

STOP KLEPTOCRATS

THE EU MUST NOT BE A VAULT
FOR THE WORLD'S STOLEN ASSETS

Call for a sweeping reform of EU asset recovery policy



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The recovery of illegal assets held within its borders is critical if the EU wants to stop serving as an attractive destination for

This is why Transparency International is calling for a comprehensive reform of EU asset recovery policy to ensure that stolen assets held in the EU do not remain in the hands of kleptocrats and criminals, and are instead returned to their rightful owners. As the EU envisions a revision of its asset recovery legislation in 2021, it should consider introducing provisions to facilitate:

- The confiscation of stolen assets in situations where securing a prior conviction is not possible;
- The return of assets to the country of origin in a transparent and accountable manner and for the benefit of the victim populations;
- The collection and systematic publication of data on Member States' asset recovery efforts disaggregated on a case-by-case basis.



² Council of Europe, Fighting organised crime by facilitating the confiscation of illegal assets, 26 March 2018. Retrieved from: <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2V2Ym5LmNvZS5pbmQvbnNvZG1sL1h5ZWYwYm9kL1URXUwLW4dHlUeXNwP2p2bG9pZD0yNDUwNyZ5YW5nPUVO&xs1=aHR0cDovL3NlbnRwFudGljcGFZSS5uZXQvWHNsdC9QZGVyWfJlZi1XRC1BVC1YUwvUERGLnhzbA==&xs1tparams=ZmlsZWlkPT10NTA3>

THE EU'S STOLEN ASSETS PROBLEM

In recent years, scandals involving embezzlement of public funds and money laundering by foreign politicians and business magnates have laid bare the role of the EU as an attractive destination for their ill-gotten gains. This stolen wealth sits in the coffers of European banks, or is invested in yachts, luxury goods, or high-end property in European capitals.

It is believed that the family of former Tunisian President, Zine El Abidine Ben Ali, hid as much as 15 billion euros - equivalent to about one third of the average annual GDP of Tunisia - in bank accounts across the world, many of them in Europe. Meanwhile, Gulnara Karimova, daughter of the former leader of Uzbekistan, channelled stolen money into banks, offshore companies, luxury goods and property in at least 9 EU countries (see Table 1 and Annex A).³

Despite notorious cases making the headlines, the EU continues to perform poorly when it comes to confiscating and returning this loot. EU asset recovery efforts are not paying off and recent reforms have only produced marginal progress.⁴ It is estimated that within the EU only 2.2% of criminal proceeds are seized, and an even smaller percentage (1.1%) are confiscated. Very little is returned to victim populations.⁵

By failing to address loopholes in its asset recovery system, the EU is enabling the impoverishment of the countries from which the stolen money originated, and allows this dirty money to be diverted into Europe. On average, 1 trillion EUR of illicit money is believed to circulate around the world every year - half of which comes from developing countries.⁶



³ https://transparency.eu/wp-content/uploads/2020/07/upload_asset_recovery_compress.pdf

⁴ Report from the Commission to the European Parliament and the Council, Asset recovery and confiscation: Ensuring that crime does not pay, COM/2020/217 final. Retrieved from: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20200602_com-2020-217-commission-report_en.pdf

⁵ Europol, Does crime still pay?, Criminal Asset Recovery in the EU – Survey of Statistical Information, 1 July 2016, pp.4,11. Retrieved from <https://www.europol.europa.eu/publications-documents/does-crime-still-pay>

⁶ <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/economic-crime/money-laundering> and https://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

TABLE 1

ESTIMATES OF ASSETS ALLEGEDLY STOLEN...



