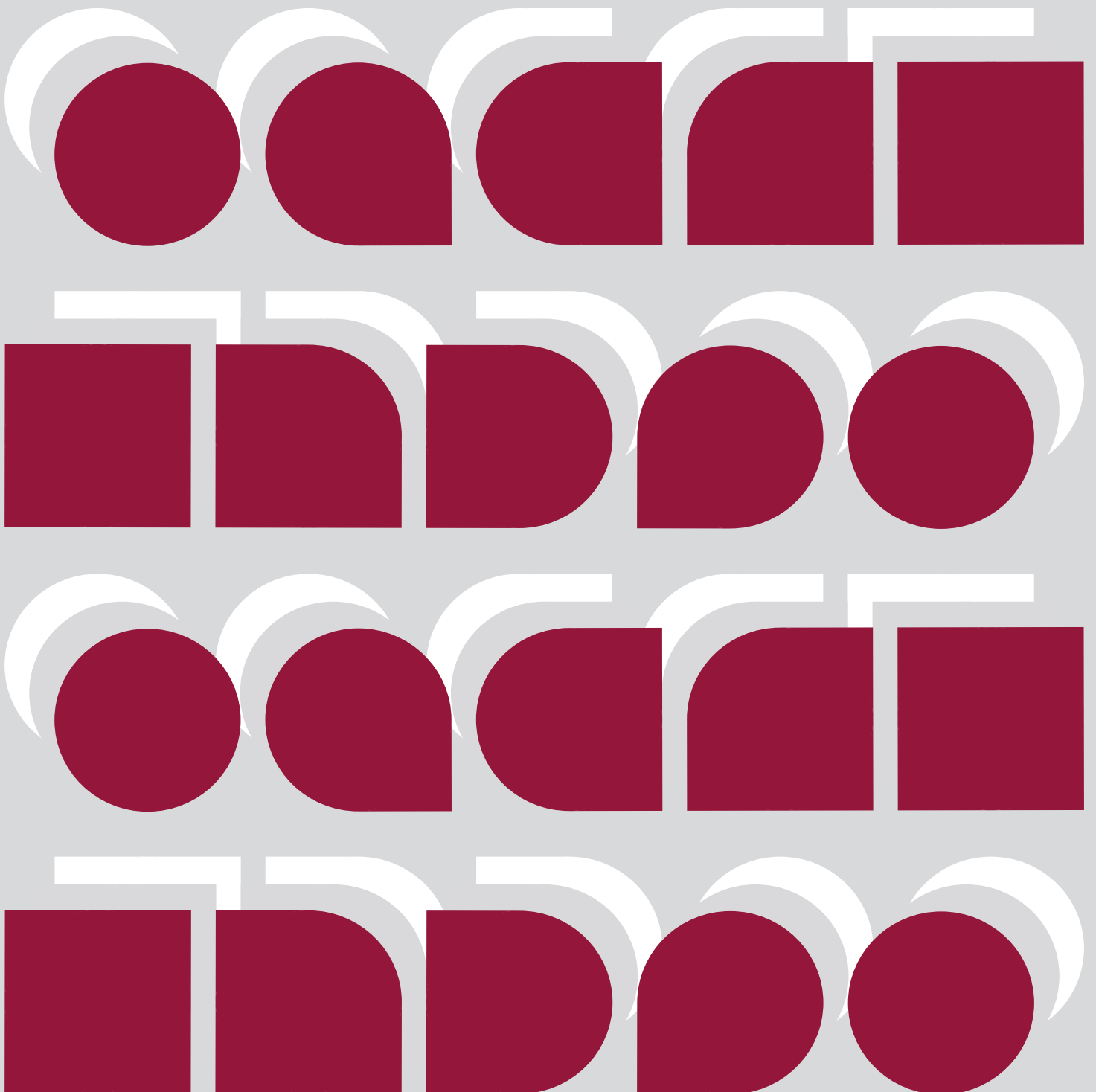


Arab Forum on Asset Recovery
**Guide to the role of civil society organisations
in asset recovery**



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About this guide

Asset recovery refers to the process by which the proceeds of crime are identified, traced, seized, confiscated and returned to their rightful owners.

Generally speaking, States need to lead the process of recovering stolen assets. However, civil society organisations (CSOs) can play an important role in the different stages of the asset recovery process. This guide:

- seeks to assist interested CSOs to understand potential areas of engagement and strategic considerations regarding routes of engagement;
- highlights potential risks and challenges and how these may be mitigated;
- provides case examples of CSO efforts in support of the recovery of stolen assets.

The guide was first developed by the International Centre for Asset Recovery at the Basel Institute on Governance, jointly with partners, in the context of the Arab Forum on Asset Recovery (AFAR). Its content is applicable at a global level and can serve as a useful guidance to CSOs from other regions as well.

We express our appreciation to the United Kingdom G8 Presidency, the World Bank / UNODC Stolen Asset Recovery Initiative (StAR) and Ambassador Muhyieddeen Touq of Jordan for their advice and support, and the following CSOs for their valuable contributions:

- Association Tunisienne pour la Transparence Financière (ATTF)
- Yemeni National Authority for Recovering Stolen Assets (AWAM)
- Egyptian Initiative for Personal Rights (EIPR)
- Global Witness
- Open Society Justice Initiative
- Sherpa

For more information about the Arab Forum on Asset Recovery and the development of this guide, please see Annex I.

Asset recovery fundamentals

What is asset recovery?

Even if corruption is identified and exposed, victims rarely recover all the assets that have been stolen. This is usually because of one simple reason: the assets cannot be found. To benefit from gains of their corrupt activities, the perpetrators of such offences will usually need to insert these assets into the financial system.

Money laundering and asset recovery go hand-in-hand:

- **Money laundering** is the criminal activity that a person, following the commission of a predicate offence, commits in order to hide the true origin, nature and ownership of their criminal proceeds.
- **Asset recovery**, on the other hand, is the action investigative and prosecutorial authorities conduct to trace those unlawful assets, seize them from the perpetrators and restore them to their rightful owner.

Consequently, these perpetrators have become exceptionally skilled at laundering their criminally acquired assets through financial channels, usually across multiple jurisdictions, in order to disguise the illegitimate origins of their assets.

