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Tracking Anti-Corruption and Asset Recovery Commitments

A Progress Report and Recommendations for Action



StAR

The Stolen Asset Recovery Initiative is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centres to prevent the laundering of the proceeds of corruption, and to facilitate more systematic and timely return of stolen assets.

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All monetary values have been converted to United States dollars using the approximate exchange rates as of March 2011.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or of the governments of its member countries, or those of the Executive Directors of the International Bank for Reconstruction and Development/The World Bank.

Preface

At the Third High Level Forum on Aid Effectiveness in Accra, Ghana in 2008, more than 1 700 participants from governments, aid agencies and civil society organizations came together to review progress on the Paris Declaration and to define the steps forward to further improve aid effectiveness. One result was the Accra Agenda for Action, in which donor countries committed themselves to fight corruption, in particular to “take steps in their own countries to combat corruption by individuals or corporations and to track, freeze, and recover illegally acquired assets.”

This declaration created momentum in the international fight against corruption, addressing a facet that had hitherto been largely neglected by the international development community, but which has important repercussions worldwide. Vast sums of financial assets are stolen from developing countries and hidden in financial centers around the world – money that could provide education, food or health services to the poor. Estimates reach into the hundreds of millions of dollars, and, although, there is some disagreement about these figures, it is clear that they probably exceed the level of official development assistance by a significant margin. Those stolen assets can be returned to their lawful owners and used for development programs, sending a clear message to corrupt political leaders that OECD countries are prepared to take action against corrupt practices at home.

This publication reviews the compliance of 30 OECD donor countries with the anti-corruption commitments they made in Accra. It assesses progress in combating corruption and in tracking and recovering illegal assets to inform decision-makers of progress at the Fourth High Level Forum on Aid Effectiveness, which will be held in Busan in November 2011.

The report shows that four countries – Australia, Switzerland, the United Kingdom and the United States – have repatriated a total of USD 227 million to foreign jurisdictions between 2006 and 2009, with another two countries – France and Luxembourg – having frozen assets pending a court decision. Assets frozen total slightly over USD 1.2 billion.

The findings of the report highlight the need to develop a concrete follow-up action plan in Busan, as most countries have not yet taken sufficient steps to translate the commitments they made in Accra into policies generating concrete results. However, positive examples show that, with strong political leadership and institutional mechanisms in place, important results can be achieved in the fight against corruption and asset recovery.

This report is a reminder of the commitments made in the fight against corruption. It provides us with practical recommendations on how action to recover stolen assets can be improved.

I invite you to read this document carefully and to make use of its insights in addressing the global epidemic of corruption.

A handwritten signature in black ink, appearing to read 'Janamitra Devan'.

Janamitra Devan
Vice President & Head of Network
Financial & Private Sector Development
The World Bank & International Finance Corporation

A handwritten signature in black ink, appearing to read 'Brian Atwood'.

J. Brian Atwood
DAC Chair

Acknowledgements

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Executive Summary

Corruption is a global epidemic. Its impact can be particularly devastating on developing countries, which lose billions of dollars every year through corrupt acts such as bribery, misappropriation of public property, abuse of office, and embezzlement. Corruption and the illicit financial flows that result hinder economic development and the delivery of basic services, erode confidence in governments and the rule of law, and thereby perpetuate poverty.

Much of the proceeds of corruption are laundered through the world's financial centres. It is estimated that USD 20 billion to USD 40 billion are stolen annually from developing countries and hidden in financial centres (World Bank and UNODC, 2007, p. 9); yet only USD 5 billion has been returned over the past 15 years (Stephenson *et al.*, 2011, p. 11).

The international community has taken action and is moving forward. Through multilateral agreements, countries have committed themselves to implementing preventive measures, prosecuting corruption cases, increasing international co-operation, and recovering assets. The United Nations Convention against Corruption (UNCAC), which includes an innovative framework for asset recovery, entered into force in 2005. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) has been in force since 1999.¹ In statements, the G20 countries (2010) have also committed themselves to recovering the proceeds of corruption stowed abroad, and called for action to prevent illicit outflows of capital (2009). Regional instruments to fight corruption have also been adopted, including the Inter-American Convention against Corruption (1996), Southern African Development Community Protocol against Corruption (2001), and the African Union Convention on Preventing and Combating Corruption (2003).

Development agencies have joined these efforts. In September 2008, ministers of developing and donor countries responsible for promoting development and heads of multilateral and bilateral development institutions committed themselves to fighting corruption in the *Accra Agenda for Action* (adopted at the Third High Level Forum on Aid Effectiveness). Specifically, donor countries pledged to “*take steps in their own countries to*

combat corruption by individuals or corporations and to track, freeze, and recover illegally acquired assets.” This publication reports on the progress of 30 donor countries in meeting those commitments.

Key findings

- ***Data on international corruption and asset recovery cases is scarce.*** Some countries have difficulty collecting data from different levels of government or institutions; others do not capture data that in a way that distinguishes between domestic and foreign cases.
- ***Many donor countries have no criminal convictions for foreign bribery.*** Seventeen of the thirty OECD donor countries reviewed had not obtained a criminal conviction or acquittal in a bribery case against an individual or entity between the time the Convention entered into force in 1999 and the end of 2009.
- ***Few donor countries have taken steps to trace, freeze and return the proceeds of corruption to a foreign jurisdiction.*** Only four of the thirty countries returned assets to a foreign jurisdiction between 2006 and 2009: Australia, Switzerland, the United Kingdom and the United States. These four, as well as France and Luxembourg, report having frozen assets at the request of a foreign jurisdiction. There was no such activity in the remaining 24 countries: Austria, Belgium, Canada, Czech Republic, Denmark, Finland, Greece, Germany, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, and Turkey.
- ***Strong and sustained political leadership backed by the necessary laws is directly linked to actual progress on foreign corruption and asset recovery.*** Three of the four countries with the highest results – Switzerland, the United Kingdom and the United States – have adopted and implemented comprehensive policies that identify asset recovery as a priority, and have committed the tools and resources necessary for results.

Recommendations

The fact that the majority of OECD donor countries have no criminal convictions for corruption (or related money laundering offences) and have not returned assets is not because bribes are not being paid by companies from these countries or because their financial systems are free of corruption proceeds. It is because investigating and prosecuting corruption cases and tracing, freezing, and returning the stolen assets are complicated processes.

Asset recovery in particular is outside the traditional focus of law enforcement on obtaining a conviction and prison penalty; prosecuting the predicate crime is often easier for judges, investigators and prosecutors to understand than recovering the assets. Recovery requires a greater commitment of expertise, tools and resources than most crimes. It also demands the participation and co-operation of a wide range of stakeholders, including law enforcement and justice officials in requesting countries and financial centres, banks, private companies, development agencies, civil society and the media.

These recommendations are intended for the OECD DAC members, the development agencies of donor countries, and the co-operation agencies of developing countries. Through their implementation, these stakeholders can help realise the commitments in the Accra Agenda for Action.

1. *Adopt and implement comprehensive strategic policies to combat corruption and recover assets.* The demonstrated and credible intent of political actors, civil servants and other organs of the state – political will – is a precondition for fighting foreign corruption and asset recovery.
2. *Ensure that laws effectively target corruption and asset recovery, and provide the necessary powers to rapidly trace and freeze assets.* Laws also need to allow for the enforcement of a wide range of foreign orders, such as non-conviction-based confiscation orders, and for the return of the proceeds of corruption.
3. *Implement institutional reforms that encourage the active pursuit of cases, build capacity, and improve trust and co-operation with foreign counterparts.* Specialised units with trained practitioners and adequate resources have proved a successful model for addressing the complex and lengthy nature of these cases. The units can conduct outreach to make other relevant actors (the judiciary, parliament, prosecutors and civil society) more aware of the unique difficulties of corruption cases.
4. *Ensure adequate funding for domestic law enforcement efforts and foster international co-operation in kleptocracy cases.* Allocating development funds to domestic law enforcement for foreign corruption and asset recovery cases is one avenue that has been proved effective. With adequate funding and political support, countries can generate asset returns that are much higher than the funds invested – and these funds can be used for development programmes.
5. *Collect statistics to measure results.* Statistics on law enforcement efforts in this field are needed to assess effectiveness in meeting international commitments and to guide domestic policy development, resource allocation and strategic planning.

Note

1. The 38 countries party to the Convention included the 34 OECD countries, as well as 4 non-members (Argentina, Brazil, Bulgaria and South Africa).

Introduction

On 2-4 September 2008, the Third High Level Forum on Aid Effectiveness was held in Accra, Ghana and attended by over 1 700 participants, including over 100 ministers and heads of agencies from developing and donor countries and representatives from emerging economies, the United Nations and multilateral institutions, global funds, foundations, and 80 civil society organisations. The Forum reviewed progress on the Paris Declaration on Aid Effectiveness and identified new actions needed to invigorate aid effectiveness and to achieve the targets set for 2011.

In the Accra Agenda for Action adopted on 4 September, ministers of developing and donor countries responsible for promoting development and heads of multilateral and bilateral development institutions committed themselves to supporting the reforms deemed needed to improve the effectiveness of development assistance. Among these reforms, donor and partner countries pledged to fight corruption as a means for increasing accountability and achieving development results (see Box 0.1).

Box 0.1. The Accra Agenda for Action: Commitments to fight corruption

“24. Transparency and accountability are essential elements for development results. They lie at the heart of the Paris Declaration, in which we agreed that countries and donors would become more accountable to each other and to their citizens. We will pursue these efforts by taking the following actions:

[...]

d) Effective and efficient use of development financing requires both donors and partner countries to do their utmost to fight corruption. Donors and developing countries will respect the principles to which they have agreed, including those under the UN Convention against Corruption. Developing countries will address corruption by improving systems of investigation, legal redress, accountability and transparency in the use of public funds. *Donors will take steps in their own countries to combat corruption by individuals or corporations and to track, freeze, and recover illegally acquired assets.”*

These are bold commitments. Asset recovery does not figure among traditional development assistance programmes such as those on good governance and corruption prevention.

They are also important commitments. Not only do they demonstrate that donor countries are prepared to take action to end safe havens for corruption; they also carry the potential for a huge development impact. First, recovered funds can be used for development programmes. Given the estimated billions of dollars that are stolen annually from developing and transition countries and hidden in foreign jurisdictions, the recovery of even a portion of these funds would be a helpful contribution to development efforts. This assumes that the funds are spent in an effective and transparent manner. Second, the confiscation and recovery of assets remove the economic gain from crime and reinforce the message that crime does not pay. Depriving corrupt political leaders of their ill-gotten wealth, together with prosecutions and convictions for corruption offences, ultimately helps to deter the criminal conduct in the first place. Finally, implementation of the policy, legislative and institutional changes needed for successful asset recovery can result in long-lasting reforms and improved credibility of governance.

This publication reports on the progress of 30 donor countries in meeting their Accra commitments to 1) combat corruption by individuals or corporations, and 2) track, freeze, and recover illegally acquired assets (referred to as “asset recovery”).¹ Progress is determined on the basis of the level of law enforcement activity and the policy, institutional and legislative measures taken by donor countries and development agencies to strengthen law enforcement efforts. The challenges in meeting these commitments are described, as well as good practices and recommendations for efforts going forward. Finally, the role of developing countries in meeting the Accra commitments is discussed.