Zine El Abadine Ben Ali,
former President Of Tunisia



Eur 15 Billion

EU jurisdictions through which the money stolen
has been transferred, invested or concealed

Belgium, France, Germany,
Italy, Spain



Gulnara Karimova, daughter of
former President of Uzbekistan



More Than
Eur 1 Billion

Belgium, France, Germany, Ireland,
Latvia, Luxembourg, Malta,
the Netherlands, Spain



Hosni Mubarak ,
former President of Egypt



Eur 64 Billion

France, Germany, Spain



Isabel dos Santos, daughter of
former President of Angola



Eur 1.8 Billion

Cyprus, France, Italy, Luxembourg,
the Netherlands, Portugal



Viktor Yanukovich, former
President of Ukraine



Eur 33 Billion

Austria, Cyprus, Italy, Latvia,
the Netherlands

SOURCE:

<https://sanctionswatch.cifar.eu/> and www.transparency.eu/wp-content/uploads/2020/07/upload_asset_recovery_compress.pdf

GAPS IN EU ASSET RECOVERY POLICY AND PRACTICE

Confiscation is a complex process which seeks to deprive criminals of the proceeds of their crimes. It is rendered even more difficult by the transnational nature of financial crime and money laundering. Money laundering is used to disconnect the proceeds of crime from the original offence in order to give these funds the appearance of legality. As a result, even if suspicious financial flows are detected, it is not always easy to connect them to a specific criminal act and criminal.⁷ Even if this connection is made, confiscation may not happen because it is too difficult to secure a conviction in the country where the

offence was committed. Proceedings can be delayed or stalled by poorly-functioning legal or judicial systems, or because the individuals targeted are in power and have control over these institutions. As a consequence, the stolen assets or property remain in corrupt hands.

Over the past decade, the EU has put considerable effort into enhancing its asset recovery framework. In 2014 it adopted the 'Directive on the freezing and confiscation of instrumentalities and proceeds of crime in the EU'⁸ (the 2014 Directive), which is



⁷ Commission staff working document- Analysis of non-conviction-based confiscation measures in the European Union. Retrieved from: <https://ec.europa.eu/transparency/regdoc/rep/10102/2019/EN/SWD-2019-1050-F1-EN-MAIN-PART-1.PDF>

⁸ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>
The Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters. EUR-Lex (official website to EU law, international agreements and other public documents).

currently under review. Then in 2018 it adopted two new instruments, a 'Directive on combating money laundering by criminal law' and a 'Regulation on the mutual recognition of freezing and confiscation orders'.⁹ The current framework provides various criminal law instruments that may help EU states in their international asset recovery efforts.

However, there are still legislative gaps that make it difficult to recover stolen assets without a prior request from the victim state, or a conviction of the perpetrator in that jurisdiction. Moreover, the current EU policy framework overlooks the last phase of the international asset recovery process: the repatriation and use of confiscated assets to benefit the citizens of the country from which they were stolen.



⁹ EUR-Lex, Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. Retrieved from: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1673&from=EN>
EUR-Lex, Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1805&from=EN>

RECOMMENDATIONS

In its last report¹⁰, the Commission recognised the need for a “broad modernisation of the EU legislation on asset recovery and further strengthen[ing of] the competent authorities’ capacity to ensure that crime does not pay.” This acknowledgment is welcome. The revision of the 2014 Directive, foreseen for the end of 2021, should provide an opportunity to introduce instruments and provisions that will allow for more proactive enforcement at all phases - freezing, confiscation and repatriation.

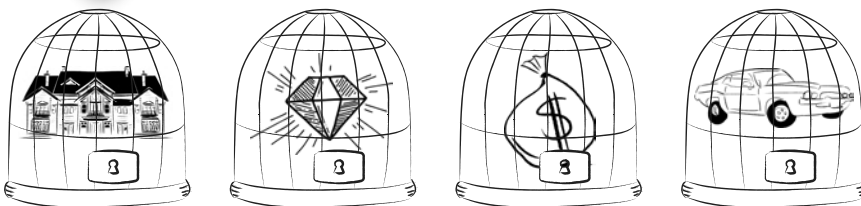
In particular, the EU reform should include provisions for **i) the confiscation of stolen assets in situations where securing a prior conviction is not possible** and **ii) the return of assets to the country of origin for the benefit of the victim populations (see Graph 1)**. Moreover, the ability of the EU to assess the impact of its reform and overall system depends on the availability of data. It is therefore critical that **iii) data on Member States’ asset recovery efforts are systematically collected and made publicly available in a disaggregated format, and on a case-by-case basis**.