Asset recovery thus refers to the process by which these proceeds of crime are identified, traced, seized, confiscated and returned to their rightful owners (which may include States, state owned enterprises as well as private individuals or private legal entities).

UN Convention against Corruption on asset recovery and the role of civil society

The United Nations Convention against Corruption (UNCAC) explicitly states asset recovery as a fundamental principle of the Convention (Article 51, UNCAC) and dedicates an entire chapter to asset recovery (Chapter V). This chapter outlines, inter alia:

- measures to be taken for the prevention and detection of transfers of proceeds of crime (Article 52);
- measures for direct recovery of property (Article 53);
- mechanisms for recovery of property through international cooperation in confiscation and international cooperation for purposes of confiscation (Articles 54 and 55);
- measures for the return and disposal of assets (Article 57).

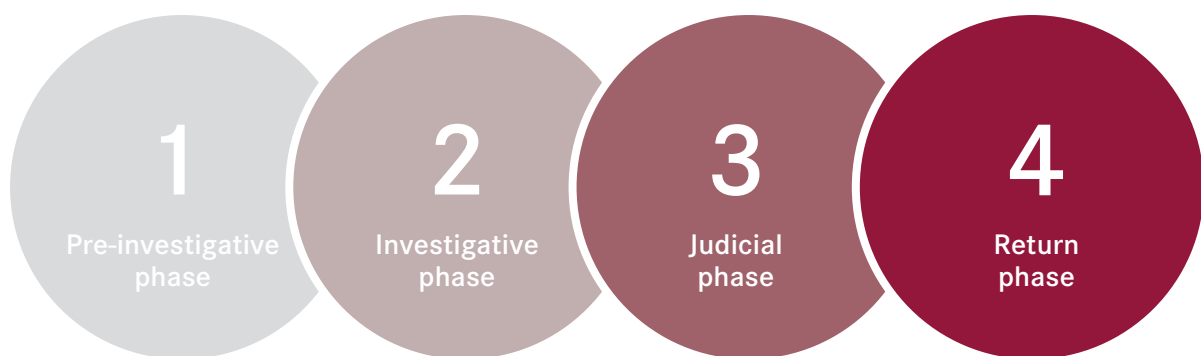
Several articles in other chapters also relate to asset recovery and the role of CSOs. Relevant sections relate to:

- participation of society (Article 13);
- prevention and criminalization of money-laundering (Articles 14 and 23);
- protection of reporting persons- or whistle-blowers (Article 33);
- compensation for damage (Article 35)
- cooperation between national authorities and the private sector (Article 39);
- bank secrecy (Article 40);
- mutual legal assistance (Article 46).

For the text of these articles and links to the full UNCAC in various languages, please see the interactive version of this guide on learn.baselgovernance.org.

The four phases of asset recovery

While each asset recovery case is unique, given the circumstances surrounding it, the process itself can generally be broken down into four phases:



1

Pre-investigative phase

An investigator will receive information from a source about a crime and / or particular stolen assets, and will work to gather further intelligence to verify the authenticity of this information. Financial intelligence in particular plays a critical role at this stage in ascertaining the preliminary information required to confirm the actual theft and movement of assets, and their potential locations.

The key questions to be addressed in this phase are:

- whether or not an offence has taken place;
- who has committed it.

2

Investigative phase

The proceeds of crime are identified, located, frozen and evidence in respect of ownership of these assets is collated to allow for a seizure order to subsequently be made.

This is the stage during which investigative and prosecutorial authorities in both the requesting and requested jurisdictions need to choose the appropriate tool(s) to achieve the desired results (e.g., evidence gathering, freezing or seizure of assets). It is important to understand that this phase relates to both the original offence as well as the actions taken to launder the proceeds derived from this original (predicate) offence.

The investigative stage is a double-faceted process that aims to both locate and freeze stolen funds, as well as to link them to the commission of an illegal act. Thus in this stage it is important to focus on both establishing sufficient evidence of the criminality of the original action that generated the assets in question as well as on unravelling the specific techniques of money laundering that were adopted by the perpetrators to launder these assets.

Key questions are:

- Who (individuals, companies) was involved in the commission of the offence?
- What was the damage of the offence, i.e. what was taken or what proceeds of crime were generated?
- When did the offence take place?
- Where did the offence take place? Where were the proceeds of crime transferred to, and where are they located now?
- Why did the perpetrators commit the offence? What was the motive behind the commission of this offence?
- How was the offence committed? How were the proceeds of crime generated? How were they transferred?

3

Judicial phase

This takes place when the investigation is completed and referred for trial.

The judicial phase includes the trial and then issuance of the judgment against the persons identified in the previous phase. In the event that the accused are convicted, the court hands down a final decision for the legal confiscation of assets they have stolen in connection with the criminal offence committed.

When all avenues of appeal have been exhausted, this phase marks the transition from the phase of “frozen assets” to the phase of “confiscated assets”.

In order to confiscate the assets in the jurisdiction(s) in which they have been found, the judicial authorities of the requesting jurisdiction must work closely with their counterparts, to ensure that an appropriate course of action is taken (e.g., enforcement of the confiscation order from the requesting country or obtaining a local confiscation order in the requested jurisdiction).

It is important to note that while this section predominantly relates to criminal procedures, judicial procedures surrounding civil actions as well as non-conviction-based forfeiture proceedings are also a viable avenue to take at this stage, depending on the individual circumstances of the case at hand. For more information please refer to the resources noted at the end of this section.



The questions to be answered in this phase (in particular by a judiciary) include:

- whether enough persuasive evidence has been collated;
- whether the rule of law has been observed in the investigation phase.

4

Return phase

Property is actually returned to the rightful owner and disposed of (taking into account any international asset sharing obligations and rights of bona fide third parties).

The questions to be addressed in this phase will generally include:

- determining the amount of assets that should be returned;
- the ways in which these assets should be disposed of.

Conclusions

Challenges

No matter how high the degree of political will is, the process of recovering stolen assets is immensely intricate, time consuming and resource intensive. The term asset recovery therefore encompasses the series of actions undertaken in order to trace, seize and confiscate and return stolen assets.

