sept. 2020).

RECOMMENDATIONS

■ Within the general budget of destination countries, pending their transfer, confiscated funds should be subject to separate accounting treatment so as to guarantee their traceability, allow parliamentary control and prevent them from being falsely labelled as “official development assistance”.

■ Within the general budget of origin countries, when returned funds pass through the coffers of the origin state before being used for the purposes agreed between the states, they should be subject to an accounting treatment that ensures their traceability, including when they are allocated to projects financed in part with other funds.

■ During inter-state negotiations, the destination state and the origin state should publish the main stages of the schedule for the negotiations, basic information on the nature of the returned assets and the ad hoc agreements concluded as a result of the negotiations.

■ The destination state and the origin state should establish the general and intermediate objectives of the asset recovery process and determine the monitoring and evaluation procedure at an early stage. No transfer of funds should take place until the general and intermediate objectives have been defined and the monitoring and evaluation procedures have been clearly and finally agreed on.

■ At each stage of the asset recovery process, civil society and the general public should have access to all information relevant to the asset recovery process without undue delay. This information should be accessible to the public as open source, in a centralised manner on a dedicated website or webpage accessible from both the origin country and the destination country, and in the languages spoken by the populations of each of these countries, without the need to submit a request.

■ The returned funds should be allocated to projects or programmes that meet the needs of the affected populations, identified prior to any allocation decisions, by means of public consultations which allow civil society and the general public to express their expectations and make proposals on how the returned funds will be used, which the origin state and destination state should take into account.

■ The selection process for all non-governmental actors involved, be they intergovernmental organisations, NGOs or private sector actors, should be subject to the highest standards of transparency and accountability so as to prevent any conflicts of interests and ensure the best possible use of the returned funds.

■ The authorities of the origin state and the destination state should ensure that the funds do not in any way benefit, directly or indirectly, any individuals who were directly or indirectly involved in the original offences, their entourage and the legal persons they own or control.

■ Any suspicion of irregularities in the management of the returned funds should lead to an investigation and the suspension of all or part of the asset recovery process. At each stage of the asset recovery process, specific accountability mechanisms should be put in place to remedy these irregularities and sanction those responsible, where appropriate.

■ At each stage of the asset recovery process, the roles and responsibilities of the various actors involved, both governmental and non-governmental, should be clearly defined. These actors should establish contact points for civil society and the general public to obtain answers to their questions and to submit reports and complaints. They report on and are accountable for their activities in accordance with the terms of the asset recovery process, to both the origin state and the destination state, as well as to civil society and the general public.

■ The destination state and the origin state should take the necessary steps to involve civil society from the earliest stages of the asset recovery process. CSOs should be involved in negotiating restitution agreements; they should be consulted before the restitution terms are decided and before recipient projects are selected; and they should have access at all stages to information and the means to exercise their role as independent guardians of the integrity of the asset recovery process. Civil society’s concerns and suggestions should be taken into account by the various actors involved in the asset recovery process.

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ANNEXES

ANNEX 1 - GFAR PRINCIPLES

GFAR PRINCIPLES FOR DISPOSITION AND TRANSFER OF CONFISCATED STOLEN ASSETS IN CORRUPTION CASES

The co-hosts and four focus countries at GFAR reaffirmed their commitment to the return and disposition of confiscated stolen assets as articulated in UNCAC. They highlighted the importance of technical assistance towards successful asset recovery and disposition. They reflected further on their experiences, and emerging lessons, from previous instances of returns.

Cognisant of the work already going on under the auspices of UNODC, and the call in the Addis Ababa Action Agenda¹ for the international community to develop good practices on asset return, GFAR participants offered the following considerations for principles that would promote successful asset return.

These Principles address approaches and mechanisms for enhancing coordination and cooperation, and for strengthening transparency and accountability of the processes involved. Nothing in these Principles is intended to infringe national sovereignty or domestic principles of law.