¹⁰ Report from the Commission to the European Parliament and the Council, Asset recovery and confiscation: Ensuring that crime does not pay, COM/2020/217 final, see above.

GRAPH 1

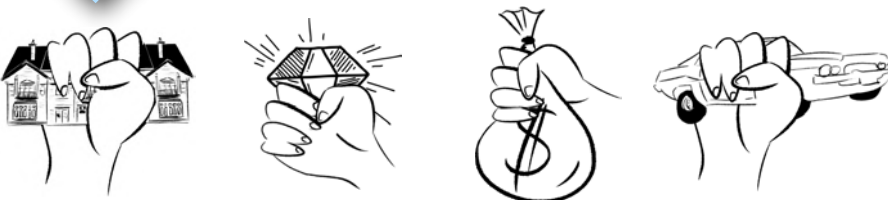
RECOMMENDATIONS TO IMPROVE ASSET RECOVERY PROCESSES ACROSS EUROPE

1 FREEZING



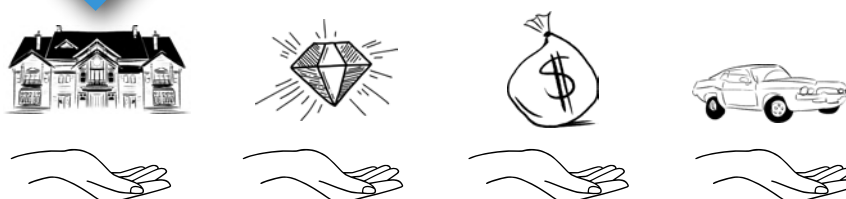
2 CONFISCATION

Extend the use of non-conviction based confiscation to cases where securing conviction of the individual in a third country is not possible



3 RESTITUTION

Enshrine principles for responsible asset recovery in EU law



Collect & Publish
Statistics On EU
Countries' Asset
Recovery Efforts

EXTENDING THE USE OF NON-CONVICTION-BASED CONFISCATION

Instruments should be introduced to facilitate the confiscation of illicit assets by Member States in situations where a prior conviction of the suspected individual is not possible. This is critical in transnational corruption cases where the ability to confiscate becomes dependent on the progress and outcome of judicial proceedings taking place in a third country where the original offence was committed. A number of countries already provide for this kind of confiscation, known as ‘non-conviction-based confiscation’ through either civil or criminal proceedings. In the current EU framework, non-conviction-based confiscation is foreseen only in limited cases when the accused or suspected individual absconds or is ill.

Non-conviction-based confiscation should be extended to other situations. In particular where justice often cannot be delivered in Europe due to judicial failings and rampant corruption in a third country. The European Commission recently admitted that “the introduction of further measures in the area of non-conviction-based confiscation is feasible and has potential benefits in increasing the levels of freezing and confiscation of proceeds of crime.”

This of course should be done in keeping with the principles of the rule of law as defined by the European Commission.¹¹ It should be done with respect for fundamental human rights such as the presumption of innocence, the right to a fair trial, the protection of property, as well as the legality principle when the sentence amounts to criminal sanctions. Similar legislation in EU Member States has passed the test of the highest national courts and, not least, that of the European Court of Human Rights.^{12 13} Provided that sufficient safeguards are in place – in particular, effective judicial review and compensation mechanisms for cases where assets were unduly seized and confiscated¹⁴ – and provided that these measures do not aim to establish whether the defendant is guilty or not but rather to recover the proceeds of crimes, such measures could offer an effective way to confiscate illegal assets. This has the potential to make crime less financially rewarding as well as releasing resources for victim redress.

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1757

¹² The European Court of Human Rights has repeatedly considered non-conviction based confiscation (including civil and administrative forms) and presumptions to be consistent with Article 6 European Convention on Human Rights (right to a fair trial) and Article 1 of Protocol 1 (right to property), if effective procedural safeguards are respected.