This publication is primarily intended to support the anti-corruption and asset recovery efforts of the OECD DAC members, development agencies of donor countries and the co-operation agencies of developing countries. Civil society organisations engaged in governance and development issues also may wish to use the findings and recommendations in their reports and advocacy efforts. The publication will be tabled at the Fourth High Level Forum on Development Effectiveness, which will take place from 29 November to 1 December 2011 in Busan, Republic of Korea. It is anticipated that the Forum will consider the report, its good practices and recommendations in drafting a follow-up action plan.

To give an idea of the level of law enforcement activity in each country, statistics, data and information were drawn from a StAR/OECD questionnaire on international asset recovery cases, the StAR International Asset Recovery Database, and the OECD Working Group on Bribery Data on

Enforcement of the Anti-Bribery Convention (2010).² The policy, institutional and legislative developments and good practices were derived from the research and publications of StAR; the StAR legal library on asset recovery (under development); and independent research. References for these materials are provided in a Bibliography at the end of this report.

The StAR/OECD questionnaire requested data from 30 OECD countries on domestic cases of corruption involving the tracing, freezing, or return of assets to a foreign country between January 2006 and December 2009 (see Annex 2 for a copy of the questionnaire).³ Responsibility for the accuracy of the information provided rests solely with the individual countries.

The questionnaire was prepared in consultation with asset recovery practitioners from several OECD countries. It should be noted that the questionnaire focused only on corruption cases with an asset recovery component; it did not gather data on all corruption cases. As a result, this report does not have sufficient quantitative data to assess the donors' Accra commitment to combat all types of corruption by individuals and corporations. It does however provide enforcement data for one corruption offence – foreign bribery – from the OECD Working Group on Bribery (2010) and data gathered through independent research, in order to present at least a partial picture of enforcement activity on one aspect of corruption. The report notes where these data fall outside the focus period of 2006-09 (for example, the OECD Working Group on Bribery data cover 1999 to December 2009). It is recommended that future questionnaires collect information on total corruption cases and corruption cases with an international dimension to assess that part of the commitment.

The questionnaire gathered information on assets frozen and returned pursuant to confiscation proceedings. A few countries noted that this approach excludes fines, reparations, disgorgement, restitution and other orders that do not relate to specific assets. It is suggested that such data be captured in a future questionnaire.

In the questionnaire and in this report, “corruption offences” are those outlined in articles 15-23 of UNCAC, specifically: bribery of national public officials (art. 15); bribery of foreign public officials and officials of public international organisations (art. 16); embezzlement, misappropriation or other diversion of property by a public official (art. 17); trading in influence (art. 18); abuse of functions (art. 19); illicit enrichment (art. 20); bribery in the private sector (art. 21); embezzlement of property in the private sector (art. 22); and laundering of proceeds of crime (art. 23). “Asset recovery” is defined to include the powers envisaged in articles 53-55 of UNCAC, and is effectively the process by which stolen assets are recovered and returned to the foreign jurisdiction harmed by corruption. “Cases” are investigations, sanctions or acquittals.

In addition, the questionnaire refers to cases with “an international dimension”. Although that term can be interpreted broadly to describe, for example, cases where some part of the offence is committed in another jurisdiction, cases where the parties are from another jurisdiction, or cases with evidence in another jurisdiction; the questions were designed to obtain data specifically on cases that involved asset return to a foreign jurisdiction. While four countries provided additional data on corruption cases that resulted in asset freezing or confiscation orders (or both); these cases did not involve the return of proceeds to a foreign jurisdiction and therefore were not considered to be “asset recoveries” for the purposes of this report.⁴

The report is organised as follows. Section 1 reveals the findings from the law enforcement data on corruption and asset recovery cases with an international dimension. A summary of the data is provided in Table 1.1 and the flows of assets are displayed in Figure 1.3. Section 2 reviews the policy, institutional and legislative developments. Section 3 introduces the role of developing countries and Section 4 concludes with a call to action for development agencies.

Notes

1. There were 30 OECD members at the time the Accra Agenda for Action was adopted. The four countries that have acceded to the OECD since Accra (Chile, Estonia, Israel and Slovenia) are not included in this report.
2. The 2010 Annual Report of the Working Group on Bribery provides updated enforcement data to December 2010. While 2010 data were available, this report uses the enforcement data from the 2009 Annual Report because these best accord with the report’s time frame of 2006 to 2009.
3. Countries that responded included: Australia, Austria, Canada, Czech Republic, Denmark, Finland, Greece, France, Germany, Hungary, Ireland, Italy, Japan, Republic of Korea, Luxembourg, Mexico, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, United Kingdom and United States. Responses were not received from Belgium, Iceland, Netherlands or Turkey.
4. The Czech Republic, Italy, New Zealand, and Norway provided this information. Details are reflected in the footnotes to Table 1.1.

1. Findings from law enforcement data

1.1. General observations on the availability of data

Although the response rate to the StAR/OECD questionnaire was high (26 of 30 countries responded), the availability and quality of data were poor. Most countries acknowledged having difficulty in gathering data on asset recovery cases that involve an international component. A number of reasons were cited:

- Data on corruption and asset recovery cases are collected at the federal level, but not at the state/provincial/canton level. In some countries, the federal government was aware of asset returns – because they involved mutual legal assistance requests that went through federal authorities – but was not able to collect information on all asset tracing investigations and freezing orders, because these could be initiated by prosecutors and investigating magistrates at the state/provincial/canton level.
- Data on domestic and foreign cases, whether pertaining to corruption or asset recovery, are not counted separately.
- Data on money laundering offences do not distinguish the predicate offence of corruption.
- Data are difficult to collect because a number of different institutions are involved in investigating and prosecuting corruption (*e.g.* courts, prosecutors, police, anti-corruption agencies).
- Data on ongoing cases are sensitive and therefore cannot be universally provided. For example, freezing orders that have been issued without notice to the asset holder (*ex parte* orders) may not be shared where there is a risk that information may be leaked to the asset holder, leading to a subsequent dissipation of assets and destruction of evidence.

Similar issues were reported by countries in the enforcement data collected by the OECD Working Group on Bribery (2010, Comparative Table).

Countries need to collect comprehensive statistics from cases involving corruption and asset recovery and to keep data updated. Such data help in determining whether governments are fulfilling their commitments to the Accra Agenda for Action and other international agreements or conventions, and whether the policies, laws, and institutions they have in place are actually effective. Perhaps more importantly, statistics have a major function in domestic decision making, including policy development, resource allocation, and strategic planning. For similar reasons, most countries already gather statistics on other offences, such as drug offences, so the practice of gathering statistics on law enforcement data is not a new phenomenon.

Many agencies indicated that they have survey/statistic fatigue. Resource constraints also impact statistics gathering, as the limited resources are concentrated on operational aspects (for example, pursuing investigations and ensuring asset return).

However, much of this data is already collected as part of evaluation processes under the various international commitments – processes already agreed to by the parties themselves. Data on foreign bribery cases are collected by the OECD Working Group on Bribery, and statistics on money laundering investigations, prosecutions and convictions, and on property frozen, seized and confiscated are required under Recommendation 32 of the Financial Action Task Force (FATF) 40+9 Recommendations. Separate statistics for each of the UNCAC offences (articles 15-23) are requested in self-assessment checklists and will likely take on a greater importance with the implementation of the review mechanism.

International organisations and entities requesting data can do their part to alleviate survey fatigue by collaborating on data requests, especially when the information sought is duplicative. In preparing this report, for example, StAR and OECD DAC co-ordinated on the questionnaire sent to OECD members and used the data gathered by the OECD Working Group on Bribery.

Data should include the number of domestic cases (investigations, sanctions, acquittals) against individuals and legal persons; cases with an international dimension; and cases where assets are frozen, confiscated and returned to foreign countries with the total dollar value of the assets involved. See Table 1.1 on comparative enforcement data for examples of main indicators.

International standards and conventions on corruption issues vary in terms of focus. For example, UNCAC looks at all forms of corruption, OECD Anti-Bribery Convention looks at foreign bribery, and FATF looks at the laundering of the proceeds of corruption and other crimes. As a result, the

categories of corruption cases (investigations, sanctions and acquittals) could include:

- Bribery of national public officials (art. 15, UNCAC)
- Bribery of foreign public officials and officials of public international organisations (art. 16, UNCAC; art. 1, OECD Anti-Bribery Convention)
- Embezzlement, misappropriation or other diversion of property by a public official (art. 17, UNCAC)
- Trading in influence (art. 18, UNCAC)
- Abuse of functions (art. 19, UNCAC)
- Illicit enrichment (art. 20, UNCAC)
- Bribery by legal persons (art. 26, UNCAC; art. 2, OECD Anti-Bribery Convention)
- Bribery in the private sector (art. 21, UNCAC)
- Embezzlement of property in the private sector (art. 22, UNCAC)
- Laundering of the proceeds of crime (art. 23, UNCAC; Recommendation 32, FATF; art. 7, OECD Anti-Bribery Convention)

Recommendation 1: Countries should maintain comprehensive and, where possible, sub-national statistics on corruption, money laundering (where corruption is the predicate offence) and asset recovery cases (see Table 1.1 for examples of main indicators). Gaps in data collection should be identified and addressed, such as in situations where:

- data are collected at one level of government (*e.g.* federal) and not at another (*e.g.* state/provincial/canton);
- data on domestic and foreign cases, whether pertaining to corruption or asset recovery, are not counted separately;
- data on money laundering offences do not distinguish the predicate offence of corruption; and
- data are not collected by all institutions involved in investigating and prosecuting corruption (*e.g.* courts, prosecutors, police, anti-corruption agencies).

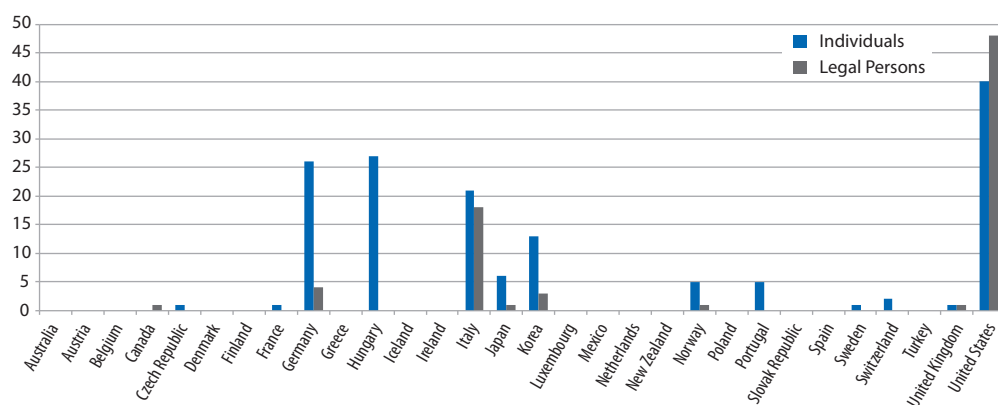
1.2. Corruption by individuals or corporations

The first part of the donor countries' commitment in the Accra Agenda for Action is to "combat corruption by individuals or corporations". The data collected indicate that few countries have obtained criminal convictions, but that law enforcement efforts seem to be increasing.

Data have not been systematically collected on those efforts in relation to the various corruption offences, such as trading in influence, embezzlement, misappropriation or illicit enrichment (art. 15-22, UNCAC), or for money laundering offences in which corruption is the predicate offence. However, the enforcement data collected by the OECD Anti-Bribery Working Group (2010) provides a helpful insight into one corruption offence – that of foreign bribery.