PRINCIPLE 1: PARTNERSHIP

It is recognised that successful return of stolen assets is fundamentally based on there being a strong partnership between transferring and receiving countries. Such partnership promotes trust and confidence.

PRINCIPLE 2: MUTUAL INTERESTS

It is recognised that both transferring and receiving countries have shared interests in a successful outcome. Hence, countries should work together to establish arrangements for transfer that are mutually agreed.

PRINCIPLE 3: EARLY DIALOGUE

It is strongly desirable to commence dialogue between transferring and receiving countries at the earliest opportunity in the process, and for there to be continuing dialogue throughout the process.

PRINCIPLE 4: TRANSPARENCY AND ACCOUNTABILITY

Transferring and receiving countries will guarantee transparency and accountability in the return and disposition of recovered assets. Information on the transfer and administration of returned assets should be made public and be available to the people in both the transferring and receiving country. The use of unspecified or contingent fee arrangements should be discouraged.

PRINCIPLE 5: BENEFICIARIES

Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct.

PRINCIPLE 6: STRENGTHENING ANTI-CORRUPTION AND DEVELOPMENT

Where possible, in the end use of confiscated proceeds, consideration should also be given to encouraging actions which fulfill UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals.

PRINCIPLE 7: CASE-SPECIFIC TREATMENT

Disposition of confiscated proceeds of crime should be considered in a case-specific manner.

PRINCIPLE 8: CONSIDER USING AN AGREEMENT UNDER UNCAC ARTICLE 57(5)

Case-specific agreements or arrangements should, where agreed by both the transferring and receiving state, be concluded to help ensure the transparent and effective use, administration and monitoring of returned proceeds. The transferring mechanism(s) should, where possible, use existing political and institutional frameworks and be in line with the country development strategy in order to ensure coherence, avoid duplication and optimize efficiency.

PRINCIPLE 9: PRECLUSION OF BENEFIT TO OFFENDERS

All steps should be taken to ensure that the disposition of confiscated proceeds of crime do not benefit persons involved in the commission of the offence(s).

PRINCIPLE 10: INCLUSION OF NON-GOVERNMENT STAKEHOLDERS

To the extent appropriate and permitted by law, individuals and groups outside the public sector, such as civil society, non-

governmental organizations and community-based organizations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets.

Washington, D.C. • December 2017

¹ Financing for Development conference, July 2015, para 25

ANNEX 2 – CIVIL SOCIETY PRINCIPLES FOR ACCOUNTABLE ASSET RETURN

These principles have been developed through a consultative, 18 month process involving civil society organizations from across the globe. They are minimum, framework standards and are designed to be supplemented by country and case specific detail by civil society. These principles should be applied to both international and domestic asset recovery.

TRANSPARENCY AND PARTICIPATION

PRINCIPLE 1

Asset recovery cases, including settlements, reconciliation agreements and negotiated agreements, should be conducted transparently and accountably from start to end, to the extent compatible with rules on confidentiality of investigation.

As far as possible, relevant authorities - both domestic and international - and including judicial authorities, where permitted, should publicly provide, from the earliest legally possible opportunity, the following information in an accessible manner and format to the public, including any identified victims of corruption:

- timely and accessible case information on the progress and status of asset recovery cases, including case names;
- the nature, type and estimated value of the assets under investigation;
- the legal framework through which the asset recovery process was initiated and is being undertaken;
- the nature, type and estimated value of assets seized and a timeline of planned steps for return;
- the negotiating framework, modalities for asset return and disbursement, and the foreseen role of civil society in the return;
- the disposition, administration and monitoring of returned assets. This should include an independent tendering process for third-party stakeholders involved in the disbursement of funds; due diligence on third-party/intermediary actors involved in the disbursement and monitoring of assets, and independently audited reports on the disbursement and management of funds; and progress of programs - all to be published publicly and available in an accessible format.