¹³ Council of Europe, Fighting organised crime by facilitating the confiscation of illegal assets, 26 March 2018. Retrieved from: semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmN-vZS5pbmQvbnNveG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0yNDUwNyZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWwHNsdC9QZG9yWFIJZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTI0NTA3

¹⁴ See Transparency International recommendations in previous publication, Transparency International, Confiscation of Criminal and Illegal Assets: European Perspectives in Combat Against Serious Crime, March 2015. Retrieved from: confiscation.eu/site/wp-content/uploads/2015/03/Policy_Paper_EN_web.pdf

REPATRIATING ASSETS FOR THE BENEFIT OF THE VICTIM POPULATIONS

The goal of asset recovery should be to mitigate and redress the damage caused by corruption. In the case of cross-border corruption involving misappropriation of public funds, every effort should be made to return the confiscated assets to the country of origin for the benefit of the population that has been harmed.

There is currently no harmonised practice across Europe and no common legal framework to guide asset return in international cases. Current EU legislation fails to address the disposal of confiscated assets in grand corruption cases involving third countries, i.e. who should use the assets and how. The 2014 Directive contains only a soft provision as regards the social reuse of assets which applies mainly to domestic cases.¹⁵ In practice, the assets usually end up transferred to the treasury of the EU state that ordered the confiscation unilaterally.¹⁶ Alternatively, the confiscated money may be integrated into the aid budget and returned to the country it was stolen from in the form of aid. In cases

where cooperation is possible between the confiscating and the victim countries, the money may be directly returned to the victim country but in a way that is not sufficiently transparent, accountable and beneficial to the populations which have been harmed by corruption. A good illustration of this is the process through which French authorities recently repatriated to Uzbekistan USD 10 million resulting from the sale of confiscated assets belonging to Gulnara Karimova (see Case study 1 in Annex A).

This issue was raised by a recent resolution by the European Parliament¹⁷ which called on the Commission to “pay particular attention to rules on the use of confiscated assets for public interest or social purposes, and to work to ensure the return of confiscated assets to victims in countries outside the EU”. Member States such as France are already adopting similar legislation (see Box 1).

¹⁵ Even though the ultimate use of confiscated assets falls within the competence of Member States (i.e. it is not an EU competence to rule over the ultimate use of confiscated property that is regarded as state property), the EU may still provide some guidance.

¹⁶ Save the possibility for asset sharing between EU jurisdictions that were involved in the case.

¹⁷ European Parliament in its resolution adopted on 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing – the Commission’s Action Plan and other recent developments (2020/2686(RSP)).

BOX 1

ARE THE PROCEEDS OF CORRUPTION NO LONGER WELCOME IN FRANCE?

Over the past few years, France has shown its willingness to address transnational corruption and to systematically chase kleptocrats who are using France as a destination for their dirty money. It has been active both on the judicial and legislative fronts. On the judicial side, a number of cases involving theft of public money by foreign kleptocrats (known as les affaires des Biens Mal Acquis in French) have come to a positive conclusion with the confiscation of the ill-gotten gains. For example, in June 2020, Rifaat al-Assad, the uncle of Syrian President Bashar al Assad, was sentenced by a French Court to four years in prison for money laundering and embezzlement of public funds. The Court considered al-Assad's wealth to be of unlawful origin and ordered the confiscation of his properties in France and in the United Kingdom, worth respectively €90 million and €29 million. The decision follows a legal campaign by Transparency International France and Sherpa, which also led to the conviction of

kleptocratic Vice President of Equatorial Guinea, Teodorin Obiang.¹⁸

On the legislative side, France intends to address the issue of asset return through a forthcoming reform. A parliamentary report "Investir pour mieux saisir, confisquer pour mieux sanctionner"¹⁹ (Working to better seize, confiscate and sanction), commissioned by the then Prime Minister and published in November 2019, laid the groundwork for the future legislation by highlighting the principles of transparency, accountability, solidarity, integrity and efficiency that should be the basis for any future regulation of the restitution of assets. Transparency International has been supporting these efforts at national level, insisting on the need for a well-governed and inclusive process involving civil society both in the country where the money is held and the country where it is returned to. The French initiative should inspire EU leaders to adopt a similar legislation at EU level.