The OECD Anti-Bribery Working Group data reveal that very few countries have obtained criminal convictions in foreign bribery cases. Only 13 of the 38 parties have sanctioned individuals (148) and entities (77) in criminal proceedings between the time the Convention entered into force in 1999 and the end of 2009 (see Figure 1.1 and Table 1.1). However, data on the ongoing investigations and criminal charges show that law enforcement authorities seem to be taking a more proactive approach in a number of countries: 21 parties had investigations (280) ongoing at the end of 2009 and 20 parties had initiated criminal charges against individuals (180) and/or entities (20).¹

Figure 1.1. **Number of individuals and legal persons sanctioned or acquitted for foreign bribery in 30 OECD countries (1999-2009)**



Source: OECD Working Group on Bribery Data on Enforcement of the Anti-Bribery Convention (June 2010), www.oecd.org/dataoecd/11/15/45450341.pdf. The Working Group collected decisions from the 38 parties to the Convention. For the purposes of this report, the focus was on 30 OECD member countries.

A 2009 review of progress by Transparency International reports similar results, with active enforcement by 4 countries (Germany, Norway, Switzerland and the United States), moderate enforcement by 11 countries (Belgium, Denmark, Finland, France, Italy, Japan, Korea, the Netherlands, Spain, Sweden and the United Kingdom), and no enforcement by 21 countries.

1.3. Asset recovery

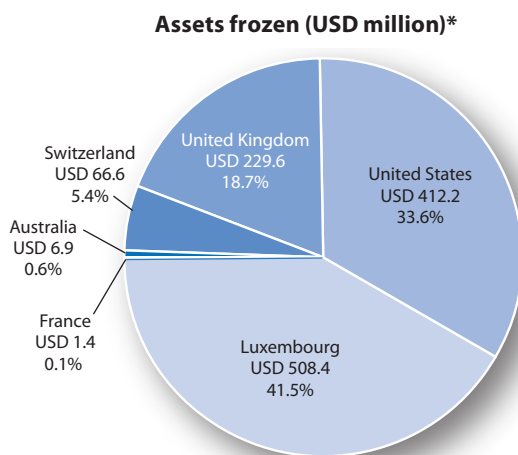
Asset recovery – the process of tracing, freezing, and returning illegally acquired assets to the jurisdiction of origin – is the second part of the donor countries' commitment in the Accra Agenda for Action. The data gathered indicate that few countries are pursuing asset recovery cases. Of the 30 OECD countries questioned, only four reported having returned assets to a foreign jurisdiction between 2006 and 2009. A total of USD 277 million was returned by Australia (2.9%), Switzerland (52.9%), the United Kingdom (0.8%) and the United States (43.4%). These countries, as well as France and Luxembourg, reported having frozen a total of USD 1.225 billion of assets pursuant to requests from foreign jurisdictions.

The data on tracing investigations was inconclusive. Only Australia and the United Kingdom were able to provide information on tracing efforts. Since the number of tracing investigations should, in theory, be greater than the number of asset freezing cases, it is assumed that countries are not currently collecting this data for the reasons set out in Section 1.1, in particular the inability to provide data on ongoing investigations.

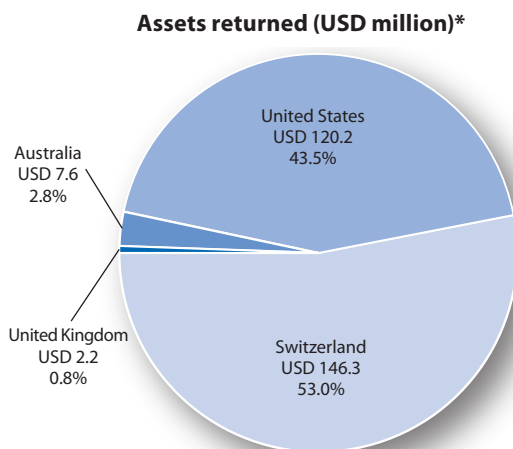
The remaining 24 countries did not report any activity in freezing or returning assets to a foreign country: Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, Greece, Germany, Hungary, Iceland, Ireland, Italy, Japan, Republic of Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden and Turkey. The Czech Republic, Italy, Norway and New Zealand reported having frozen or confiscated assets (or both) in corruption cases; however, these efforts resulted in domestic confiscation orders only; the freezing and confiscation orders were not pursuant to an international request, nor were proceeds returned to a foreign jurisdiction.

Figure 1.2 illustrates the results of the countries that reported asset freezing and returns to a foreign jurisdiction. This information is also contained in Table 1.1.

Figure 1.2. **Total assets frozen and returned to the jurisdiction harmed by corruption by 30 OECD member countries (2006-09)**



Total assets frozen = USD 1.225 m



Total assets returned = USD 277 m

* No information provided by Belgium, Iceland, Netherlands or Turkey. No freezing or return data reported by Austria, Canada, Denmark, Finland, Germany, Greece, Hungary, Ireland, Japan, Korea, Mexico, Poland, Portugal, Slovak Republic, Spain or Sweden. The Czech Republic, Italy, New Zealand and Norway reported cases with asset freezing or confiscation orders (or both); however, these cases did not involve returns to a foreign jurisdiction.

The scarcity of data makes it difficult to draw many conclusions; however, a few trends can be noted from what data there are, as well as from comparing data with the policy, legislative and institutional developments discussed in Section 2:

1. *There remains a huge gap between the results achieved and the estimated billions of dollars that are stolen from developing countries each year.* A total of USD 1.225 billion assets were frozen between 2006 and 2009 and USD 277 million assets were returned to the country of origin. These amounts are only a tiny fraction of the estimated USD 20 billion to USD 40 billion that are stolen annually from developing countries and hidden in financial centres (World Bank and UNODC, 2007, p. 9). While these estimates are uncertain, they provide a rough idea of the magnitude of the problem and the need for countries to ensure that asset recovery becomes routine in corruption cases.
2. *There have been few returns in bribery cases.* Only one country – the United Kingdom – reported having returned assets in a bribery case.
3. *Countries with strong and sustained political leadership and institutional mechanisms for anti-corruption and asset recovery are achieving results.* The data reveal that Australia, Switzerland, the United Kingdom and the United States are the only countries to have returned assets to the originating jurisdiction. These same countries are the only ones to have implemented and resourced comprehensive strategies on asset recovery. Their policies have encouraged creative solutions for overcoming barriers, the adoption of new laws, and the introduction of institutional changes (see Section 2 for details).
4. *Countries with successful returns have been proactive in initiating domestic cases.* Donor countries often have jurisdiction to prosecute the officials and natural or legal persons involved with either a corruption or a money laundering offence: the offence may have been committed (fully or in part) within the territory of the donor country, by or against a national, or by or against a stateless person who resides within the country. Indeed, the OECD Anti-Bribery Convention requires that Parties investigate and prosecute cases involving their nationals (natural or legal persons) who have bribed foreign public officials.

The countries with successful asset recovery cases also have law enforcement agencies that have been proactive. Rather than waiting for a mutual legal assistance (MLA) request to arrive, these agencies have initiated their own investigation and prosecution of cases of foreign corruption or money laundering. Investigations can be launched

based on suspicious transaction reports, media reports, whistleblowers or other means. Of the 21 cases initiated between 2006 and 2009 by law enforcement in the United Kingdom, for example all were started prior to receipt of an MLA. In Australia, financial intelligence and Interpol Red Notices were used to initiate investigations into foreign corruption rather than MLA requests.

Recommendation 2: Encourage law enforcement to be proactive in initiating cases and recovering the proceeds of corruption in their jurisdictions.

5. *Settlement agreements are an opportunity for asset returns.* An increasing number of bribery cases are being resolved through settlement agreements with huge monetary orders, fines, disgorgement of profits, restitution and reparations. The 2008 Siemens prosecutions, for example, resulted in USD 1.6 billion in penalties and fines in Germany, Italy and the United States. The BAE Systems plc case resulted in a guilty plea and more than USD 450 million in penalties. These judgements have led to a shift in attitude in the business community, now interested in measures to strengthen compliance and reduce business risk.

However, these orders typically do not result in the return of assets to the foreign jurisdictions harmed by corruption. From a standards

Box 1.1. Asset return in bribery cases

Foreign bribery cases have resulted in huge monetary orders, whether fines, disgorgement of profits, restitution orders or reparations. In a case in the United Kingdom against Mabey & Johnson Ltd, a portion of these pecuniary orders was awarded to the jurisdiction harmed by the bribe.

The company pled guilty to the payment of bribes to public officials in Ghana and Jamaica and to “making funds available” in connection with illegal kickbacks to the Saddam Hussein regime in Iraq through contracts awarded under the United Nations Oil-for-Food Programme. The company admitted that but for the bribe, the contract would have been for less money and that the Iraqi people lost out on funds diverted to pay the kickback. The settlement included GBP 4.6 million (approximately USD 7.2 million) in criminal penalties and an additional GBP 2 million (approximately USD 3.1 million) in reparations and costs to be paid to the governments of Ghana, Iraq, and Jamaica. With regard to the Iraq case, confiscation was ordered for the value of the contract, EUR 4.22 million plus interest (approximately USD 5.41 million), and compensation of GBP 618 484 (approximately USD 969 100) was awarded to the Iraqi people (Development Fund for Iraq).

perspective, this approach is technically correct because UNCAC requires return of *confiscated* assets (see art.57). Fines, disgorgement of profits, and other pecuniary orders are therefore not technically subject to return provisions.

Regardless of this technicality, asset return or some development component can still be incorporated into the settlement process. For example, in a case in the United Kingdom against Mabey & Johnson Ltd, reparations were awarded to the jurisdiction harmed by the bribe as part of the settlement agreement (see Box 1.1).

Recommendation 3: Countries should engage in a broader international policy debate on how asset return can be incorporated into settlement agreements in bribery and corruption cases. Data on case outcomes should also be collected.

6. *Only a few developing countries have had assets frozen or returned.* The StAR/OECD questionnaire asked reporting countries to provide the name of the foreign jurisdiction involved in their five largest asset freezing cases and five largest asset return cases between 2006 and 2009. Six countries provided a total of 34 cases and a summary of this information is displayed in Figure 1.3. The information shows that the majority of assets frozen or returned in that time frame originated in G20 or OECD countries. Only 7 countries representing 14 of the 34 cases – Belarus, Kazakhstan, Latvia, Nigeria, Peru, Ukraine, and Uganda – fell outside this group. Seven of the thirty-four cases involved co-operation between the United Kingdom and Nigeria.

One factor contributing to this outcome has been raised in the recent StAR publication “Barriers to Asset Recovery” (Stephenson *et al.*, 2011), specifically the importance of a trusting relationship in cases requiring international co-operation. Without trust, jurisdictions are hesitant to share intelligence data, assist in gathering evidence, or freeze, seize, confiscate, or repatriate assets (Stephenson *et al.*, 2011, p. 19).

Building trust requires improved communication among international counterparts – the more countries reach out to one another, the greater the opportunity for understanding differences in legal systems, overcoming language barriers, and clarifying the facts of a particular case. Those aspects can be particularly difficult for developing countries, as they lack access to telephones for international calling, personal computers with Internet access, and resources for attending conferences that facilitate networking. See pages 25-27 and 30 on mechanisms that countries have implemented to improve trust.