PRINCIPLE 2

All recovered assets must be traceable by the general public at all stages of the process of asset recovery, from the confiscation, seizure and sale of assets through to the return and disbursement of assets. This could include, amongst other methods, that recovered funds be separated from the general state budget and placed in a special account or an agreed independent mechanism until assets have been fully disbursed.

PRINCIPLE 3

Independent civil society organisations, including victims' groups/representatives, should be able and enabled to participate in the asset recovery process. This includes:

- identifying the mechanisms and processes that allowed for initial harm to occur;
- identifying how the harm can be remedied including providing information on how the harm was committed, as well as proposals to prevent recurrence and a timeline for achieving this;
- contributing to decisions on the return and disposition of assets including social programs dedicated to victims of corruption and identifying needs;
- fostering transparency, accountability and due diligence in the transfer, administration, disposition, monitoring and reporting of recovered assets; and,
- as far as permitted by confidentiality rules, fostering transparency and accountability in the investigation.

PRINCIPLE 4

Multilateral, bilateral and case-specific agreements or arrangements should be made public in a timely fashion and accessible manner, including when recovery is part of reconciliation arrangements, and should involve independent civil society representatives.

These agreements should be concluded to ensure the transparent, accountable and effective use, administration and monitoring of the returned proceeds of corruption are in line with the principles set out here.

INTEGRITY

PRINCIPLE 5

In no cases should the disposition of the recovered assets benefit directly or indirectly natural or legal persons involved in the commission of the original or on-going offence(s).

This includes situations where those directly or indirectly involved in the original corruption remain in positions of power and are able directly or indirectly to benefit from the disposition of the recovered assets; or influence the decision-making process.

PRINCIPLE 6

A process should be in place to monitor the disbursement of funds that includes an independent complaints mechanism.

Any suspicion of irregularities concerning the management of recovered assets should lead to the opening of an investigation by independent authorities. Where the return is international, investigations should be opened by both the origin and returning jurisdictions and transfers should be suspended pending the outcome of the investigation.

When countries are not compliant with UNCAC Articles 9, 10 and 13 (transparency and accountability in public financial management; public reporting and participation of society), monitoring for irregularities in international returns should be particularly stringent.

ACCOUNTABILITY

PRINCIPLE 7

Anti-corruption, rule of law and accountability mechanisms should be in place to provide oversight of recovered assets. As a minimum, this should include:

- Transparent and accountable public procurement and tendering processes that meet international standards;
- Transparent and publicly available registers of companies, with beneficial ownership declared;
- Establishment of regulations on conflict of interest;
- Independence of the judiciary and access to a fair trial;
- Freedom of association and freedom of the press, without which any meaningful monitoring by the civil society would be impossible.

When these are not in place, alternative arrangements should be considered in consultation with a broad base of independent civil society organisations that are truly representative of citizens, including where possible victims' groups/representatives, to ensure accountability and transparency in the management and oversight of recovered assets.

This does not affect the principle that the recovered assets remain the property of the people of the country from which they were stolen.

VICTIM RESTITUTION AND OTHER BENEFICIARIES

PRINCIPLE 8

Victims should be provided access to justice in domestic and international cases of illicit activities including bribery and money laundering. They should be informed of case developments in an accessible format; and be provided opportunities to positively engage in cases e.g. through victim impact statements.

**ANNEX 3 - METHODOLOGY DEVELOPED BY THE CISLAC
(NIGERIAN CHAPTER OF TRANSPARENCY INTERNATIONAL)
ASSESSING THE IMPLEMENTATION OF THE GFAR PRINCIPLES**

Where possible, victim groups and their representatives should be afforded 'standing' in relevant jurisdiction outside their own, to allow them to bring cases against state officials and their representatives to the courts, particularly in instances where domestic judicial systems would not allow or are susceptible to being partial.

Where victims of the abuse of power by public officials can be identified individually or as a group, they should allow the opportunity to be provided restitution for the damage caused. This principle should not apply to those involved directly or indirectly in the commission or facilitation of the offence(s).