This process is complicated at every phase of the asset recovery process, not only because the perpetrators of the criminal offences are attempting to hide the true nature, origin and ownership of the stolen assets, through money laundering techniques, but also because it requires active communication and close coordination between both the relevant authorities in the jurisdiction where the criminal offences have been committed, and between these and their foreign counterparts, where evidence or assets may be found.

This is because skilled money launderers adopt numerous strategies to conceal the origins of assets, and to transform them into numerous forms including hard currency, electronic funds, tangible and intangible property, corporate structures and shareholdings, to name just a few. They will transfer and spread these assets across multiple jurisdictions under the name of multiple owners to further disguise the true nature of these assets and make it increasingly difficult for state law enforcement agencies to track, trace and legally seize them. This multi-jurisdictional element of money laundering can particularly frustrate asset recovery efforts as it gives rise to several cross-border related hurdles which range from potentially conflicting legislative and procedural differences to language inconsistencies, among others.

This is the principal reason why jurisdictions need to begin active communication with one another early on, beginning at the pre-investigative phase of the asset recovery process (as indicated above). Consequently, if different States have trouble working together efficiently it will be extremely difficult to effectively untangle a money launderer's web of deceit.

Moreover, even when States do work together effectively, cross-border co-ordination between States can be extremely time consuming, which can give criminals additional opportunities to stay one step ahead of law enforcement agencies.

Asset recovery without a criminal conviction

Another factor which often hampers asset recovery efforts relates to when the person who committed the corrupt acts is deceased or has fled from justice. As a response, many jurisdictions now have so-called non-conviction-based (NCB) forfeiture. These proceedings are initiated against the proceeds of crime themselves, and not against the person under investigation. The immediate consequence of initiating NCB forfeiture proceedings is that the level of proof is lower when compared to a criminal prosecution, and there is no need to convict the criminal.

In light of these barriers, active communication and co-ordination internally and internationally is the crux of the asset recovery process. No formal action that will directly or indirectly impact intelligence gathering, investigation, prosecution or adjudication of an asset recovery case should be taken by any of the agencies involved alone, without prior consultation and discussion of the risks and mitigating factors with their national and international counterparts. This holds particularly true when countries need to issue or process a request for mutual legal assistance.

Why asset recovery is vital despite the challenges

The return of confiscated assets is of practical importance. In particular, it is widely recognised that the recovery of stolen assets could provide essential resources for the financing of public services and investments in infrastructure and other programmes aimed at enhancing social and economic development.

In addition, the recovery of stolen assets is seen as a deterrent to corruption as it fundamentally undermines the key incentive for corruption – the assets which are stolen.

It is for these reasons that it is imperative that all concerned actors – States, international organisations, the private sector and in particular financial institutions, and CSOs – understand their respective roles, duties and responsibilities in relation to the recovery of stolen assets, and seek to collaborate and mutually support each other as best possible.



Further reading and resources

- Brun, Jean-Pierre, Larissa Gray, Clive Scott, and Kevin M Stephenson. *Asset Recovery Handbook - A Guide for Practitioners*. Washington, DC: StAR Initiative / The International Bank for Reconstruction and Development / The World Bank, 2010. Available in Thai, French, English, Korean, Spanish, Russian, Arabic.
- *Towards a Global Architecture for Asset Recovery*. StAR Initiative, 2010.
- Fenner-Zinkernagel, Gretta, Charles Monteith, and Pedro Gomes Pereira. *Emerging Trends in Asset Recovery*. Bern: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2013.
- *Development Assistance, Asset Recovery and Money Laundering: Making the Connection*. Basel Institute on Governance, 2011.

You can find links to these publications and other useful resources on the Basel Institute's website [baselgovernance.org/publications](https://www.baselgovernance.org/publications) and via the interactive version of this guide on [learn.baselgovernance.org](https://www.learn.baselgovernance.org).

The role of civil society in anti-corruption and asset recovery

Generally speaking, States need to lead the process of recovering stolen assets. However, CSOs can play a determining role in different stages that comprise the asset recovery process.

Their importance in the asset recovery process has been enshrined in UNCAC, which states in its Article 13 that States Parties should promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community based organisations, in the prevention of and the fight against corruption.

This is because the prevention and the fight against corruption is a shared responsibility.

- The Conference of the States Parties (CoSP) to UNCAC, in its session held in Doha in 2009, highlighted that these individuals and groups outside the public sector contribute to a culture of integrity, and encourage the involvement of citizens in the prevention of corruption at the national level.
- Specifically in the region, the Arab Convention Against Corruption, which entered into force in June 2013, considers as one of its aims “to encourage individuals and civil society organizations to take an active part in preventing and fighting corruption” (Article 2 Arab Convention Against Corruption), a mandate that is further defined in Article 11 of the same convention about participation of civil society.

Thus, since the establishment of the UNCAC there has been a strong impetus for CSOs to engage in the efforts of preventing and combating corruption.

This guide outlines numerous ways in which CSOs can contribute actively to the asset recovery process, whilst acknowledging that their work can never substitute the activities that need to be undertaken by the States.

How CSOs engage in asset recovery

CSOs have traditionally engaged in the asset recovery process through awareness raising, research and advocacy. Over time, they have also increasingly assisted States in managing frozen assets or helped with considerations related to the end use of returned assets. Indeed in some cases CSOs may be well positioned to act as facilitator between the involved States and the victims of corruption-related offences.

CSOs have also sometimes been the recipients of returned assets or involved in the monitoring of this end use.

More recently, CSOs have also assisted States in their enforcement efforts, whether by helping identify and investigate corruption-related offences, engaging with whistle-blowers and acting as mediator between whistle-blowers and the judicial apparatus, or by initiating legal action where the legal framework permits such initiative. For instance, Article 35 of UNCAC on compensation for damage offers an avenue for CSOs to initiate legal proceedings in order to obtain such compensation and this has provided the legal basis for some corruption cases.

What CSOs need to be able to assist effectively

For CSOs to act effectively in these areas, CSOs need to act with strategic vision. This includes to identify key partners within state institutions and to carefully assess the risks in the type of engagement they wish to pursue.

CSOs should strive to coordinate their actions across CSO organisations – within borders or at times across them – as well as cooperate with citizens, local communities and the media, in addition to strategic partners in foreign jurisdictions.