7. *Private law actions in the United Kingdom and United States have produced results.* Another way that countries can facilitate the return of the proceeds of corruption to foreign jurisdictions is to ensure that laws permit foreign countries to initiate civil actions in domestic courts to recover these proceeds.

UNCAC requires States Parties to take such measures (art. 53). The StAR Asset Recovery Database (in peer review) reveals that one civil case was initiated in the United Kingdom in 2006 and is completed (in part), with some issues still ongoing;² two more were initiated in the United States between 2006 and 2009.³ Only one of the two cases concluded during this time, resulting in the recovery of USD 12 million by the Government of Antigua and Barbuda.

Recommendation 4: Ensure that effective mechanisms for civil recovery are in place.

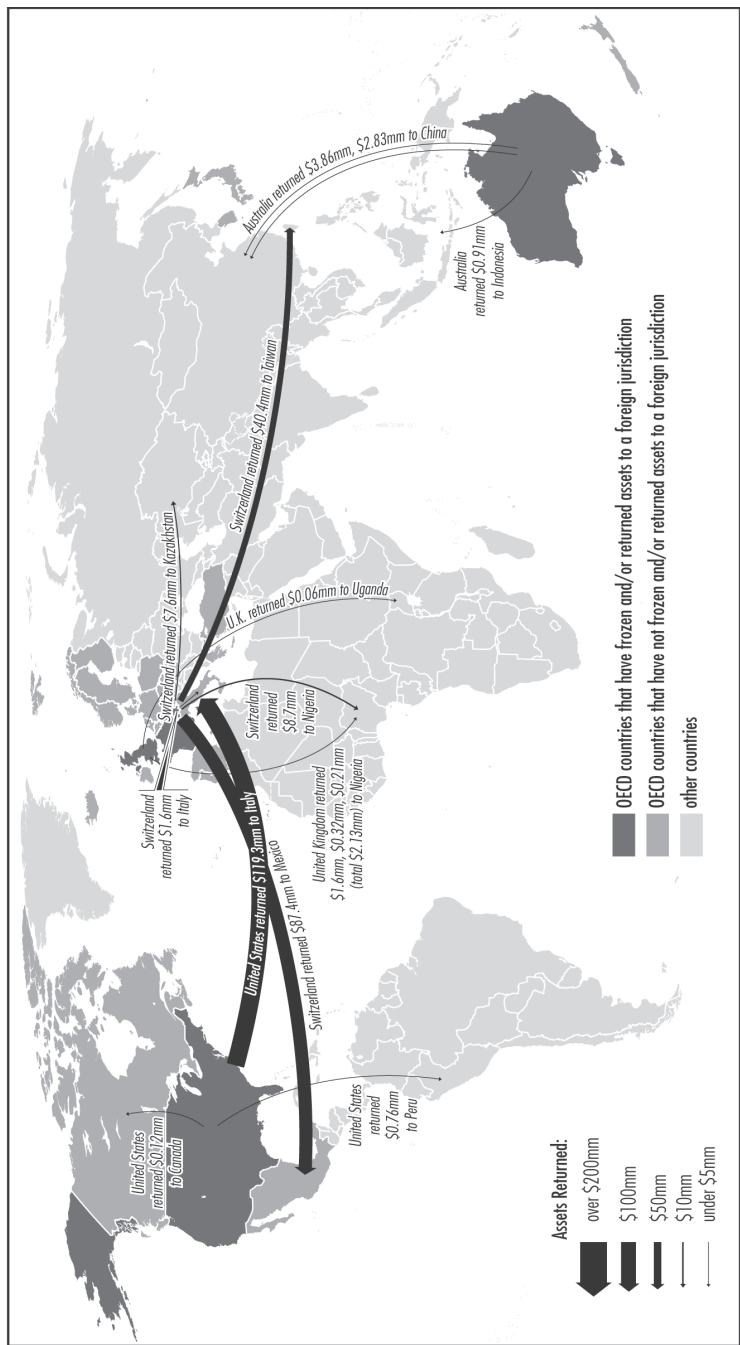
Table 1.1. **Comparative table of enforcement data of 30 OECD countries on corruption and asset recovery***

		Foreign bribery offences (art. 16 UNCAC)						Other corruption offences with an international dimension (art. 15, 17-23 UNCAC)				
Country	% of world exports in 2009	Sanctions (1999 to Dec. 2009)		Asset recoveries (2006-09)				Sanctions	Asset recoveries (2006-09)			
		Individuals	Legal persons	Assets frozen		Assets returned			Assets frozen		Assets returned	
				# Cases	USD m	# Cases	USD m		# Cases	USD m	# Cases	USD m
Australia ^a	1.3	0	0	0	0	0	0	0	1	6.9	3	7.6
Austria	1.3	0	0	0	0	0	0	0	0	0	0	0
Belgium ^b	2.2			No info provided					No info provided			
Canada	2.5	0	1	0	0	0	0	0	0	0	0	0
Czech Republic	0.9	5 ^c	0	0	0	0	0	0	0	0	0	0
Denmark	1	0	0	0	0	0	0	0	0	0	0	0
Finland	0.5	0	0	0	0	0	0	0	0	0	0	0
France	4	1	0	0	0	0	0	0	1 ^d	1.4	0	0
Germany ^e	8.9	26	4					0				
Greece	0.4	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.6	24 ^f	0	0	0	0	0	3	0	0	0	0
Iceland	0.04	0	0	No info provided				0	No info provided			
Ireland	1.4	0	0	0	0	0	0	0	0	0	0	0
Italy	3.2	21	18	0	0	0	0	13 ^g	0	0	0	0
Japan	4	6	1	0	0	0	0	0	0	0	0	0
Korea ^h	2.8	13	3					0				
Luxembourg	0.5	0	0	0	0	0	0	59	20	508.4	0	0
Mexico	1.5	0	0	0	0	0	0	0	0	0	0	0
Netherlands	3.6	0	0	No info provided				0	No info provided			
New Zealand	0.2	0	0	0	0	0	0	2 ⁱ	0	0	0	0
Norway	1	5 ^j	1	0	0	0	0	0	0	0	0	0
Poland	1.1	0	0	0	0	0	0	0	0	0	0	0
Portugal ^k	0.4	5	0					0				
Slovak Republic	0.4	0	0	0	0	0	0	0	0	0	0	0
Spain	2.2	0	0	0	0	0	0	0	0	0	0	0
Sweden	1.3	1	0	0	0	0	0	0	0	0	0	0
Switzerland ^l	1.6	2	0	0	0	0	0	301 ^m	3	66.6	6	146.3
Turkey	0.9	0	0	No info provided				0	No info provided			
United Kingdom	3.9	1	1	1	0.06	1	0.06	0	9	229.6	4	2.2
United States	10	40	48 ⁿ	0	0	0	0	2000 ^o	9	412.2	3	120.2

* Unless otherwise indicated, the data on sanctions in foreign bribery offences have been reproduced from OECD Working Group on Bribery Data on Enforcement of the Anti-Bribery Convention (2010) for the period 1999 to 2009. Unless otherwise indicated, all other data in the table are derived from responses to the STAR/OECD questionnaire.

- a. Australia reported that it was not able to provide cases from states and territories, as these are not recorded.
- b. Belgium indicated that it had several convictions of individuals for foreign bribery but was unable to provide specific data, as data on domestic and foreign bribery cases have not, to date, been counted separately.
- c. The Czech Republic reported five corruption cases during the period 2006-09, all of which involved bribery (passive, active, or indirect). These cases resulted in domestic confiscation orders; however, they did not result in the return of assets to a foreign jurisdiction and are therefore not recorded as “asset recoveries”.
- d. France provided data on six cases of asset freezing/return involving a foreign jurisdiction; however, only one case involved corruption offences and could therefore be included for the purposes of this report.
- e. Germany reported that data on asset recoveries are unavailable because they are not collected in a central database. The data on sanctions and acquittals in foreign bribery cases refer to convictions and acquittals in the years 2008 and 2009 only, and not since the entry into force of the Convention in Germany. The data are compiled on the basis of the information voluntarily supplied to the Federal Ministry of Justice by administrations of the 16 federal states. In 10 sanctions cases, the sanctions were ordered following the application of paragraph 153a of the Germany Criminal Procedure Law.
- f. Hungary reported 24 sanctions for foreign bribery (art. 16, UNCAC) and 3 cases involving influence peddling (art. 18 UNCAC) during the period 2006-09. No measures for asset return were taken.
- g. Of these cases, Italy reported five cases where assets were frozen during the period 2006-09; however, they are domestic freezes that will not result in the return of assets to a foreign jurisdiction and are therefore not recorded as “asset recoveries”.
- h. Korea was not able to provide specific data because international corruption and asset recovery cases are not counted separately from domestic cases.
- i. New Zealand reported two corruption cases during the period 2006-09, and these resulted in assets being frozen (two cases totaling NZD 8.851 million, approximately USD 7.224 million) and confiscated (one case of NZD 1.1 million, approximately USD 899,000); however, they did not result in the return of assets to a foreign jurisdiction and are therefore not recorded as “asset recoveries”.
- j. Norway reported that one of the convictions for bribery during the period 2006-09 resulted in an order of confiscation; however, it did not result in the return of assets to a foreign jurisdiction and is therefore not recorded as an “asset recovery”.
- k. Portugal was not able to provide specific data because international corruption and asset recovery cases are not counted separately from domestic cases.
- l. Switzerland is able to provide information on assets frozen and returned by the Federal Office of Justice, but not on assets frozen and returned by the cantonal authorities. Similarly, for foreign bribery data, data are not collected at the federal level, and the Office of the Attorney General of Switzerland (OAG) does not have the authority to require the cantons to report the relevant data to the OAG.
- m. Switzerland was only able to provide data on sentences for “corruption offences” for 2006-07 and they include both international and domestic cases.
- n. These data reflect the number of cases prosecuted by the United States Department of Justice (DOJ) either for violations of the anti-bribery provisions of the Foreign Corrupt Practices Act, or for violations of both the anti-bribery provisions of the FCPA and the books and records and internal controls provisions of the FCPA. The United States reports that 10 entities and 2 individuals have been subject to criminal sanctions exclusively for books and records violations under the FCPA.
- o. The number of federal prosecutions of corrupt public officials by United States Attorney’s offices between 2006 and 2009 was reported as 4 234 in the US UNCAC Self-Assessment (10 July 2010), available at www.state.gov/documents/organization/158105.pdf.

Figure 1.4. Assets returned by 30 OECD countries, 2006-09



Notes

1. The data on ongoing investigations and criminal charges are available in the report of the OECD Working Group on Bribery Data on Enforcement of the Anti-Bribery Convention as an aggregate statistic only. They have not been broken down by country.
2. The case in the United Kingdom is against former president of Zambia Frederick Chiluba and his associates: see *AG of Zambia v. Meer Care and Desai and others* [2008] EWCA Civ. 1007, [2007] EWHC 708 (Ch) (appeal in part).
3. The two cases initiated between 2006 and 2009 are *Aluminum Bahrain B.S.C. v. Alcoa, Inc., Alcoa World Alumina LLC, William Rice, and Victor Dahdaleh*, Case No. 2:08-cv-00299-DWA (W.D. Pa.) and *Antigua and Barbuda v. Bruce Rappaport, et al.*, Case No. 06-03560 CA 25 (Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida).

2. Policy, legislative and institutional developments

While a number of countries have introduced measures to combat corruption, only a few have also taken steps to promote the recovery of the proceeds of corruption. Some of these measures are outlined below.