PRINCIPLE 9

Without prejudice to the restitution of identified victims and with the understanding that the recovered assets remain the property of the people of the country from which they were stolen, recovered assets should be used to benefit the people of the country from which the assets were stolen.

'Benefit the people' in this context means improving the living standards of populations and/or strengthening the rule of law and prevention of corruption in line with international human rights obligations in the country or countries where the underlying offences occurred, and thus contributing to the achievement of the Sustainable Development Goals.

PRINCIPLE 10

A wide range of stakeholders, including a broad base of representative, independent civil society organizations should be involved in determining how recovered assets should be used to best repair the harm caused and to benefit the people of the country. Where possible and where victims' groups do not exist, independent civil society should also be empowered to help identify, and where possible, to represent victims and their interests.

The Global Forum for Asset Recovery (GFAR) took place in Washington D.C. in December 2017. It was an outcome of the London Anti-Corruption Summit held in 2016 and built on the previous Arab Forum for Asset Recovery series,¹ that began in 2012, and the Ukraine Forum on Asset Recovery, that took place in 2014, both of which aimed at supporting the countries involved in recovering assets hidden overseas by former rulers. The GFAR took these experiences to a global level, focusing on four countries: Nigeria, Sri Lanka, Tunisia and Ukraine and was jointly hosted by the UK and the US. The forum primarily focused on political, policy and technical exchange between involved governments a civil society participation was limited.²

The final communique of the GFAR set out ten principles that the hosts and focus country governments committed to in their further work on asset recovery. These principles were

not agreed to as binding commitments, nor worded as such, and reference themselves as 'approaches and mechanisms for enhancing coordination and cooperation, and for strengthening transparency and accountability of the processes involved.'³ Similarly the wording of each principle is vague in many cases and lacks the specify needed to be seen as clearly binding. Nevertheless, they do contain key ways in which the participating governments have agreed to act and should be seen as strongly influential in guiding their actions with respect to asset recovery.

This section examines each principle and its meaning in turn, with a view to providing greater detail on the meaning of the principles and how they relate to government action for asset recovery. It then includes a methodology for a trac light assessment of adherence with each principle.

GFAR PRINCIPLES

PRINCIPLE 1: PARTNERSHIP

It is recognised that successful return of stolen assets is fundamentally based on there being a strong partnership between transferring and receiving countries. Such partnership promotes trust and confidence.

This principle implies that the governments strengthen their bilateral relationships on asset recovery with countries of origin and destination. Partnerships could range from informal meetings to building relationships between key ocials at dierent levels, to regular political and technical conferences, to memoranda of understanding and concluding bilateral treaties on asset recovery. At the technical level, it could also include facilitating the setup of platforms for communication and exchange of information between law enforcement and the judiciary of dierent countries including membership in relevant international organisations, for example asset recovery inter-agency networks, Interpol etc.

No adherence	Partial adherence	Full adherence
The government has not started building partnerships with sending or destination countries.	The government started to build bilateral/multilateral partnerships at informal level, but lacks concrete measures; <i>ad hoc</i> informal meetings take place but are not regular; participation in international fora and platforms on asset recovery cooperation.	The government established one or more bilateral/multilateral partnerships with sending or destination countries; regular meetings of ocials; potentially bilateral treaties or other agreements in place. Regular participation in international fora and platforms on asset recovery cooperation.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, ocial policy documents, media reports. Please specific sources.		

¹ <https://star.worldbank.org/arab-forum-special-sessions>
² <https://star.worldbank.org/case-study/global-forum-asset-recovery-gfar>
³ <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>

PRINCIPLE 2: MUTUAL INTERESTS

It is recognised that both transferring and receiving countries have shared interests in a successful outcome. Hence, countries should work together to establish arrangements for transfer that are mutually agreed.