Maybe most importantly, there is a need for CSOs to manage their own expectations and be realistic about their capacities. As has been mentioned previously, asset recovery is a complex and time-consuming exercise. It is thus necessary to understand its underlying complexities in each case scenario, and potential risks and pitfalls in the process.

This will help CSOs to take appropriate decisions regarding the focus and timing of their advocacy and awareness raising strategies, and to understand and clearly communicate that while the ultimate goal is to return the stolen assets to their country of origin, this may take considerably more time than wished for, due to the legal intricacies and the need to respect the fundamental principles of the rule of law in concerned jurisdictions. Establishing such realistic outcomes of the activities that can be undertaken also strengthens reliability in the persons and institutions involved.

Against this background, this guide:

- presents not only areas of engagement but also strategic considerations regarding routes of engagement;
- highlights potential risks and challenges and how these may be mitigated;
- provides real-life examples that help to put CSO action in asset recovery in perspective and manage expectations.

Awareness raising and research

Awareness raising in the context of this guide refers to different campaigns that can be undertaken by CSOs with the purpose of:

- Raising awareness (across society, key institutions in the public sector and the private sector, including the financial sector and designated non-financial businesses and professions (DNFBPs)) about the importance of asset recovery, its role in the fight against corruption and in development efforts.
- Generating demand (across society and key institutions) for asset recovery.
- Raising awareness (across society and key institutions) about the roles and responsibilities of concerned actors, including CSOs.

Potential research projects include:

- Practical asset recovery work
- Policy dialogue
- Enhancing general understanding of asset recovery

Often research and awareness are intrinsically linked – research projects uncover issues and formulate ideas backed by established evidence, and awareness campaigns deliver these ideas and issues to a wide audience.

Article 13 of UNCAC seeks to promote the participation of CSOs in the prevention of and fight corruption, including by undertaking public information activities.

Awareness campaigns and research efforts should aim at informing citizens of new information on asset recovery, and enriching the information that the target audience may already be aware of. However it is important to remember that asset recovery-related awareness campaigns should be conducted with a level of caution. CSOs need to approach asset recovery awareness raising strategically to ensure sufficient pressure is on governments to act, whilst not raising expectations in society regarding the speed at which assets can be returned to an unrealistic level. Thus, the role of CSOs in this regard is delicate, and extremely critical in steering the entire asset recovery process in a constructive direction.

Objective 1: Raising awareness about and generating demand for asset recovery



Method of engagement

Informing society about the importance of asset recovery and system weaknesses that cause assets to be lost / stolen.



Possible actions

- Use blogging and social media to disseminate messages.
- Conduct research and publish results, including in the local language(s).
- Create and provide information about asset recovery on your website.
- Make announcements about your work and governmental actions regarding asset recovery.
- Maintain a journalist/media contact person database for your press releases.



Best practices

- Only use and disseminate information from credible and verifiable sources.
- Assess the accessibility of the media you use to disseminate information (i.e. assess whether the internet is widely accessible, or whether people are more likely to watch TV, listen to radio or read newspapers, etc.).
- When applicable, involve the local community in research.
- An awareness campaign, and particularly the dissemination of information, is expensive – be aware of your cost limitations and target your efforts accordingly.
- If possible, use follow-up evaluations to determine what awareness raising techniques are successfully conveying messages to your target audience.



Resources

- *NGO Media Outreach: Using the Media as an Advocacy Tool*. Coalition for the International Criminal Court, 2003.
- *Recovering Stolen Assets: A Problem of Scope and Dimension*. Transparency International, 2011.

CSO example 1

Yemeni National Authority for Recovering Stolen Assets (AWAM)

AWAM emerged from the popular Youth Revolution in Yemen in 2011. AWAM seeks to raise awareness of the importance of recovering stolen assets across society and its structures, as well as the negative effects of corruption and the smuggling of assets outside Yemen. It further engages and assists the anti-corruption organisations of Yemen.

To achieve its goals, AWAM makes use of media channels to carry out its work and message on the need to uphold transparency and integrity, highlighting the importance of recovering stolen assets and drawing the attention of society to it. It furthermore holds workshops and conferences to achieve the aforementioned objectives, and liaises with governmental authorities to track stolen assets.

CSO example 2

Global Youth Anti-Corruption Network (GYAC)

GYAC is a global network of young leaders, journalists, artists and ICT experts from civil society who work to improve transparency and social accountability for better governance. Members share experiences, ideas and resources via an online social network, videoconferences, and face-to-face events.

GYAC also works with musicians to create global songs against corruption and supports journalists in their fight for greater transparency and accountability.

GYAC Facebook page: www.facebook.com/GYACNetwork

Objective 2: Raising awareness about the roles and responsibilities of concerned actors, including CSOs



Method of engagement

Helping CSOs and other key stakeholders better understand their roles and responsibilities in asset recovery.



Possible actions

- Hold targeted trainings, conferences and workshops.
- Work with or encourage government to publish (and regularly update) a practical guide to asset recovery in their jurisdiction (including information on key institutions, key legislation, key processes, and key information sources).



Best practices

- Address expectation management and capacity requirements during CSO asset recovery trainings.
- Whenever possible link research to policy engagement to strengthen the vision, strategy and activities undertaken by the CSO.



Resources

- Thelesklaf, Daniel, and Pedro Gomes Pereira. *Non-State Actors in Asset Recovery*. Bern: Peter Lang, 2011.

CSO example

Arab Reporters for Investigative Journalism (ARIJ)

Founded in 2005 and based in Amman, Jordan, ARIJ's mission is to enhance excellence in investigative journalism. ARIJ understands investigative journalism to be a key component to a transparent and accountable society and government. They support investigative journalists from the region through training, resources and providing a community of support; by promoting high professional standards; and protecting the rights of investigative journalists.

Through this work, ARIJ contributes to a growing awareness and greater understanding of journalists in the Arab region regarding their role in relation to combating corruption and, as part of this, promoting the recovery of stolen assets.

ARIJ website: en.arij.net

Advocacy

As compared to awareness raising, advocacy strategies are more targeted. They have the ultimate aim of persuading certain public or private institutions to undertake specific actions. Consequently, when launching advocacy campaigns, CSOs should have a clearly defined, and a realistically achievable objective.