2.1. Policy developments

The demonstrated and credible intent of political actors, civil servants and organs of the state to combat corruption and recover and return stolen assets is arguably the most relevant precondition for successful and effective cases (Stephenson *et al.*, 2011, p. 24). Most often this intent manifests itself as a country policy or strategy which, when properly resourced, can be used to pursue necessary legislative, institutional or operational changes. Switzerland, the United States and the United Kingdom have all adopted and implemented comprehensive policies on fighting corruption and asset recovery (see Box 2.1).¹

Box 2.1. Good practice: Policy initiatives

As part of its increased focus on the return of the proceeds of corruption the United States launched a new Kleptocracy Asset Recovery Initiative in July 2010 to target and recover the proceeds of corruption on the part of foreign officials that have been laundered into or through banking and financial systems in the United States. The Kleptocracy Initiative is led by the Asset Forfeiture and Money Laundering Section, Criminal Division and receives considerable support from other federal law enforcement components such as the Federal Bureau of Investigation and the United States Department of Homeland Security, Homeland Security Investigations Section. It is expected that the Initiative will allow the recovery of proceeds of grand corruption and ensure that corrupt leaders cannot seek safe haven for their stolen wealth in the United States.

Recommendation 5: Adopt and implement comprehensive strategic policies to combat corruption and recover assets.

The StAR study on barriers to asset recovery elaborates the characteristics of an anti-corruption and asset recovery policy (Stephenson *et al.*, 2011, pp. 24-31). These include clear objectives, dedicated action, new legislation to overcome barriers, sufficient resources, training for law enforcement and other practitioners, and use of the legal tools available in a comprehensive, creative, consistent and committed manner. Ideally, any strategy will be part of an integrated policy plan adopted by high-level officeholders to reduce opportunities for corruption, deter crime, and achieve good governance. Motivating the private sector and international partners to work toward the same goals will help jurisdictions achieve more with fewer resources.

Policies need to be backed by necessary resources to ensure that preventive mechanisms are in place, as well as reporting mechanisms to track progress and monitor results. Clear accountability for results, established through public statements of commitment and the setting of clear benchmarks, will help create incentives for investigators and prosecutors to be proactive in pursuing complex cases that require international co-operation, to prosecute wealthy and powerful individuals, and to endure prolonged challenges in court. In cases where these elements are in place, practitioners have found creative and unconventional ways to overcome the various obstacles encountered. Switzerland, for example, returned funds to Nigeria without a final and executable order of confiscation in the Abacha case.

2.2. Legislative developments

States Parties to UNCAC are still in the process of adopting legislation to incorporate their commitments into domestic legislation. Parties to the OECD Anti-Bribery Convention have largely implemented their obligations, but enforcement is generally in its early stages. Some countries have taken steps to improve foreign bribery legislation (for example in China, the Russian Federation and the United Kingdom). Italy and the Czech Republic amended their Criminal Code to permit the return the proceeds of crime to a requesting jurisdiction in compliance with UNCAC. A few OECD countries have still not ratified UNCAC, namely Czech Republic, Germany, Ireland, Japan and New Zealand.

Legislation has also been introduced to overcome obstacles that have been encountered by countries. Switzerland adopted the Restitution of Illicit Assets Act (adopted by Parliament in 2010 and entered into force on 1 February 2011) to assist in the context of failed states; the Act has been used to freeze assets of ex-dictator of Haiti Jean-Claude Duvalier (Federal Department of Foreign Affairs; see Box 2.2). In another example, Canada adopted the Freezing Assets of Corrupt Foreign Officials Act to enable the freezing of corrupt leaders' assets, such as those of former Tunisian president Zine El Abidine Ben Ali and

his family. The law targets politically exposed persons (PEPs) and their family members and close associates in circumstances where the foreign nation is in a situation of “internal turmoil” and the freezing of assets is in the best interests of the “international community”.

Box 2.2. Good practice: Innovative legislation on asset recovery

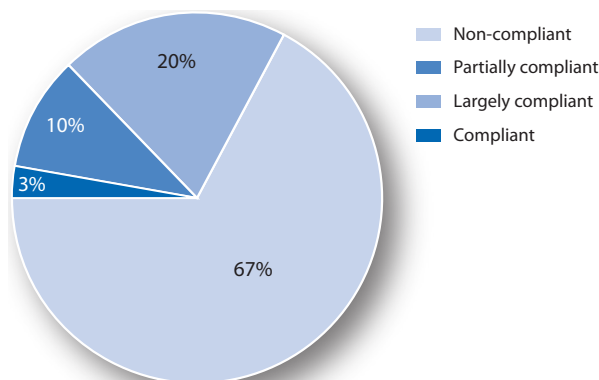
The new Swiss Federal Restitution of Illicit Assets Act (RIAA) governs the freezing, forfeiture and restitution of the assets of politically exposed persons (PEPs) and their close associates in cases where a request for mutual assistance in criminal matters cannot succeed due to the failure of its judicial system in the requesting state. The RIAA completes the Swiss two-pronged system based on prevention and mutual legal assistance, established in the 1980s following a number of high-profile cases (Marcos, Abacha, Montesinos). The RIAA provides a complementary solution to the Swiss Federal Act on International Mutual Legal Assistance in Criminal Matters.

The RIAA makes it possible to freeze and confiscate assets that are potentially of illicit origin without the need for a criminal conviction of the PEP in his or her country of origin. It provides for a presumption of the illicit nature of the assets in cases where the enrichment of the PEP is clearly exorbitant and the degree of corruption of the state or of the PEP in question is notoriously high. If the PEP is unable to prove the legal acquisition of the assets, the funds will be confiscated by the judge. Confiscated assets will be returned by the Confederation for the benefit of the population of the country of origin, through the financing of programmes in the public interest, *e.g.* in co-operation with the World Bank. The restitution has two objectives: to improve the living conditions of the population in the country of origin, and to strengthen the rule of law in that country while making efforts to combat the impunity of criminals.

A number of countries have adopted laws to improve the availability and flow of financial intelligence, such as those requiring that financial institutions conduct customer due diligence, detect and monitor PEPs, and report suspicious transactions to financial intelligence units (FIUs) (Greenberg *et al.*, 2010). In 2006, the European Union adopted a directive to implement a regime for the detection and monitoring of PEPs, and member countries have been taking steps to incorporate the directive into domestic legislation.² However, country compliance with international requirements on PEPs remains low. Of the 30 OECD countries, 77% (23 countries) were rated as non-compliant or partially compliant with FATF Recommendation 6 on PEPs.³ With the push from the G20 countries to improve transparency, countries are beginning to adopt mechanisms for improving the information

available on those with controlling interest in an entity – the ultimate beneficial owner. Such laws are essential for ensuring that law enforcement has the necessary intelligence to initiate or investigate a case.

Figure 2.1. **The 30 OECD member countries’ compliance rating – FATF Recommendation 6**



Legislative changes also show that countries are seeking to expand their toolkit of options for recovering the proceeds of crime, including corruption. More countries have either adopted non-conviction based (NCB) confiscation laws and incorporated them into either a civil law framework or into criminal laws and system. New Zealand adopted the Criminal Proceeds (Recovery) Act 2009, joining a number of other OECD donor countries including Australia, several provinces in Canada, Ireland, Italy, New Zealand, Switzerland, the United Kingdom, and the United States (Greenberg *et al.*, 2009). Australia adopted the Crimes Legislation Amendment (Serious and Organised Crime Act) 2010, a new development in confiscation law that places the onus on a person who lives beyond their means to prove that their wealth was acquired legally. France has introduced a criminal offence for owning “unjustified” assets, a law that can be used against the proceeds of crime in cases where assets are disproportionate to the lifestyle of their owner, who has habitual contact with criminals (Brun *et al.*, 2011, p. 190).

International co-operation laws have been expanded in some countries to allow for recognition of confiscation orders. A number of European countries will recognise NCB confiscation orders or extended confiscation orders even in the absence of similar domestic provisions pursuant to Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition of confiscation order. However, data gathered from the Commission of the European Communities (2008) indicate that this decision

and other related framework decisions lack clarity and therefore confiscation orders based on NCB confiscation procedures or extended confiscation may not be executed in all member states.

Failure to act quickly can result in the dissipation or movement of assets, and so countries have adopted legislation that allows for rapid tracing and freezing of assets. Such laws proved to be critical during the spring turmoil in the Middle East and Northern Africa. Some countries were able to issue orders or decrees to pre-emptively freeze the assets of some of the embattled leaders before an official request was received. However, a number of countries were unable to act quickly. Canada, for example, was initially unable to freeze the assets of the former Tunisian president without a formal MLA request and had to introduce a new law in order to freeze the assets. Tracing laws should enable domestic and foreign law enforcement authorities to quickly obtain information on whether an allegedly corrupt official has access to banking facilities or assets in his or her jurisdiction. This can be achieved through central registries of bank accounts (currently operated in Brazil, Chile, France, Italy and Germany) or through laws that allow authorities to reach out through the Financial Intelligence Unit (FIU) to financial institutions to locate accounts of the official. Property and company registries are also helpful tracing tools. Examples of freezing provisions include temporary administrative freezes, automatic freeze upon the filing of charges or an arrest, or freeze orders that can be made by investigating magistrates or prosecutors (Brun *et al.*, 2011, pp. 135-136).

There continue to be laws that frustrate international co-operation on asset recovery, in particular the disclosure obligation laws in Luxembourg and Switzerland. Such laws require notification to the asset holder of an MLA request in order to give the asset holder the right to contest the provision of MLA – even when only evidence such as financial records are sought. This notice effectively alerts the asset holder to the presence of an investigation and provides the opportunity to hide or dissipate funds; it also leads to lengthy delays because the asset holder uses all available avenues to block the MLA request (Stephenson *et al.*, 2011, p. 56). While notice is an important due process requirement to follow once the freezing orders are in place, it is not generally required to obtain evidence or the freezing order in the first place – some countries refer to this as an *ex parte* order – and, in fact, all OECD countries permit *ex parte* orders in domestic cases.) This is mainly because such orders are intrinsically temporary, contain sufficient safeguards to protect the rights of the asset holder, and do not permanently prejudice the rights of the asset holder. To effectively combat corruption and preserve assets subject to forfeiture, advance notice requirements should be lifted to allow for *ex parte* restraint in international co-operation cases, particularly where there is a risk of dissipation.

Recommendation 6: Ensure that laws effectively target corruption and asset recovery. These laws include:

- laws that enable the rapid tracing and freezing of stolen assets;
- multiple avenues for asset recovery, including confiscation without a conviction (NCB confiscation), and private (civil recovery) actions;
- laws that facilitate international co-operation – including the direct enforcement of foreign orders and the granting of mutual legal assistance in the absence of a bilateral legal assistance agreement – when dealing with asset recovery of PEPs, and that permit mutual legal assistance requests to freeze assets on an ex parte basis;
- preventive measures requiring financial institutions to identify and monitor PEPs and collect beneficial ownership information.