As part of the foreseen reform, the EU should adopt a system to guide the recovery of stolen assets, especially in cross-border cases involving the theft of public money by third country leaders and officials. The EU level becomes even more relevant for cases

involving multiple EU jurisdictions as those provided in Table 1. Establishing EU-level cooperation mechanisms for the collective repatriation of confiscated assets could prove particularly effective as shown in past cases.²⁰

¹⁸ <https://www.transparency.org/en/press/obiang-verdict-transparency-international-welcomes-the-corruption-conviction>

¹⁹ <http://www.assemblee-nationale.fr/dyn/docs/CRCANR5L15S2020PO59051N026.raw>

²⁰ Reference "See the example of the BOTA Foundation which successfully and transparently returned \$115 million in disputed assets reaching over 200,000 beneficiaries in Kazakhstan through a process involving civil society and independent and international third-party oversight. See "The BOTA Foundation: Final Summative Report", 2015, Retrieved from <https://www.irex.org/sites/default/files/node/resource/bota-foundation-final-report.pdf> ; The BOTA Foundation: Final Report Executive Summary, 2015. Retrieved from: <https://www.irex.org/sites/default/files/node/resource/bota-foundation-final-report-executive-summary.pdf> "

The future EU system for asset recovery should be underpinned by principles of transparency, accountability and integrity and ensure the effective participation of independent civil society. Transparency

International EU has developed together with CSO partners 10 principles for responsible asset return summarised in Box 2 and available in full in Annex B:

BOX 2

10 PRINCIPLES FOR RESPONSIBLE ASSET RECOVERY

1

The freezing, confiscating and returning of assets must be transparent and accountable, from beginning to end.

2

Confiscated assets must be traceable and kept apart from countries' national budgets

3

Independent civil society organisations must be able participate in the asset recovery process.

4

Agreements on the confiscation and repatriation of assets must be made publicly, transparently available, and with the inclusion of civil society.

5

When stolen assets are returned, they must never be allowed to benefit the person who stole them – either directly or indirectly.

6

There must a process for monitoring the return of funds, with a complaints mechanism and the power to trigger an independent investigation.

7

Anti-corruption, rule of law and accountability mechanisms should be built in to ensure proper oversight of recovered assets.

8

Victims must have access to justice in cases of illicit activities like bribery and money laundering, and be able to engage with these cases.

9

Recovered assets must be used to benefit the people of the country from which they were stolen.

10

A wide range of stakeholders, including civil society and victims' organisations, should determine how best to use recovered assets to repair the harm done and to benefit the people they were stolen from.

PUBLISHING DISAGGREGATED DATA ON EU COUNTRIES' ASSET RECOVERY EFFORTS

The EU should require Member States to collect and publish data on asset recovery efforts disaggregated on a case-by-case basis. Information on assets frozen or confiscated, compensations or restitutions ordered, and assets returned should be included, as well as details of the type of offences that led to the illegal acquisition (e.g. corruption, drug trafficking, etc.) and on

whether the decision to confiscate was the result of civil or criminal proceedings. These should be accessible through a central location, such as a dedicated website, and timely press releases should be issued on specific cases. Data should be harmonised at EU level to facilitate cross-country comparison.

ANNEX A

Case studies

I- Gulnara Karimova, The Princess Fallen From Grace

Gulnara Karimova, daughter of former President of Uzbekistan has led many lives. Once called the “Uzbek princess”, she has been a pop singer, fashion designer, owner of scents and gem brands and UN ambassador until her fall from grace in 2014.

Revelations showed her being involved in a vast network of corruption tied to public procurement in the telecommunication sector. She is accused of taking bribes from Swedish, Russian and Dutch telecom companies in exchange for licenses to operate in Uzbekistan. It is estimated that she received the equivalent of at least USD 1.3 billion of payments and shares.

Gulnara’s corruption has had very concrete implications for Uzbek people. It is believed to have contributed to Uzbek telecom users paying among the highest rates in the world for mobile phone services.