The need for advocacy is likely to be applicable in requesting and requested States, and is often aimed at similar objectives in the two concerned jurisdictions. For example the reform of public policy on asset recovery specific issues, including the reform of legislation and institutions involved in the asset recovery process, will be a potential target in both countries, though the exact content of that advocacy campaign will likely differ.

For example in relation to prevention:

- CSOs in requested jurisdictions are likely to target the private sector, first and foremost the financial industry, and aim for enhanced regulatory action by public agencies to enhance supervision of these private-sector institutions.
- On the other hand in requesting jurisdictions such efforts aimed at enhancing prevention would target gaps and loopholes in the public sector primarily, such as advocating for better conflict of interest regulations.

In both requesting and requested States, CSOs will be keen on ensuring a great degree of transparency and accountability in relation to the asset recovery process. They will want a highly proactive attitude of local law enforcement in relation to investigating stolen assets:

- in requesting countries through a criminal investigation into the underlying crime;
- in requested countries through an investigation into money laundering.

Importantly, when it comes to the return of stolen assets, a close collaboration in advocacy work between CSOs in requesting and requested countries is actually recommended, as their interests are likely to converge.

CSO advocacy work in this area will aim at engaging an early dialogue on the potential end-use of returned assets, at a participatory process to determine this end-use, and at potential civil society participation in either the use of returned assets or the monitoring of this use.

Close collaboration and coordination between CSOs from requesting and requested jurisdictions will help advance these issues constructively and could help overcome potential reluctance between requested and requesting jurisdictions to engage in a dialogue on this matter.

Forms of advocacy include:

- Influencing political will
- Promoting reform in public policy
- Strengthening government accountability with regards to asset recovery and related issues
- Demanding stronger prevention mechanisms, including from the private sector

Objective 1: Public policy reform



Method of engagement

Campaign and lobby government for asset recovery related legislative, institutional and policy reform.



Possible actions

- Develop and maintain contact with stakeholders driving legislative and public policy reform processes, such as key ministries, members of parliament and members and leaders of concerned parliamentary sub-committees.
- Lobby state institutions and semi-state organisations (e.g. professional associations representing enablers) on addressing system weaknesses that allow assets to be stolen.
- Develop case-based studies that draw out the underlying systems weaknesses that led to the assets to be lost, with a view to make the need for policy reform more easily accessible.
- Engage with media, academia and other CSOs to align reform demands, generate a broad coalition and increase the number of advocacy channels.
- Capitalise on political changes for opportunities to affect policy changes.
- Actively follow the concerned country's legislative reform schedule to conduct timely advocacy campaigns.
- Identify and partner with potential champions for legislative initiatives as an avenue to propose provisions dealing with the asset recovery process.



Best practices

- Identify specific expectations and goals to be achieved within your reach of capabilities.
- Develop a core message of your work and adapt it to different audiences.
- Present information and resources only from reliable sources to establish credibility.
- Consider approaching third parties to independently assess the benefits of the proposed changes, in order to increase their appeal.
- Identify the constraints in conveying your message to key decision makers (if you cannot lobby direct decision makers, lobby those who have influence over direct decision makers).



Resources

- de Toma, Costanza. *Advocacy Toolkit: Guidance on How to Advocate for a More Enabling Environment for Civil Society in Your Context*. Open Forum for CSO Development Effectiveness, 2012.
- *UNDP web page on Anti-Corruption and Integrity in the Arab States*
- Chowdhury, Naved, Chelsie Finlay-Notman, and Ingie Hovland. *Working paper 272. CSO Capacity for Policy Engagement: Lessons Learned from the CSPP Consultations in Africa, Asia and Latin America*. Overseas Development Institute, 2006.
- Open Government Partnership

CSO example 1

Association Tunisienne pour la Transparence Financière (ATTF)

ATTF was created with the aim of accelerating the judicial and administrative efforts to recuperate the assets stolen by the former Tunisian President Ben Ali and his entourage. ATTF specifically aims to:

- put pressure on governments and financial institutions to accelerate asset recovery efforts and hold them accountable for progress in these efforts;
- assist the Tunisian Government in these efforts through targeted citizen actions and by mobilising other NGOs to support asset recovery efforts;
- lobby government to enhance laws and strengthen institutions that allow to more effectively prevent corruption in Tunisia in the future;
- contribute to raising awareness and educating youth, who represent the future economic and social actors that will shape this democracy, about rule of law and integrity issues as well as the threat that corruption poses for the Tunisian society's fundamental values.

ATTF Facebook page: www.facebook.com/Association-Tunisienne-pour-la-Transparence-Financi%C3%A8re-443867492307877/

CSO example 2

Egyptian Initiative for Personal Rights (EIPR)

EIPR's aim is to strengthen and protect human rights and freedom through research, advocacy and litigation. After the Arab Spring, their Economic and Social Justice unit focus has widened to include the topic of asset recovery and its links to human rights and freedom. Since then EIPR regularly publishes information packages for the media with updates on efforts to recover stolen assets.

EIPR has also published an informative report titled "Can we recover our stolen assets?" and a joint report with the British NGO the Corner House that looked into Gamal Mubarak's assets in tax havens. Both reports were launched at the occasion of an open discussion event. In order to improve the quality of media reports on Asset Recovery, EIPR has also been training economics journalists in Egyptian newspapers on AR-related issues.

Most recently, EIPR filed a lawsuit before an administrative court against the government, requiring it to have better disclosure of information on the reconciliation deals it is having with members of the former regime accused of embezzlement of public assets.

EIPR website: eipr.org

CSO example 3

Global Witness campaign on beneficial ownership

Global Witness, along with other groups, has been campaigning against hidden company ownership and advocating for a publicly available beneficial ownership registry for the purpose of identifying the true owner of a corporation. By engaging key stakeholders and governments, the campaign has successfully placed this issue on the political agenda of key international forums and governments, most notably at the G8 summit in Northern Ireland.

Global Witness commissioned a cost-benefit analysis to examine the costs associated with establishing a public registry, which helped to persuade the UK government that such a register would not place undue burdens on business, nor would it be unduly expensive for the government.