2.3. Institutional developments

A number of countries have made institutional changes to recover the proceeds of corruption. The European Union countries are establishing Asset Recovery Offices (AROs) to promote co-operation in asset tracing and identification, pursuant to Council Decision 2007/845/JHA (6 December 2007). Member states are encouraged to staff AROs with multidisciplinary teams, including experts from law enforcement and prosecution authorities. AROs are to have access to relevant databases, registries and financial information to allow them to identify and trace and freeze assets, and should be able to co-operate with FIUs and judicial authorities. AROs differ widely in structure, powers and practices, and have not yet been fully established or resourced in all countries (Commission of the European Communities, 2008). The Criminal Assets Bureau of Europol has had considerable success in assisting financial investigators. In 2007 it supported 133 investigations to trace criminal proceeds and provided AROs with expert knowledge (Commission of the European Communities, 2008).

Specialised units that focus on recovery of the proceeds of crime have been introduced in several countries, including Australia, Ireland, New Zealand, the United Kingdom and the United States. The United Kingdom and United States have applied this model in the context of corruption proceeds. The United Kingdom created an International Corruption Group in the Metropolitan Police Service and City of London Police to strengthen the capacity to investigate and prosecute corruption occurring between developed and developing countries and return stolen assets. The United States has established a specialised team of prosecutors under the Kleptocracy Initiative.

These units typically encourage co-operation among multiple agencies, such as prosecution, law enforcement and anti-money laundering authorities (see Box 2.3). Such an inter-agency approach allows for more strategic intelligence gathering and access to additional tools that can be used to fight corruption and recover assets.

Box 2.3. Good practice: Specialised units

To improve the capacity of law enforcement in identifying and recovering the proceeds of crime, the Australian government created a multi-agency Criminal Assets Confiscation Taskforce. Under the leadership of the Australian Federal Police, the Taskforce brings together the Australian Taxation Office, the Australian Crime Commission, and the Commonwealth Director of Public Prosecutions. The Taskforce:

- employs a dynamic, innovative approach to criminal asset confiscation, with intelligence, operations, legal, policy and other resources from the participating agencies all working together;
- uses a proactive intelligence-led approach to identify potential criminal asset confiscation matters; and
- focuses on developing the most effective and appropriate enforcement strategy in each individual case.

The Taskforce adopts a collaborative approach that ensures that the skills, expertise, knowledge and legislative mandate of each agency are fully exploited. For example, the Taxation Office provides dedicated auditing staff; the Crime Commission provides support through its Money Laundering Determination (work priority) and National Criminal Intelligence Fusion Centre; and Public Prosecutions commences and conducts litigation and supports the Taskforce with ongoing advice.

The Taskforce pursues the proceeds of corruption offences as well as targeting PEPs through intelligence support undertaken by the Australian FIU (AUSTRAC) and the Crime Commission. It provides a focused entry point for matters referred from overseas jurisdictions as well as having the responsibility of pursuing Australian funds sent overseas.

To foster trust and facilitate international co-operation, many OECD countries have taken steps to develop international contacts and encourage the sharing of information through practitioner networks. Such efforts have expanded opportunities for informal assistance – *i.e.* assistance outside the realm of a formal mutual legal assistance request – which is an important first step in international co-operation (Brun, *et al.*, pp. 121-137). Fifteen OECD countries

have appointed focal points under the StAR/Interpol Asset Recovery Focal Point Initiative, a network of practitioners representing approximately 80 countries.⁴ Countries have also engaged in efforts to share best practices, participating in practitioner-led projects under the StAR Initiative, the Lausanne Process, the Oslo Dialogue, and informal meetings of practitioners through the OECD Working Group on Bribery. In addition, a number of countries have relied on informal practitioner networks to facilitate international co-operation, such as the Camden Asset Recovery Inter-Agency Network (CARIN) (see Box 2.4).

Box 2.4. Good practice: Practitioner networks on asset recovery – CARIN

The Camden Asset Recovery Inter-Agency Network (CARIN) is a network of law enforcement and judicial experts on confiscation and asset recovery. There are over 40 members and observers: member status is open to EU member states and to jurisdictions invited to the CARIN launch in 2004; observer status is available to jurisdictions and non-private bodies concerned with the identification and confiscation of the proceeds of crime.

CARIN has proved an effective law enforcement tool that has improved cross-border and inter-agency co-operation through exchange of information and good practices and through facilitating training for tackling the proceeds of crime. Its success has led to the development of other regional asset recovery networks, such as the Asset Recovery Inter-Agency Network for Southern Africa (ARINSA). Moving forward, it will be important for donors to extend networks to authorities in developing countries, whether through offering them participation in current networks or through partnerships with regional networks.

Other efforts which have helped to build trust and improve international cooperation include mentorship and technical assistance programs designed for law enforcement counterparts in developing countries, and the continued placement by donor countries of liaison magistrates and police attachés in foreign jurisdictions. These individuals have knowledge of the laws and procedures of both their own jurisdictions and the host jurisdiction, and that knowledge can help practitioners avoid the pit-falls of working with different legal systems. Their roles vary, but generally they will facilitate contact with counterparts, provide informal assistance, help with MLA request preparations (reviewing drafts) and assist with the follow-up to a MLA request. France, United Kingdom and United States are among the countries that provide these resource persons (Brun, Gray, Scott, Stephenson, 2011, p. 125).

Effective preventive measures and the development and sharing of financial intelligence are critical in corruption and asset recovery cases. Countries require financial institutions to improve their systems for detecting and monitoring PEPs and reporting suspicious transactions to FIUs (Greenberg *et al.*, 2010). Some competent authorities have adopted spontaneous disclosures, a proactive form of assistance that alerts a foreign jurisdiction to an ongoing investigation in the disclosing jurisdiction and indicates that existing evidence could be of interest. The receiving jurisdiction may use the information to further its own investigation and eventually submit an MLA request.

Recommendation 7: Implement institutional reforms that foster trust and build capacity to fight corruption and recover assets. Examples include:

- putting together specialised teams;
- designation of focal points of contact for corruption and asset recovery cases;
- working with existing networks and sharing best practices at regular intervals;
- allocating increased staff and resources to work with requesting countries in the drafting or clarification of mutual legal assistance requests (whether within Central Authorities or through the designation of liaison magistrates and police attachés placed in foreign jurisdictions); and
- encouraging spontaneous disclosures by domestic authorities.

A number of the publications of the StAR initiative provide additional details on implementation (see Box 2.5).

Box 2.5. StAR's research and policy development work on asset recovery

The StAR Initiative has produced a number of products that provide more in-depth analysis of some asset recovery issues. These products can be of assistance to policy makers and practitioners in donor and developing countries, and are available on the StAR website: www.worldbank.org/star. They include:

- *Asset Recovery Handbook: A Guide for Practitioners* (2011)
- *Asset Recovery Watch Database* (in press)
- *Barriers to Asset Recovery* (2012)

Box 2.5. StAR's research and policy development work on asset recovery (continued)

- *Illicit Enrichment Study* (forthcoming)
- *Income and Asset Declarations: Tools and Trade-offs* (forthcoming)
- *Management of Returned Assets: Policy Considerations* (2009)
- *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (2010)
- *StAR/OECD Report on the Quantification of the Proceeds of Bribery* (forthcoming)
- *Towards a Global Architecture for Asset Recovery* (2009)
- *Politically Exposed Persons – Preventive Measures for the Banking Sector* (2010)
- *Stolen Asset Recovery – A Good Practices Guide to Non Conviction Based Asset Forfeiture* (2009)

Notes

1. A number of other countries have adopted anti-corruption policies; however, these do not include an asset recovery component.
2. Commission Directive 2006/70/EC of 1 August 2006, laying down implementing measures for Directive 2005/60/EC with regard to the definition of “politically exposed person” and the technical criteria for simplified customer due diligence procedures, and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.
3. Recommendation 6 of the Financial Action Task Force (FATF) requires financial institutions to have a system in place to identify politically exposed persons (PEPs), obtain senior management approval for establishing a business relationship with such customers, take measures to establish the source of wealth and source of funds, and closely monitor the business relationship. www.fatf-gafi.org/document/5/0,3746,en_32250379_32236920_43678853_1_1_1_1,00.html.
4. OECD member countries that are members of CARIN are Australia, Austria, Canada, the Czech Republic, Denmark, France, Hungary, Ireland, Italy, Luxembourg, Poland, Spain, Turkey, the United Kingdom and the United States.

3. Role of developing (requesting) countries

Fighting corruption requires the commitment of and action by developing countries as well. In the Accra Agenda for Action, developing countries committed themselves to “*improving systems of investigation, legal redress, accountability and transparency in the use of public funds*”. A review of their progress in meeting these commitments is outside the scope of this paper; however, the report would not be complete without stressing that developing countries, particularly those requesting recovery of assets, have a vital role in helping donor countries realise *their* commitments. For successful prosecutions of foreign corruption offences or money laundering and for money to be returned, some form of political leadership and co-operation are needed from these countries.

As with the donor countries, the demonstrated political will of developing countries is of critical importance. Lack of political will in these countries manifests itself in a variety of ways: an unwillingness to pursue cases (particularly if they are large or complex) or co-operate with foreign jurisdictions, a lack of capacity and expertise, unskilled practitioners, and a lack of resources (Stephenson *et al.*, 2011, pp. 2, 24). Developing countries also need to implement policies, adopt legislation, and make institutional changes to prevent and deter corruption and facilitate international co-operation. Most important in this regard, they need to be pursuing cases against the corrupt officials involved. Not only do cases send a strong deterrence message, but also the evidence gathered can be used to support efforts of the jurisdiction where the assets are hidden.

International co-operation will always be required – whether the country harmed by corruption decides to pursue, for example, a domestic corruption or money laundering case (or both), or whether a foreign country initiates an action against the individuals, companies or assets over which it has jurisdiction. In the former case, the country harmed by corruption will need to use informal assistance and MLA to gather evidence, trace assets, and enforce freezing and confiscation orders. In the latter scenario, the country harmed by corruption will often be asked to provide evidence to the foreign jurisdiction in order to prove corruption or other alleged predicate crimes. Even if the

case file or MLA request has been provided to the foreign jurisdiction, additional information will likely be needed. When such additional information is requested, it is imperative that a response be provided. Without continued attention to the case and international co-operation, success in the foreign case will be limited or impossible.

Box 3.1. Good practice: Developing and donor country co-operation

For many years, British anti-laundering and anti-corruption agencies (directly supported by the donor agency DfID – see Box 4.1) have maintained an ongoing relationship with the Nigerian government, resulting in millions of dollars of repatriated and frozen funds. In the 2005 case of Diepreye Peter Solomon Alamieyeseigha, former governor of Bayelsa State, Nigeria recovered USD 17.7 million through domestic proceedings and close co-operation with authorities in both the United Kingdom and South Africa. Co-operation between Nigeria's Economic and Financial Crimes Commission and the London Metropolitan Police's Proceeds of Corruption Unit relied on innovative collaboration for the seizure, confiscation and ultimate return of multi-state funds controlled by Alamieyeseigha (Brun *et al.*, 2011, pp. 17-18).

That kind and level of co-operation reinforces the chances of a positive outcome and emphasises the clear benefits, particularly for developing countries, of establishing strong ongoing channels of communication with other jurisdictions.

Recommendation 8: Technical assistance to developing countries should focus on improving domestic criminal investigations in addition to legislative development.

Donor countries can assist developing countries with the institutional and legislative changes necessary for undertaking corruption investigations and pursuing asset recovery. Several donor countries have already conducted in-country or regional trainings or sponsored mentorship programmes; other countries have funded the training programmes delivered by multilateral institutions, such as the World Bank and UNODC, or by non-governmental organisations. In some instances, national authorities may be faced with multiple offers of training opportunities – some targeting particular agencies, others addressing particular themes; some delivered as stand-alone events and others as part of an institutional development project.