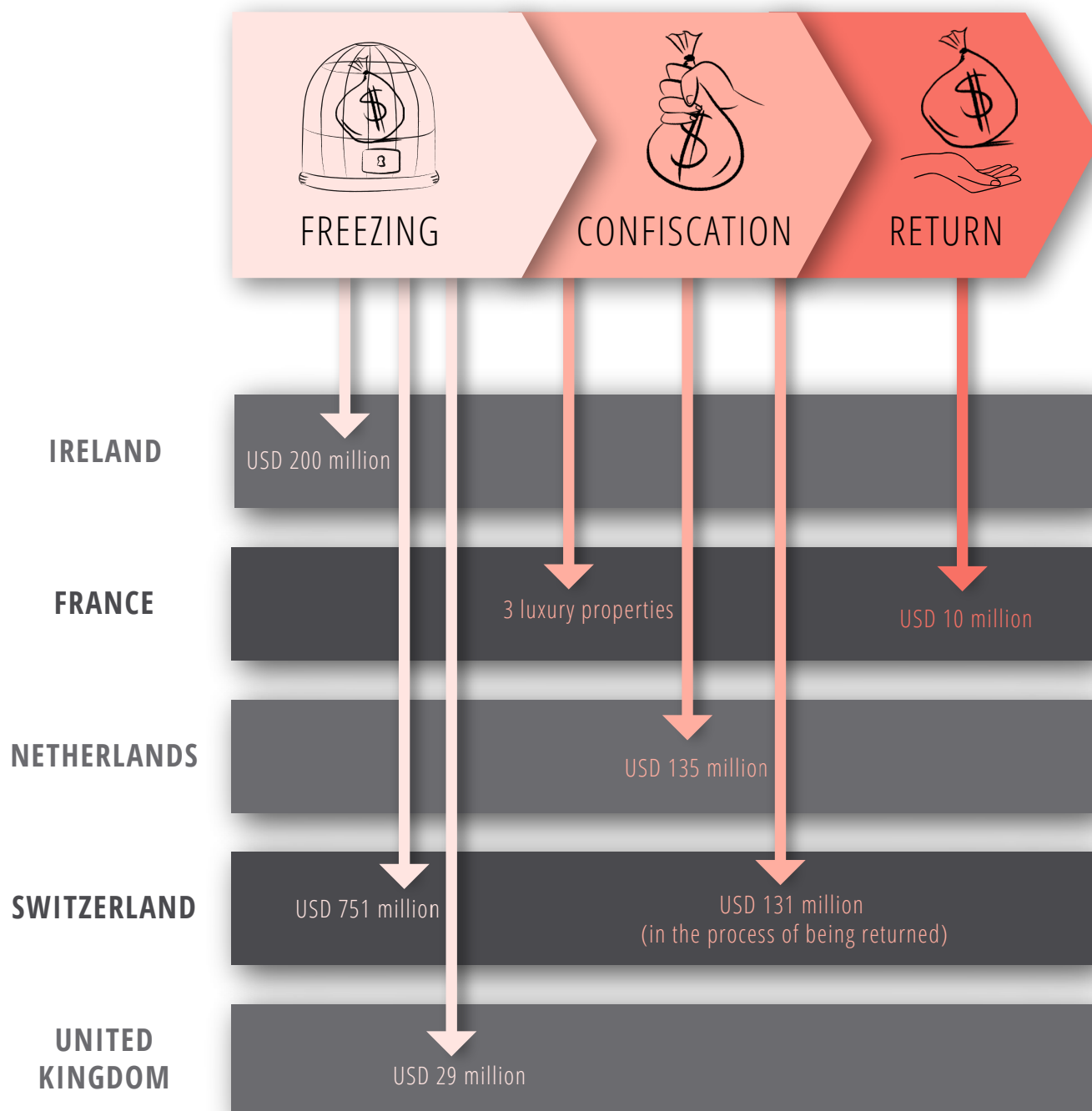
The proceeds of Karimova’s dealings were stashed away in banks, offshore companies, luxury properties and goods around the world including at least 9 EU countries (Belgium, France, Germany, Ireland, Latvia, Luxembourg, Malta, the Netherlands, Spain).

The criminal investigations initiated in Uzbekistan led to her conviction for extortion and embezzlement in 2015. Efforts to confiscate her corrupt wealth have been undertaken in a number of countries, including France, Switzerland, the United States and the Netherlands.