Global Witness website: www.globalwitness.org

Objective 2: More and proactive tracing and recovery of stolen assets



Method of engagement

Campaign and lobby government for asset recovery related legislative, institutional and policy reform.



Possible actions

- Monitor law enforcement action.
- Monitor the institutions responsible for the asset recovery process.
- Coordinate and develop practical collaboration with CSOs in other countries concerned by cases to apply pressure in all concerned jurisdictions.



Best practices

- Review internal and external reports of the institutions responsible for the asset recovery process to monitor progress in cases and identify weaknesses in policies or practices that require reform.
- Maintain a network of potential partners in advocacy campaigns.



Resources

- Joint Letter: Criminal Proceedings Against Jean-Claude Duvalier Should Continue

CSO example 1

Bruno Manser Fund (BMF) and Global Witness campaigns – Malaysia (Sarawak)

The Stop Timber Corruption campaign has built up pressure to put a stop to timber corruption in Sarawak. BMF launched a worldwide online petition and is monitoring high value state contracts on dam and rain forest deals in Sarawak. As a result of evidence produced by the NGO Global Witness (see video link below), the Malaysian Anti-Corruption Agency has initiated investigations into a number of suspects.

Stop Timber Corruption website: www.stop-timber-corruption.org

Global Witness report (2013): www.globalwitness.org/en/campaigns/forests/inside-malaysias-shadow-state/

CSO example 2

Global Witness campaign – Equatorial Guinea

As early as 2003, Global Witness helped to expose how the Obiang regime had stashed millions of dollars in accounts at the prestigious Riggs bank in Washington, DC. Since then, Global Witness has repeatedly raised questions about how Equatorial Guinea's natural resource wealth is managed and about the relationship between the regime and its bankers.

Global Witness's investigations have exposed how the President's son and then government minister (and currently Second Vice President), Teodorin Obiang, has spent millions of dollars on sustaining a playboy lifestyle in Europe and the U.S. while reportedly earning a government salary of only a few thousand dollars a month.

Global Witness website: www.globalwitness.org

Casework and legal analysis

This refers to gathering intelligence that helps financial intelligence units and investigative and prosecutorial authorities.

Furthermore, casework and legal analysis may allow for CSOs to initiate legal proceedings in relation to stolen assets and those who have stolen them. This may be done through private litigation, provided the concerned jurisdictions grants CSOs legal standing to pursue such actions, or through exposing and revealing stolen assets through whistle-blowers. Specific measures for whistle-blower protection are called for in Article 33 of UNCAC.

Moreover, CSOs may assist in representing victims of economic crimes as well as providing legal assistance to local citizens to file complaints, where these may have legal standing to do so, for instance in accordance with Article 35 of UNCAC on compensation for damage.

In order to undertake these activities, CSOs should make careful consideration and assess risks in relation to the costs of undertaking such proceedings. Especially when intending to contribute to and trigger law enforcement action, close co-ordination with concerned public institutions should be sought whenever possible as issues of evidentiary integrity etc. may be concerned.

The activities carried out by CSOs should not amount to taking over the activities of the existing public law enforcement mechanism.

Objective 1: Identification and exposure of stolen assets – I



Method of engagement

Generating useful information and intelligence for law enforcement.



Possible actions

- Collect, verify and expose intelligence/information about the location and origins of potentially stolen assets.
- Co-operate with investigative journalists in your country/region or in the concerned foreign jurisdiction to generate information.



Best practices

- Use only verifiable and identifiable information.
- Collaborate or coordinate with public law enforcement bodies if possible.



Resources

- *Tracing Illegal Assets - A Practitioner's Guide*. Basel Institute on Governance, 2015. Available in Arabic, Bulgarian, English, Spanish, Ukrainian. For Russian and Thai, see an earlier publication: *Tracing Stolen Assets - A Practitioner's Handbook*. Basel Institute on Governance, 2009.
- *Asset Recovery Handbook - A Guide for Practitioners*. Washington, DC: StAR Initiative / The International Bank for Reconstruction and Development / The World Bank, 2010.
- *Exposing the Invisible: Obtaining Evidence*

CSO example

Angola-Russia Debt Deal (2011) – Corruption Watch and Associação Mãos Livres

Corruption Watch, Associação Mãos Livres and a group of Angolan anti-corruption campaigners are taking steps in Switzerland and Angola in relation to the laundering of proceeds of an alleged corrupt deal worth USD 700 million. This scheme allegedly involved Russian oligarch(s) and high-ranking Angolan public officials.

Corruption Watch and Associação Mãos Livres have issued a report which revealed improper payments and exposed the alleged fraudulent multi-million dollar transaction in international Angola-Russia debt deal. Furthermore, they have worked with local communities and Angolan citizens to collect information and provided legal assistance to file legal complaints.

Objective 1: Identification and exposure of stolen assets – II



Method of engagement

Enabling safe whistleblowing in relation to asset recovery cases.



Possible actions

- Act as a spokesperson for/represent/facilitate the reporting by whistleblowers.
- Raise public awareness through media and other communication channels when a whistleblower is, or is at risk of being, mistreated/his protections are not being respected.
- Provide advice to potential whistleblowers about risks and available protections.



Best practices

- Ensure you are familiar with the relevant legal framework on the protection rights guaranteed to whistleblowers.
- Verify the information provided by whistleblowers as best possible.
- Establish a network of knowledgeable and trusted lawyers who can provide (pro bono) legal assistance to potential whistleblowers.



Resources

- *Tracing Illegal Assets - A Practitioner's Guide*. Basel Institute on Governance, 2015. Available in Arabic, Bulgarian, English, Spanish, Ukrainian. For Russian and Thai, see: *Tracing Stolen Assets - A Practitioner's Handbook*. Basel Institute on Governance, 2009.
- *Exposing the Invisible: Obtaining Evidence*

CSO example 1

Sherpa

Sherpa, one of the first NGO dealing with illicit financial flows and litigation against officials in their own countries, together with the French organisation Survie and the Federation of the Congolese Diaspora, filed in 2007 a case with the Public Prosecutor in Paris against the ruling families of Congo-Brazzaville, Equatorial Guinea and Gabon, alleging that their considerable fortunes, whether in real estate assets or bank accounts, could not have been accrued solely from their public salaries and fees. The main charge in the case is “concealment of misappropriation of public funds”, which is a crime under French Law if there are assets on French soil which have been acquired illegally.