StAR suggests (2009, p. 30) that developing countries would benefit from a more coherent, better co-ordinated and country-led process of institutional capacity building to support asset recovery. Co-ordination by donor countries subject to available resources would greatly facilitate these efforts. Moreover, donor co-ordination around UNCAC implementation would help developing countries ensure fulfilment of UNCAC commitments.

4. Calling development agencies to action

Donor countries have made bold commitments in the Accra Agenda for Action. There may be uncertainty as to how these can be met in a development assistance programme, particularly since the Accra Agenda calls on donor countries to take steps “in their own countries”. In fact these commitments represent an opportunity for donor countries to expand development assistance beyond the traditional field of good governance, improved accountability and corruption prevention programmes, to programmes that focus on the criminal justice side of the corruption issue.

This focus needs to encompass planning and advocacy efforts in both developing and donor countries. As mentioned in Section 3, technical assistance can be provided to developing countries to support their capacity to conduct criminal investigations, develop legislation, and request international assistance. Domestically, development agencies can be instrumental in supporting the necessary policy, legislative, and institutional changes in donor countries. Examples of possible areas for action are outlined below. The role of development agencies will vary depending on their domestic context, mandate and role in formulating broader government policy; but all agencies will need to “think outside the box” and consider innovative ways to support their own domestic efforts in moving the corruption and asset recovery agenda forward.

Recommendation 9: Development agencies need to expand their efforts in fighting corruption and recovering assets. Possible actions, described further below, include:

- Incorporating anti-corruption and asset recovery efforts into development policies
- Supporting domestic law enforcement efforts in pursuing kleptocracy cases
- Ensuring adequate financing for legal co-operation activities
- Facilitating data collection
- Advocating for pertinent policies, laws and institutional developments.

1. *Incorporating anti-corruption and asset recovery efforts into development policies.* As indicated above, political will – the credible intent of the various stakeholders – is critical to successful asset recovery. Development agencies need to join the other stakeholders in setting anti-corruption and assets recovery as a priority in their strategic planning.
2. *Supporting domestic law enforcement efforts in pursuing kleptocracy cases.* Financial centres (which are also donor countries) often have the jurisdiction to prosecute the officials and legal persons involved in either a corruption or a money laundering offence. Yet the data show that in most countries, law enforcement agencies are not pursuing corruption or asset recovery cases. As far as resources and frameworks are concerned, donor countries need to ensure that law enforcement agencies are adequately funded and have the necessary laws, institutions and political backing to pro-actively pursue cases. Given the significant development impact, development agencies should advocate the necessary changes. In some cases, given the absence of incentives from other government departments, development agencies can consider allocating development assistance funds to support domestic law enforcement units dedicated to investigating and prosecuting kleptocracy cases that are expected to result in the return of illegally acquired assets to developing countries (for example, cases under UNCAC or UNTOC). Experience demonstrates that results can be achieved in terms of cases and dollars frozen or returned (see Box 4.1). In addition, funds could be used and technical assistance provided to train law enforcement officials in financial investigation and financial criminal analysis, to improve the identification and tracing of the proceeds of crime.

Box 4.1. Good practice: Development agencies financing law enforcement efforts to combat corruption and recover assets

In 2006, concerns were raised that the United Kingdom was not doing enough to recover and return the proceeds of corruption. The Department for International Development (DfID) stepped in with financing for a dedicated Proceeds of Corruption Unit (POCU) in the Metropolitan Police. POCU employs eleven specialist officers who investigate cases involving the alleged laundering of corrupt assets in the United Kingdom. DfID also funds the City of London Police Overseas Anti-Corruption Unit (OACU), with 12 specialist officers who investigate allegations of corruption in developing countries that involve UK citizens, companies or financial institutions. The financing was GBP 4.6 million (approximately USD 7.4 million) in total.

Box 4.1. Good practice: Development agencies financing law enforcement efforts to combat corruption and recover assets *(continued)*

These units have been actively involved in investigations in close collaboration with Nigeria, Malawi, Uganda and Zambia. They have pursued prosecutions through the UK courts, provided evidence for prosecutions overseas, and supported the freezing and confiscation of assets.

And there has been a significant return on investment: as of March 2011, POCU and OACU, working with the Serious Organised Crime Agency, Serious Fraud Office and Crown Prosecution Service, have contributed to the recovery and return of GBP 20.7 million (approximately USD 33.2 million) and the freezing of another GBP 160 million (approximately USD 256.9 million) of corruptly acquired assets.

3. *Ensuring adequate financing for legal co-operation activities.* One of the main difficulties in prosecuting corruption cases and recovering the proceeds is that such cases typically require co-operation from one or more foreign jurisdictions. And co-operation is often stymied for a number of reasons – a lack of trust and communication between counterparts, differences in legal systems (for example, civil and common law systems), or insufficient capacity, laws, or political will on the part of one or more jurisdictions (Stephenson *et al.*, 2011, p. 2).

Development agencies can help diminish these obstacles by funding programmes or activities that foster trust and international co-operation. Such programmes will benefit practitioners in developing jurisdictions as well, helping to build their capacity to co-operate with their counterparts in donor countries. Examples include:

- international and bilateral meetings of practitioners for sharing of good practices;
- practitioner networks, including global or regional asset recovery networks (for example, StAR/INTERPOL, CARIN, ARINSA), or law enforcement co-operation (for example, Interpol);
- mentorship and training programmes for foreign law enforcement agencies, including exchanges and secondments of law enforcement officials;
- placement of liaison magistrates, officers and police attachés in other regions or jurisdictions; and
- technical assistance that builds the capacity of foreign law enforcement officials to co-operate on international cases.

4. *Facilitating data collection.* There may be a role for development agencies in the collection and aggregation of data on law enforcement efforts in developing and donor countries, in particular as a co-ordinating body in countries with multiple agencies or actors at federal and local levels.
5. *Advocating pertinent policies, laws and institutional developments.* Development agencies can use their position and financing to advocate policies, laws, and institutional developments that fight corruption and recover the proceeds, both at home and in other donor countries. They can also support the efforts of civil society organizations in knowledge development/sharing and advocacy. More can be done to highlight the role of the financial centres where funds are hidden in ensuring that corrupt officials do not profit from their crimes and that funds are returned to the country harmed by the corruption. Confiscation and other asset recovery techniques can be emphasised as effective means for return, as well as the highly visible deterrence message and development impact generated by returns. Exerting pressure on other donor countries will be helpful in “leveling the playing field” among financial centres.

Ultimately it is important to recognise that progress will take place over the long term as institutional capacity is built up, legal and investigative tools are put in place, and cases are conducted. Actual cases will be time-consuming, complex and expensive. Development agencies are well placed to support efforts through policy, legal advice, knowledge generation, capacity building, and funding. And they must do so if they are to meet their anti-corruption and asset recovery commitments in the Accra Agenda for Action.

5. Conclusion

Success in fighting corruption and recovering stolen assets requires action by the various stakeholders involved, including law enforcement and justice officials requesting countries and financial centres, banks, private companies, development agencies, civil society and the media. Below are five recommendations intended for OECD DAC members, the development agencies of donor countries, and the co-operation agencies of developing countries. Implementation of these recommendations – whether through development funding, advocacy, or policy changes – can help realise the anti-corruption and asset recovery commitments in the Accra Agenda for Action.

1. *Adopt and implement comprehensive strategic policies to combat corruption and recover assets.* The demonstrated and credible intent of political actors, civil servants, and other organs of the state – political will – is a necessary precondition for fighting foreign corruption and asset recovery. All countries should engage in a broader international policy debate on how asset return can be incorporated into settlement agreements in bribery and corruption cases. Data on case outcomes should also be collected.
2. *Ensure that laws effectively target corruption and asset recovery, and in particular have the capacity to rapidly trace and freeze assets.* These include:
 - laws that enable the rapid tracing and freezing of stolen assets;
 - multiple avenues for asset recovery, including laws that permit confiscation without a conviction (NCB confiscation), and private (civil recovery) actions;
 - laws that facilitate international co-operation, including the direct enforcement of foreign orders, the granting of mutual legal assistance in the absence of a bilateral legal assistance agreement when dealing with asset recovery from PEPs, and mutual legal assistance requests to freeze assets on an *ex parte* basis;
 - preventive measures requiring financial institutions to identify and monitor PEPs and collect beneficial ownership information.

3. *Implement institutional reforms that encourage the active pursuit of cases, build capacity, and improve trust and co-operation among foreign counterparts.* Examples include:
 - specialised teams;
 - designation of focal points of contact for corruption and asset recovery cases;
 - designation of liaison magistrate and foreign attaché positions in foreign jurisdictions;
 - mentorships or technical assistance programmes in developing countries that focus on improving domestic criminal investigations (in addition to legislative development);
 - working with existing practitioner networks and sharing best practices;
 - allocating increased staff and resources to work with requesting countries in the drafting or clarification of mutual legal assistance requests; and
 - encouraging spontaneous disclosures by domestic authorities.
4. *Ensure adequate funding for domestic law enforcement efforts and foster international co-operation in kleptocracy cases.* Allocating development funds to domestic law enforcement for foreign corruption and asset recovery cases is one avenue that has proven effective. Funding programmes and activities that foster trust and international co-operation are also important for building capacity and trust with foreign counterparts. With adequate funding and political support, countries can generate asset returns that are much higher than the funds invested – and these funds can be used for development programmes.
5. *Collect statistics to measure results.* Countries should maintain comprehensive and, where possible, sub-national statistics on corruption, money laundering (where corruption is the predicate offence) and asset recovery cases. Gaps in data collection should be identified and addressed, such as situations in which:
 - data are collected at one level of government (e.g. federal) and not at another (e.g. state/provincial/canton);
 - data on domestic and foreign cases, whether corruption or asset recovery, are not counted separately;

- data on money laundering offences do not distinguish the predicate offence of corruption;
- data are not collected by all institutions involved in investigating and prosecuting corruption (*e.g.* courts, prosecutors, police, anti-corruption agencies).

Bibliography

- AusAID (Australian Aid) (2007a), *Anti-Corruption and Australian Aid*, www.aid.gov.au/makediff/anticorruption.cfm.
- AusAID (2007b), *Tackling Corruption for Growth and Development*, www.aid.gov.au/publications/pubout.cfm?Id=9779_1430_4122_3951_2367.
- Australian Government (2010), *Foreign Bribery: Australia's Approach to Fighting Corruption*, [www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~n0000Info+paper.pdf/\\$file/n0000Info+paper.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~n0000Info+paper.pdf/$file/n0000Info+paper.pdf).
- Brun, J.P., L. Gray, C. Scott and K.M. Stephenson (2011), *Asset Recovery Handbook: A Guide for Practitioners*, World Bank, Washington, DC.
- Cohen, T. (2011), “Feds Table Bill To Permit Foreign-asset Freeze,” 3 March, www.canada.com/news/Feds+table+bill+permit+foreign+asset+freeze/4377857/story.html.
- Commission of the European Communities (2008), “Communication from the Commission to the European Parliament and the Council – Proceeds of Organised Crime: Ensuring that ‘Crime does not Pay’”, Commission of the European Communities, Brussels, COM(2008) 766 final.
- G20 Countries (2009), Leaders’ Statement, Pittsburgh Summit, Seoul, Korea, 24-25 September.
- G20 Countries (2010), Leaders’ Declaration, Seoul Summit, Seoul, Korea, 11-12 November.
- Government of Antigua and Barbuda (2000), “Government of Antigua Barbuda Recoups US\$12 Million Dollars in Case Against Former Government Officials and Others”, Press Release, 10 July, www.ab.gov.ag/gov_v4/article_details.php?id=68&category=38.
- Greenberg, T.S., L.M. Samuel, W. Grant and L. Gray (2009), *Stolen Asset Recovery: A Good Practices Guide to Non-Conviction Based Asset Forfeiture*, World Bank, Washington, DC.