GRAPH 2

STATE-OF-PLAY OF ASSET RECOVERY PROCEEDINGS IN RELEVANT JURISDICTIONS



SOURCE:

<https://www.occrp.org/en/daily/5490-uzbekistan-dutch-court-seizes-us-135-m-from-company-linked-to-gulnara-karimova>
<https://www.reuters.com/article/us-netherlands-uzbekistan-corruption-idUSKCN10026V>
<https://www.rfi.fr/fr/france/20190708-biens-mal-acquis-ouzbekistan-recuperera-avoirs-saisis-france>
<https://www.bloomberg.com/news/articles/2020-06-26/hunt-for-owner-of-22-million-u-k-mansion-leads-to-uzbek-jail>
<https://www.occrp.org/en/daily/13114-switzerland-to-return-to-uzbekistan-131m-from-karimova-accounts>

The next question regards the destination of the assets once they are confiscated. What do you do when assets stolen from a country's state coffers by corrupt individuals have been recovered and can now be returned – but the government is still controlled by corrupt people? That's the case of Uzbekistan, one of the most corrupt countries in the world. It scores just 25 out of 100 on Transparency International's Corruption Perceptions Index, indicating rampant corruption in the public sector.

WHAT LESSONS CAN THE EU LEARN FROM THE KARIMOVA CASE?

We have seen two different approaches to asset return in the Karimova case so far:

The French Approach

In May 2020, the Uzbek government acknowledged receipt of USD 10 million from the French authorities. This process was settled in haste to the detriment of transparency and accountability. In place of a trial in open court, the French authorities have preferred to expedite the matter in closed-door negotiations with the Uzbek state and the three civil real estate companies that pleaded guilty to having laundered money on behalf of Gulnara Karimova. A couple of months earlier, the NGO Sherpa, who joined the proceedings as a civil party since 2014, had temporarily lost its standing accreditation and could not participate in the negotiations.

The Swiss Approach

The Swiss approach seems more promising. In September 2020, the Swiss government announced they had reached an agreement with their Uzbek counterpart for the return of USD 131 million, representing about 15% of the total amount of assets frozen by the Swiss government since 2012.

The Memorandum of Understanding signed between Switzerland and Uzbekistan incorporates commitments to ensure transparency and accountability throughout the process, and for repatriated assets to benefit the victims of corruption, i.e. the Uzbek people through the improvement of their living conditions, strengthening the rule of law or fighting impunity in Uzbekistan. The agreement also provides for the effective participation of independent civil society.

This is an important step which may set a precedent not only for future restitutions by Switzerland but also by other countries involved in this case. Transparency International urges EU countries holding assets belonging to Karimova to follow a similar approach in the future, i.e. commit to principles of integrity, transparency, accountability in asset return and to the effective participation of independent civil society.

ANNEX A

Case studies

II- Ferraris with matching socks; tales of corruption from Equatorial Guinea

Would you buy a new car every time you change your socks or shoes, just so their colours match? Probably not. But Teodorin Obiang, the Vice President of Equatorial Guinea, and son of the President, did just that. It would be an amusing story, if only the cost had not been borne by the citizens of Equatorial Guinea. Teodorin, also called “the playboy”, became famous for his lavish lifestyle, consisting of luxurious holidays on private islands, purchasing yachts, private jets, luxury cars, expensive suits and jewelry.

He is now also well-known for having been prosecuted, and in some cases convicted, for embezzlement and money laundering in several countries. So far more than EUR 200 million worth of assets plundered by Obiang have been frozen or confiscated. In 2016, US prosecutors recovered more than EUR 30 million worth of properties registered to Teodorin Obiang, including a villa in

Malibu and a dozen luxury cars.²¹ In September 2019, Swiss prosecutors confiscated and auctioned off a collection of 25 super-cars worth nearly EUR 21 million.²² Most recently, in a February 2020 appellate ruling, a Parisian court confirmed the conviction of Obiang for embezzling more than EUR 150 million and the confiscation of the corresponding assets including a 76-metre yacht and a 101-room mansion near the Champs-Élysées. Civil society, in particular Transparency International France played a key role in the French proceedings by filing a complaint against Obiang.