In order to overcome the Public Prosecutor's reluctance in opening an investigation, Transparency International (TI) France and a Gabonese citizen filed in 2008 a civil claim as part of criminal proceedings, with SHERPA's legal support. The French Cour de Cassation finally ruled in 2010 that TI France's civil claim could go ahead, and a judicial investigation was launched.

As a result, the investigating magistrates ordered both a search of the Equatorial Guinean President's luxury mansion in Paris, as well as the seizure of some fifteen sports cars belonging to his son. While the President has claimed immunity, the President's son did not appear before French courts, and a subsequent arrest warrant was issued in July 2012.

Sherpa website: www.asso-sherpa.org

CSO example 2

Government Accountability Project

The Government Accountability Project is a whistleblower protection and advocacy organisation that promotes government and corporate accountability by advancing occupational free speech, defending whistleblowers, and empowering citizen activists. The GAP studies current legislation and leads campaigns to enact whistleblower protection laws both domestically and internationally.

One of their actions are the Know Your Rights Campaigns, which provide necessary education by establishing a number of resources, including a website, a hotline, pamphlets, and an entire handbook devoted to assisting financial workers questioning whether or not to blow the whistle. Similarly, the GAP informed offshore US oil workers of the protections available to them under federal and state whistleblower laws.

Government Accountability Project website: whistleblower.org

Objective 2: Assisting asset recovery related investigations and prosecutions



Method of engagement

Supporting legal action.



Possible actions

- Assess different legal avenues to file a complaint.
- File complaint(s) on behalf of the victim(s) of economic crime.



Best practices

- Clarify legal standing of CSO organisation in applicable jurisdiction.
- Consider the added value and challenges associated with all avenues.
- Manage the expectations of all parties to a case.
- Assess cost and legal implications for all involved parties.
- Strictly follow legal and evidentiary requirements for evidence collection by CSOs.



Resources

- Sherpa study on legal standing in G20 studies.

CSO example 1

APDHE vs Theodor Obiang (Equatorial Guinea / Spain)

Asociación Pro Derechos Humanos de España (APHDE) filed a criminal complaint of money laundering upon various members of the Obiang family whom have benefitted from the transfer of money from Equatorial Guinea oil revenues into private accounts held in Spain. Spanish law grants jurisdiction to Spain in cases where money laundering has taken place in the country, regardless of where initial embezzlement occurred.

APDHE website: apdhe.org

CSO example 2

Open Society Justice Initiative vs Theodor Obiang (Equatorial Guinea / California)

The Open Society Justice Initiative and EG Justice, a US-based NGO that promotes human rights and the rule of law in Equatorial Guinea, have been able to draw on their deep knowledge of corruption and human rights abuses in Equatorial Guinea and links to civil society advocates to provide important assistance to US Department of Justice prosecutors seeking to seize, as alleged corruption proceeds, real and other property belonging to Teodorin Nguema, the son of Equatorial Guinea's president Obiang.

They have found that even while lacking certain coercive powers employed by governmental law enforcement, civil society organisations have, in some respects, important advantages, including mission flexibility, freedom to travel, deep, long-term region experience and expertise, access to evidentiary materials and potential witnesses or information sources, all of which furnish needed complement to the work of law enforcement investigators and prosecutors.

OSJI website: www.opensocietyfoundations.org

CSO example 3

Bruno Manser Fund (BMF) campaign – Malaysia (Sarawak) / Switzerland

In the context of the Stop Timber Corruption campaign in Sarawak, Malaysia, BMF filed a criminal complaint in Switzerland regarding the laundering of Malaysian timber corruption proceeds. The Swiss Attorney General opened a case, in which the BMF and 255 citizens from the Malaysian state of Sabah are asking the Swiss Federal Criminal Court to be admitted as plaintiffs.

Stop Timber Corruption website: www.stop-timber-corruption.org

Return of confiscated assets

There is today universal agreement to the principle that confiscated funds originating from corruption should be returned, as enshrined in Article 51 of UNCAC.

Specifically, UNCAC foresees that such assets are returned to their prior legitimate owner, which, in the case of corruption and misappropriation of state funds, would be the state from which such funds have been stolen (after taking into account the rights of bona fide third parties and possibly the deduction of expenses incurred by the foreign jurisdiction).

In addition, UNCAC foresees that where appropriate, countries involved in returning stolen assets may conclude agreements for the final disposal of confiscated property. Further, there is also a great degree of convergence over the need to put returned assets to good end use and to ensure that they are not stolen again.

Against this background, there are a number of roles that civil society can play in the stages immediately before and during the return of confiscated assets originating from corruption and related crimes.

These include providing input to the decision-making process over end use. CSOs are well placed to represent the voice of potential victims of those that were affected by the corruption; they can initiate and contribute towards a national dialogue on the potential end-uses of returned assets.

Participation by CSOs in oversight and monitoring of the use of returned assets can be an effective way to ensuring an adequate level of transparency in the use of returned assets, which in turn should help ensure that confiscated assets are used for their intended purpose and in line with internal legal or otherwise agreed procedures. In turn, Governments increasingly understand that they have an interest in engaging with CSOs in these matters as such a partnership enhances public trust in the recovery effort.

Objective 1: Targeted use of returned assets



Method of engagement

Promoting appropriate legal procedures and arrangements for the management of assets.



Possible actions

- Identify potential institutions, agencies and stakeholders responsible for the coordination and the management of repatriated assets.
- Identify legal mechanisms/ways to compensate the determined victims of the crime with the confiscated assets.
- Working concertedly with national asset management/asset recovery units on planning the treatment to, and allocation of confiscated assets.
- Propose wide consultation with stakeholders comprising local authorities and CSOs, to define the use of returned assets.
- Liaise with CSOs in requested countries during the asset recovery process to request their assistance to lobby for a dialogue between requested and requesting countries on the use of repatriated assets.