- Greenberg, T.S., L. Gray, D. Schantz, C. Gardner and M. Latham (2010), *Politically Exposed Persons: Preventive Measures for the Banking Sector*, World Bank, Washington, DC.
- Heimann, F. and G. Dell (2009), *Progress Report 2009: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, Transparency International, Berlin.
- OECD Working Group on Bribery (2010), *OECD Working Group on Bribery Data on Enforcement of the Anti-Bribery Convention*, OECD, Paris, www.oecd.org/dataoecd/11/15/45450341.pdf, accessed 31 March 2011.
- StAR (Stolen Asset Recovery Initiative), *StAR Asset Recovery Database*, Stolen Asset Recovery Initiative, Washington, DC.
- StAR (2009), *Towards A Global Architecture for Asset Recovery*, Paper presented to the Conference of State Parties to the United Nations Convention against Corruption, Doha, 9-13 November.
- StAR (2010), *No Safe Havens: A Global Forum on Stolen Asset Recovery and Development*, Paris, France, 8-9 June, Stolen Asset Recovery Initiative, Washington, DC.
- Stephenson, K.M., L. Gray, R. Power, J.P. Brun, G. Dunker and M. Panjer (2011), *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*, World Bank, Washington, DC.
- Third High Level Forum on Aid Effectiveness (2008), *Accra Agenda for Action*, Accra, Ghana, 2-4 September, www.accrahlf.net, accessed 31 March 2011.
- Transparency International (2009), *Progress Report 2009: OECD Bribery Convention*, Transparency International, London.
- United States Department of Justice (2010a), *Attorney General Holder at the African Union Summit, Kampala, Uganda, July 25, 2010*, www.justice.gov/ag/speeches/2010/ag-speech-100725.html, accessed 31 March 2011.
- United States Department of Justice (2010b), *Attorney General Holder Delivers Remarks at the Organisation for Economic Co-Operation and Development*, Paris, France, 31 May 2010, www.justice.gov/ag/speeches/2010/ag-speech-100531.html, accessed 31 March 2011.
- World Bank Group and United Nations Office on Drugs and Crime (2007), *Stolen Asset Recovery Initiative: Challenges, Opportunities, and an Action Plan*.

Annex 1

Executive Summary Recommendations:

1. *Adopt and implement comprehensive strategic policies to combat corruption and recover assets.* The demonstrated and credible intent of political actors, civil servants and other organs of the state – political will – is a precondition for fighting foreign corruption and asset recovery.
2. *Ensure that laws effectively target corruption and asset recovery, and in particular provide the necessary powers to rapidly trace and freeze assets.* Laws also need to allow for the enforcement of a wide range of foreign orders, such as non-conviction-based confiscation orders, and for the return of the proceeds of corruption.
3. *Implement institutional reforms that encourage the active pursuit of cases, build capacity, and improve trust and co-operation with foreign counterparts.* Specialised units with trained practitioners and adequate resources have proved a successful model for addressing the complex and lengthy nature of these cases. The units can conduct outreach to make other relevant actors (the judiciary, parliament, prosecutors and civil society) more aware of the unique difficulties of corruption cases.
4. *Ensure adequate funding for domestic law enforcement efforts and foster international co-operation in kleptocracy cases.* Allocating development funds to domestic law enforcement for foreign corruption and asset recovery cases is one avenue that has been proved effective. With adequate funding and political support, countries can generate asset returns that are much higher than the funds invested – and these funds can be used for development programmes.
5. *Collect statistics to measure results.* Statistics on law enforcement efforts in this field are needed to assess effectiveness in meeting international commitments and to guide domestic policy development, resource allocation and strategic planning.

Recommendation 1: Countries should maintain comprehensive and, where possible, sub-national statistics on corruption, money laundering (where corruption is the predicate offence) and asset recovery cases. Gaps in data collection should be identified and addressed, such as in situations where:

- data are collected at one level of government (*e.g.* federal) and not at another (*e.g.* state/provincial/canton);
- data on domestic and foreign cases, whether pertaining to corruption or asset recovery, are not counted separately;
- data on money laundering offences do not distinguish the predicate offence of corruption;
- data are not collected by all institutions involved in investigating and prosecuting corruption (*e.g.* courts, prosecutors, police, anti-corruption agencies).

Recommendation 2: Encourage law enforcement to be proactive in initiating cases and recovering the proceeds of corruption in their jurisdictions.

Recommendation 3: Countries should engage in a broader international policy debate on how asset return can be incorporated into settlement agreements in bribery and corruption cases. Data on case outcomes should also be collected.

Recommendation 4: Ensure that effective mechanisms for civil recovery are in place.

Recommendation 5: Adopt and implement comprehensive strategic policies to combat corruption and recover assets.

Recommendation 6: Ensure that laws effectively target corruption and asset recovery. These laws include:

- laws that enable the rapid tracing and freezing of stolen assets;
- multiple avenues for asset recovery, including confiscation without a conviction (NCB confiscation), and private (civil recovery) actions;
- laws that facilitate international co-operation – including the direct enforcement of foreign orders and the granting of mutual legal assistance in the absence of a bilateral legal assistance agreement – when dealing with asset recovery of PEPs, and that permit mutual legal assistance requests to freeze assets on an *ex parte* basis;
- preventive measures requiring financial institutions to identify and monitor PEPs and collect beneficial ownership information.

Recommendation 7: Implement institutional reforms that foster trust and build capacity to fight corruption and recover assets. Examples include:

- putting together specialised teams;
- designation of focal points of contact for corruption and asset recovery cases;
- working with existing networks and sharing best practices at regular intervals;
- allocating increased staff and resources to work with requesting countries in the drafting or clarification of mutual legal assistance requests (whether within Central Authorities or through the designation of liaison magistrates and police attachés placed in foreign jurisdictions); and
- encouraging spontaneous disclosures by domestic authorities.

Recommendation 8: Technical assistance to developing countries should focus on improving domestic criminal investigations in addition to legislative development.

Annex 2

StAR/OECD Questionnaire

Quantitative reporting on the return of the proceeds of corruption

Questionnaire

- A. Please state the country you are reporting on:
-
- B. Please enter the name and title of the person reporting:
-
- C. Please enter the currency you are reporting in:
-
- D. In this questionnaire, the quantitative data reported on should relate to mechanisms and measures aimed at asset recovery as contemplated in Articles 53 – 55 of UNCAC. What types of civil and criminal mechanisms are available in your country to freeze and confiscate assets?
-
- E. As far as possible, please report in Section G below on cases (domestic investigations in your country) where the underlying offence is defined in Articles 15 & 17-22 of UNCAC, and article 23 of UNCAC when the predicate offence is defined in Articles 15-22, and there is an international dimension. This will include assets resulting from money laundering (as per article 23 of UNCAC) derived from predicate offences as defined in Articles 15-22. If you are reporting results on a broader range of offences please explain:
-
- F. Please explain how you define cases? Please explain if different agencies within your country define “cases” differently. Does it start with a referral to an investigative authority, or the actual allocation of resources to investigate or on referral to a prosecutor or magistrate?
-
- G. Please report below on total cases 2006-09.

	Assets Identified	Assets Frozen	Assets Returned
No. of Cases			
Total Value:			

-
- H. Please report separately below on any cases of bribery of foreign officials as defined in Article 16 of UNCAC if these cases have led or may lead to the return of assets to another country. Please advise on total cases 2006-09.

	Assets Identified	Assets Frozen	Assets Returned
No. of Cases			
Total Value:			

I. Please list below the cases not initiated by National Authorities *i.e.* private actions by foreign governments.

J. Parts of Federal States not included:

K. Summary Information (Largest Cases):

1. Please list the five largest cases where money or assets have been frozen between 2006 and 2009 where the underlying offence is defined in Articles 15 & 17-22 of UNCAC, and article 23 of UNCAC when the predicate offence is defined in Articles 15-22, and there is an international dimension.

No.	Amount	Originating Country
1.		
2.		
3.		
4.		
5.		

2. Please list the five largest cases in the last three years, where money or assets have been returned between 2006 and 2009 where the underlying offence is defined in Articles 15 & 17-22 of UNCAC, and article 23 of UNCAC when the predicate offence is defined in Articles 15-22, and there is an international dimension.

No.	Amount	Originating Country
1.		
2.		
3.		
4.		
5.		

L. Cases started between 2006 and 2009 except in respect to Article 16 of UNCAC (bribery of foreign public officials)

Enter Date (mm-yy) when reporting starts:

Periodic Report	Number	Value
1. Total Cases:		
2. Cases resulting from MLA requests:		
3. Relevant MLA requests not resulting in cases:		
4. Cases initiated without an MLA Request:		
5. Cases where the freezing order has been granted:		
6. Cases where the freezing order has been appealed:		
7. Cases where orders for return of funds have been granted:		
8. Funds returned:		
10. Number of countries making MLA requests:		
12. Number of countries to which funds have been returned:		

M. Open Cases except in respect of Article 16 of UNCAC (bribery of foreign officials)

Enter Date (mm-yy):

Periodic Report	Number	Value
1. Total Cases:		
2. Cases resulting from MLA requests:		
3. Relevant MLA requests not resulting in cases:		
4. Cases initiated without an MLA Request:		
5. Cases where the funds have been identified:		
6. Cases where orders for return of funds have been granted:		
7. Number of countries making MLA requests:		

N. General Comments

1. Please feel free to provide any other relevant information.



It is estimated that USD 20 billion to USD 40 billion are illegally removed from developing countries annually and hidden in financial centers (StAR, 2007). Only USD 5 billion has been returned over the past 15 years. Corruption and its proceeds can be particularly devastating for developing countries which lose billions of dollars every year through corrupt acts such as bribery, misappropriation of public property, abuse of office, and embezzlement. Corruption and the illicit flows that result hinder economic development and the delivery of basic services, erode confidence in governments and the rule of law, and thereby perpetuate poverty.

The international community has taken action and is moving forward. In September 2008 Ministers of developing and donor countries responsible for promoting development and Heads of multilateral and bilateral development institutions committed themselves to fighting corruption in the Accra Agenda for Action (adopted at the Third High Level Forum on Aid Effectiveness). Specifically, donor countries pledged to “take steps in their own countries to combat corruption by individuals or corporations and to track, freeze, and recover illegally acquired assets.”

The OECD and StAR have measured the progress of 30 donor countries in meeting their Accra commitments to (1) combat corruption by individuals or corporations, and to (2) track, freeze, and recover illegally acquired assets (referred to as “asset recovery”). The challenges in meeting these commitments are described in a new report, as well as good practices and recommendations for efforts going forward for both donors and partner countries. This report is the first attempt to gauge OECD countries’ efforts in tracing and repatriating what is generically referred to as stolen assets to foreign jurisdictions. It covers the period between January 2006 and December 2009.