The Obiang case is in no way unique. Kleptocrats tend to select the EU as a favourite destination for their ill-gotten gains which end up sitting in the coffers of European banks, or invested in luxury goods, or high-end property in European capitals.



²¹ <https://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased>

²² <http://ge.ch/justice/classement-de-la-procedure-contre-t-obiang-les-vehicules-sont-confisques-et-le-navire-libere> and https://www.lemonde.fr/afrique/article/2019/09/30/guinee-equatoriale-25-bolides-de-teodorin-obiang-adjudges-21-6-millions-d-euros-en-suisse_6013580_3212.html

WHAT LESSONS CAN THE EU LEARN FROM THE OBIANG CASE?

First, that there is a role for civil society organisations to play at all stages of the asset recovery process. Second, that confiscated assets should be returned to the country they were stolen from to benefit the populations harmed by corruption.

Involving civil society in asset recovery processes

It is no exaggeration to claim that Obiang's conviction in France was the result of the continuous efforts of civil society organisations to bring the corrupt to justice. The case came to trial because Transparency International France and another French civil society organisation, Sherpa, won the right to file a complaint on corruption grounds in France. Getting there took almost a decade of arguments, and a change to French law. This shows how key it is to facilitate the participation of civil society organisations throughout the process. At the litigation stage, as illustrated above, by allowing civil society organisations to bring a corruption case to court, but also, at later stages, by involving independent civil society organisations in the process of managing and returning the assets. Civil society can be instrumental in helping to identify the models and modalities to ensure transparency and accountability throughout the process of asset restitution.

Returning confiscated assets to benefit the populations harmed by corruption

What should be done with Teodorin's confiscated assets? Often assets are not returned to the country of origin in the fear

that they might end up back in the same corrupt pockets – especially when a kleptocratic government remains in power which is the case in Equatorial Guinea.

However, the assets confiscated by France belong to the citizens of Equatorial Guinea and should be returned to their rightful owners. Despite being one of the largest African oil producers,²³ the country nonetheless ranks at the bottom in many international benchmarks when it comes to quality of life and socio-economic development,²⁴ with more than half of the population lacking access to clean water and healthcare.²⁵ It is also plagued by corruption, as shown by its performance in Transparency International's Corruption Perception Index (ranked 130 out of 180 countries).²⁶

There is currently no system in France nor in most other EU countries to guide asset recovery in these situations. It is critical that EU countries adopt a harmonised and systemic approach to asset return. Asset return should be recognised as a primary principle in EU legislation. The confiscated assets cannot be integrated into the national budget of the confiscating country. It is a question of social justice. More specifically, any restitution process led by an EU country should be underpinned by principles of transparency, accountability and integrity and ensure the effective participation of independent civil society organisations. Finally, the returned assets should be used to benefit the people of the country they were stolen from, to improve their quality of life, promote the rule of law, and fight against corruption.

²³ <https://www.hrw.org/world-report/2019/country-chapters/equatorial-guinea>

²⁴ Equatorial Guinea ranks 144 out of 189 countries in the UN's Human Development Index, see http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GNQ.pdf

²⁵ <https://databank.worldbank.org/home.aspx>

²⁶ Equatorial Guinea ranks 130 out of 180 countries in Transparency International's Corruption Perceptions Index, see <https://www.transparency.org/en/countries/guinea>

ANNEX B

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 details and modalities. These principles should be applied to both international and domestic asset recovery.

TRANSPARENCY AND PARTICIPATION

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.

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

²⁷ Africa Network for Environment and Economic Justice (ANEEJ), CIFAR – Civil Forum for Asset Recovery e.V., Civil Society Legislative Advocacy Centre – CISLAC Nigeria, Human Rights Watch, I Watch (Tunisia), The International State Crime Initiative, Transparency International EU, Transparency International France

account or an agreed independent mechanism until assets have been fully disbursed.

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.

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

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.

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

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

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.

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).

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.

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.