This principle implies that origin and destination countries should work together to mutually agree the conditions for the return of any assets. This too could range from entering into *ad hoc*, good faith negotiations on individual returns, to concluding a bilateral or multilateral treaty or other agreements setting out the modalities for future returns which satisfies all parties.

No adherence	Partial adherence	Full adherence
The government has not identified modalities for return with sending or destination countries.	The government worked to establish arrangement for mutually agreed transfers with sending or destination countries, but lacks of concrete measures <i>ad hoc</i> negotiations but not regular; no treaties or other bilateral/multilateral agreements discussed or concluded.	The government has entered into regular negotiations proactively with several key sending or destination countries nearing a return; concluded or in the process of concluding bilateral/multilateral agreements on return.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 3: EARLY DIALOGUE

It is strongly desirable to commence dialogue between transferring and receiving countries at the earliest opportunity in the process, and for there to be continuing dialogue throughout the process.

In some respects, underlying the first two principles, this principle implies that governments should commit to proactive and sustained dialogue with their counterparts in confirmed or likely countries holding their assets or sending assets to their country at an early stage of the asset recovery process. This could include for example efforts to communicate with counterparts already before a mutual legal assistance request is sent, during initial investigations into the case and in sharing information on the case from an early stage.

On the longer term, the principle aims to build durable relationships both at the political and technical levels to countermand possible future problems in the return, maintaining proactive and efficient communication between countries throughout the whole asset recovery process. This could take the form of *ad hoc* or regular meetings at the political and technical levels; sharing information at the technical level with counterparts on a regular basis; putting in place communication channels and participating in available platforms at the technical levels so that they are available when a new asset recovery case starts.

No adherence	Partial adherence	Full adherence
The government has not entered into dialogue with possible and confirmed sending or destination countries at an early stage of the asset recovery.	The government has entered into dialogue both at the political and technical levels with sending or destination countries at an early stage of the asset recovery process, but efforts are lacking for more sustained dialogue or are challenging. There are <i>ad hoc</i> mechanisms or the government has joined mechanisms to communicate and exchange information with international counterparts at the technical level but they are not used efficiently and consistently.	The government has entered into sustained dialogue with several sending and destination countries on asset recovery. Suitable communication channels and participation in international platforms on asset recovery cooperation at the technical levels are in place and consistently used.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 4: TRANSPARENCY AND ACCOUNTABILITY

Transferring and receiving countries will guarantee transparency and accountability in the return and disposition of recovered assets. Information on the transfer and administration of returned assets should be made public and be available to the people in both the transferring and receiving country. The use of unspecified or contingent fee arrangements should be discouraged.

Closely linked and potentially rearming principles developed and partially highlighted in this paper on transparency and accountability, this principle requires that States act to ensure that the asset recovery process adheres to internationally recognized best practice on transparency and accountability. This includes ensuring that authorities should publicly provide timely and accessible information in advance of any return on the agreed process; the amounts being returned; the timing of the return; and on the disposition and the administration of returned assets.⁴

No adherence	Partial adherence	Full adherence
The government does not publish updates on asset recovery efforts; no information is available online; any information on returns is only provided short notice or only through personal contacts; it is challenging to find out how returned assets are held and disbursed.	Information is provided publicly but is irregular and inconsistent. It covers some aspects of the returns and distribution process but not others AND/OR it covers some returns but not others. Information is not publicised well.	Information is openly provided by the government and covers all aspects of the return process for all cases this information is provided in a timely and accessible manner and a contact point exists for questions.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 5: BENEFICIARIES

Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct.