Best practices

- Identify good practices in other jurisdictions.
- Minimise bias and conflict of interest when determining how to manage repatriated assets.
- Refer to national development plan objectives and similarly widely accepted development goals.
- Consider the long-term sustainability of projects funded through returned assets.



Resources

- Fenner-Zinkernagel, Gretta, Charles Monteith, and Pedro Gomes Pereira. “Past Experience with Agreements for the Disposal of Confiscated Assets.” In *Emerging Trends in Asset Recovery*. Bern: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2013.
- Mader, Max. “Civil society facilitators of asset recovery. The two Swiss cases Mobutu and Abacha.” In Thelesklaf, Daniel, and Pedro Gomes Pereira (eds), *Non-State Actors in Asset Recovery*. Bern: Peter Lang, 2011.
- *Management of Returned Assets: Policy Considerations*. Washington, DC: StAR Initiative / The International Bank for Reconstruction and Development / The World Bank, 2009.
- *Effective management and disposal of seized and confiscated assets*. Vienna: UNODC, 2017.

CSO example 1

BOTA Foundation - Kazakhstan

In 2007, Switzerland, the US, Kazakhstan and the World Bank signed agreements regarding the restitution of USD 84 million of funds through the 'BOTA Kazakh Child and Youth Development Foundation' (BOTA) for projects that benefit the Kazakh population, notably in the domains of youth development and energy efficiency.

BOTA's board of trustees is composed of five local Kazakh citizens and one representative each from the governments of the US and Switzerland; its duty is to monitor the expenditure of the money. The foundation is administered by an international NGO set-up by the concerned parties, which operates independently of the Kazakh authorities.

The frozen assets are to be transferred in tranches to this foundation and deployed by it under the supervision of a consortium of two internationally recognised institutions (IREX Washington and Save the Children) and with the advice of the World Bank.

BOTA Foundation final report: www.irex.org/resource/bota-foundation-final-report

CSO example 2

Libera and FLARE Network - Italy

Libera Terra is a non-profit organisation whose mission is the fight against organised crime and mafia-type criminal organisations in Italy. They are involved in several initiatives to transform confiscated assets into social projects and to re-use confiscated assets for the local communities by creating jobs for young people or creating agricultural centres.

In cooperation with FLARE Network they contributed to the establishment of a national Asset Recovery Agency and shaped policy reform and legal procedures in the proper monitoring and management of confiscated assets. As a result more than 4,500 real estate properties have been used for social purposes in Italy.

Libera website: www.libera.it

Objective 2: Transparent use of returned assets



Method of engagement

Monitoring the management of assets.



Possible actions

- Ensure that proper audit, reporting and oversight mechanisms on the management of confiscated assets are put in place by the authorities in charge of the repatriation effort.
- Monitor and track the projects funded by repatriated assets, and collaborate with concerned (local) populations on this.
- Audit financial statements and reports of repatriated assets to verify the accuracy of information about their use and ensure appropriate protocol was followed.
- Try to formalise an official role or mandate for CSOs in the management of returned assets and/or the monitoring and oversight process.
- Make publicly available information regarding the receipt of assets, the declaration of the intended use of assets, actual expenditures, and the results achieved.



Best practices

Ensure that you have the technical capacity available for managing and/or monitoring projects (e.g. financial accounting/audit expertise, engineering, etc., depending on project).



Resources

- *Working Paper 6: Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan*. Basel Institute on Governance, 2009.
- *Management of Returned Assets: Policy Considerations*. Washington, DC: StAR Initiative / The International Bank for Reconstruction and Development / The World Bank, 2009.

CSO example 1

Monitoring of return of Abacha funds to Nigeria

In 2005, and based on an agreement on restitution modalities signed by Switzerland, Nigeria and the World Bank, USD 700 million of assets stolen by former Nigerian President Abacha were restituted from Switzerland into the Nigerian central budget. Nigeria agreed to use the repatriated funds for specific projects designed to alleviate poverty and to undertake a comprehensive Public Expenditure Management and Financial Accountability Review (PEMFAR), to be conducted by the World Bank.

Following pressure from both Swiss and Nigerian CSOs, some civil society participation in the monitoring of the expenditure of the restituted assets was also introduced. The Nigerian Civil Society Network on Stolen Assets, including Integrity and the Zero Corruption Coalition participated in the monitoring and implementation of the projects funded with the returned Abacha funds with a view to ensuring greater transparency and accountability of the returned assets.

Annex: Arab Forum on Asset Recovery

The Arab Forum on Asset Recovery is an initiative to bring together the Arab countries in transition, the G8 and other financial centres as well as other countries from the Middle East and North Africa (MENA) region with a view to enable dialogue and raise awareness of effective measures for asset recovery. It provides a forum for regional training and discussion of best practices on cases and identifies country-specific capacity building needs.

Following the success of the first meeting of the Arab Forum on Asset Recovery in September 2012, co-organised by the State of Qatar and the United States presidency of the G8, with technical support from the StAR Initiative, it was decided that for the second year, the annual Arab Forum would be supported by three special sessions which would focus on the major technical issues that were raised during the proceedings in the previous year.

Specifically, the third of these sessions – Special Session III – was convened to discuss the role of Civil Society Organisations (CSOs) in supporting the effective recovery of stolen assets. An objective of this Special Session, which included participants from CSOs, governments and international organisations, was to provide CSO participants and their partners with a range of practical tools for action to effectively engage and support the recovery of assets within and beyond their respective jurisdictions, to be presented in a practice-oriented guide.

Consequently, stemming from the objectives of this Special Session, the purpose of this guide is to provide a practical step-by-step summary of the ways in which CSOs can assist in recovering stolen assets through both independent and collaborative processes.

It is intended that this guide will encourage CSOs to explore opportunities to effectively engage in the asset recovery process, including in partnership with other actors, in order to work towards the goal of denying criminals the proceeds of their crime and returning assets to their rightful owner(s). This guide does not intend to be exhaustive, but provides an introductory overview of CSO assistance within the asset recovery process. This guide discusses asset recovery in the context of corruption-related offences, with particular emphasis on cases involving corruption in the public sector. It is the first of its kind to be developed in partnership with MENA region countries.

More information about the Arab Forum on Asset Recovery: star.worldbank.org/ArabForum/About



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See interactive version at: learn.baselgovernance.org