This Principle rearms the long established idea that victims of the abuse of power by public officials should receive compensation for the damage caused as part of an asset recovery process.⁵ It further recalls the established principle that, without prejudice to the victims of corruption, recovered assets should be allocated in such a way as to improve the living standards of the people.⁶

No adherence	Partial adherence	Full adherence
Returned assets are not required to compensate victims nor to improve living standards; returned assets go directly into the State budget and are not traceable as having contributed to one of these aims.	The government has guideline that suggest returns should first compensate victims, but it is not obligatory; there are some requirements to improve living standards but they are not strictly complied with or not measured.	All return agreements with third countries include clauses about utilising returned assets for victim compensation and/or improving live standards. There is a clear procedure for victims to register their status as a victim of that particular form of corruption and a policy or law clearly specifies the return should first go to victim and then to improve living standards. The government conducts and publishes assessments that show adherence and challenges.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

⁴ Transparency International France, Le sort des biens mal acquis et autres avoirs illicites issus de la grande corruption: Plaidoyer pour une procédure adaptée, au service des populations victimes, Key Principle 1, Stolen Asset Recovery Initiative, Management of Returned Assets: Policy Considerations (StAR, Washington D.C.: 2009), pp. 1-2.

⁵ UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Resolution 40/34 of 29 November 1985), paras 11, 18,19; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

⁶ Transparency International France (n.4), Key Principle 2; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

PRINCIPLE 6: STRENGTHENING ANTI-CORRUPTION AND DEVELOPMENT

Where possible, in the end use of confiscated proceeds, consideration should also be given to encouraging actions which fulfil UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals. Adding to the above Principle, the proceeds of the corruption can also be used to strengthen the rule of law and prevention of corruption, and thus contribute to the achievement of the Sustainable Development Goals, in particular Goal 16.⁷

No adherence	Partial adherence	Full adherence
The government does not envisage actions in the end use of confiscated proceeds assets to strengthen anti-corruption, no preference is given to anti-corruption measures in return distribution and sustainable development, or returns are not traceable in the general budget.	The government has guidelines that suggest returns should be used to strengthen anti-corruption return distribution and sustainable development, but they are not strictly complied with or not measured.	There is a clear policy or law requiring part of a return to be used for anti-corruption prevention and development. The government conducts and publishes assessments that show adherence and challenges.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 7: CASE-SPECIFIC TREATMENT

Disposition of confiscated proceeds of crime should be considered in a case-specific manner. This Principle implies that governments should treat each case separately when it comes to the disposition of the confiscated proceeds of corruption. In some cases, this may mean that funds are put into the general budget, in others a victim compensation scheme is set up. Key here will be the purpose for which the returned funds will be used, as determined by consideration under Principles 5 and 6.

No adherence	Partial adherence	Full adherence
The government gives no consideration of each case separately, all cases are treated alike and without a clear purpose for which the returned funds will be used.	The government treats cases separately but without clear rationales OR only treats cases different in some cases and without clear purpose.	All cases are treated in an individual fashion; a process is in place to consider how each return should be undertaken that publishes reasons for the approach taken.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 8: CONSIDER USING AN AGREEMENT UNDER UNCAC ARTICLE 57(5)

Case-specific agreements or arrangements should, where agreed by both the transferring and receiving state, be concluded to help ensure the transparent and effective use, administration and monitoring of returned proceeds. The transferring mechanism(s) should, where possible, use existing political and institutional frameworks and be in line with the country development strategy in order to ensure coherence, avoid duplication and optimize efficiency.

UNCAC Article 57 (5) states that: where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

⁷ Transparency International France (n.4), Key Principle 2; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery; United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases.

This principle encourages governments to ensure transparency and accountability, as well as effectiveness, in all bilateral and multilateral return agreements. This includes ensuring case-specific agreements or arrangements are public, including when returns are part of reconciliation arrangements,⁸ as well as detailing the timing, amounts, disposition and monitoring mechanism of returns. The principle also recommends using existing frameworks in the country of origin for the disposition of returned funds as well as consistency with the country's national development objectives when allocating the funds in order to avoid duplications. This could translate into using the returned funds to expand or continue already existing development or anti-corruption programmes, in line with Principle 6.

No adherence	Partial adherence	Full adherence
The government does not develop case specific agreements OR does not publish them or any details about them. There is no consideration of national development objectives or use of existing national frameworks in the disposition of funds.	Some case specific arrangements for return are carried out AND are published, including details on modalities on return and is not on regular basis. The use of returned assets in the country of origin takes into consideration existing national frameworks and development objectives only in some cases and without a clear strategy.	All cases are considered for a potential case-specific agreement and details of all concluded agreements are published in a timely fashion, including on modalities of return, timing, amounts returned and monitoring mechanisms. The disposition of funds is carried out taking consideration of national development objectives and making consistent use of existing national frameworks.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

PRINCIPLE 9: PRECLUSION OF BENEFIT TO OFFENDERS

All steps should be taken to ensure that the disposition of confiscated proceeds of crime do not benefit persons involved in the commission of the offence(s). This principle rearms the best practice provision that States should ensure that the disposition of confiscated proceeds of crime do not benefit directly or indirectly persons involved in the commission of the offence(s)⁹ and that any suspicion of irregularities concerning the management of the funds should lead to the opening of an investigation by authorities.¹⁰

No adherence	Partial adherence	Full adherence
The government does not have specific rules that restrict companies or persons convicted of corruption offences from participating in distribution of returned assets; there is no clear line of authority to investigate irregularities OR in practice there is little evidence of investigations into potential irregularities.	Rules on the participation of offenders in the distribution of recovered assets exist but are not well enforced; there are investigation and suspension powers but they are not clear or applied irregularly.	Specific rules prohibit the participation of offenders in the distribution of recovered assets; authorities have clear powers to launch investigations into irregularities in the dispersal of recovered assets and to suspend the disbursement and actually use those powers.
RED	ORANGE	GREEN
Evidence for rating		
Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.		

⁸ Transparency International France (n.4), Key Principle 1

⁹ United Kingdom: General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases

¹⁰ Transparency International France (n.4), Key Principle 4; UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery.

PRINCIPLE 10: INCLUSION OF NON-GOVERNMENT STAKEHOLDERS

To the extent appropriate and permitted by law, individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets.

This principle rearms the best practice principle that civil society, non-governmental organizations and community-based organizations, should participate in the asset return process, including by helping to identify how harm can be remedied through the recovered funds, contributing to decisions on return and disposition, and fostering transparency.

All steps should be taken to ensure that the disposition of confiscated proceeds of crime accountability in the transfer, disposition, monitoring and administration of recovered assets.¹¹ This implies that civil society groups in the country of origin are granted access to information on asset recovery dispositions early on and without hurdles; that they have a meaningful participation in the decision-making process on the use of returned funds, including during negotiations at a bilateral or multilateral level; that they are able to conduct the monitoring on the reuse of returned assets freely and independently; and that they are not retaliated against for their work on asset recovery.

No adherence	Partial adherence	Full adherence
<p>Civil society, non-governmental organizations and community-based organizations are not included in all the stages of the returns process.</p> <p style="text-align: center;">RED</p>	<p>Civil society, non-governmental organizations and community-based organizations can participate in some discussions on the return of assets, but its influence is limited OR it is only invited on an <i>ad hoc</i> basis. Civil society has access to information on asset recovery processes but the information is provided in an inconsistent and challenging way. Monitoring of returned assets by civil society takes places but independence and safety in their work is not sufficiently granted.</p> <p style="text-align: center;">ORANGE</p>	<p>Civil society has a right to participate in all asset recovery cases, including by representing the victims, and its recommendations have weight in all phases of the decision-making process. Information on asset recovery processes is provided fully and in an easily accessible way. Monitoring activities are conducted independently from authorities and without retaliation.</p> <p style="text-align: center;">GREEN</p>
<p>Evidence for rating</p>		
<p>Please include here the reasons for the above assessment. These can be taken from: Interview responses, social policy documents, media reports. Please specific sources.</p>		

¹¹ UNCAC Coalition Civil Society Statement for the Global Forum on Asset Recovery



