



WORKSHOP REPORT FORM

Number and title of workshop

1.7 THE ROLE OF CIVIL SOCIETY IN RECOVERING ASSETS

Date and time of workshop

Thursday 30 October 2008, 17.30 – 19.30

Moderator (Name and Institution)

Anne Lugon-Moulin, Basel Institute on Governance, Switzerland

Rapporteur (Name and Institution)

Ms Gillian Dell, Transparency International

Panellists (Name, institution, title)

Jeremy Carver, TI UK) on behalf of Dr Mr Kamal Hossain, Former Minister of Foreign Affairs of Bangladesh, member of the TI Advisory Council, Bangladesh

Mr Stuart Gilman (or Mr Adrian Fozzard), StAR, World Bank/UNODC

Ms Anne Lugon-Moulin, International Centre for Asset Recovery (ICAR), Basel Institute on Governance, Switzerland

Ms Gillian Dell, Global Programmes Manager, TI Berlin

Mr Chandrashekhhar Krishnan, Executive Director, TI-UK

Ms Maud Perdriel-Vaissière, Jurist, Sherpa, France

Ms Anne-Kathrin Glatz, Advisor, Bern Declaration, Swiss NGO Coalition, Switzerland

Main Issues Covered

Assets recovery is a relatively new issue in the world of anti-corruption initiatives and the assets recovery process involves multitudes of players; in the forefront governments, law enforcement agencies and financial institutions of various countries. This topic has rapidly gained in attention since the entry into force of the UN Convention against Corruption. Despite its critical contribution to a number of the recovery cases, that can be considered fairly successful (e.g. Abach), the role of the civil society remains underestimated, inadequately analysed and insufficiently made use of.

The workshop will analyse past experiences and will explore future lines of action in light of three work streams where civil society proved to have a very useful role,



13th International
Anti-Corruption Conference
IACC

Global Transparency:
fighting corruption for a sustainable future.
Athens, Greece | 30 October - 2 November 2008

namely: the promotion of reform through CSOs and their role in advocacy and raising awareness efforts; the information channelling by CSOs to make cases go forward; and the monitoring of assets by CSOs. The focus of the workshop will rather be on the role played by CSOs based in Northern countries (requested countries) and the way they can interact with NGOs based in requesting countries.

Main Outcomes

From the Abacha case in Nigeria to Marcos in the Philippines, there are gross examples of former leaders and public officials abusing their power to steal assets. World Bank estimates are that US\$ 1 trillion are the total global proceeds of bribery and up to 25 percent of Africa's gross domestic product may be lost to corruption.

The UN Convention against Corruption (UNCAC) has clear provisions regarding the responsibility of signatories to prosecute these cases (Article V). In addition, the OECD Anti-Bribery Convention provides a framework for legal codes and actions countries must take. In the case of Switzerland, the country modified its customer disclosure laws when it signed onto the OECD convention. The expected reform of the international financial system in light of the present crisis provides an excellent time for advancing legal changes to better support asset recovery work.

Civil society can work within this legal framework to pursue actions and cases and it is a critical piece of going after stolen assets. They can serve as the force to help domestic the legislation needed to implement the UNCAC provisions and prosecute cases.

For example, experience has shown the value of passing freedom of information acts as a platform for petitioning banking information. Also the use of other mechanisms such as the compilation and validation of politically exposed persons (PEPs) and life-style checks of officials' assets when compared to their public sector pay checks do work and do not require high technical expertise. Work done by an umbrella collection of Swiss civil society organisations – the Bern Declaration - to wage stolen asset cases with Nigerian (for US\$ 460 million) and Angolan (for US\$ 21 million) counterparts against past leaders offers a good model for collaboration among civil society actors. The current initiative by the French organisation SHERPA with the national chapter of Transparency International in France to support legal claims in France against five African countries is also promising.

Main Outputs

There are clear opportunities for civil society to support asset recovery initiatives. Mutual legal assistance (MLA) and support on criminal and civil cases are technical areas where civil society's help is needed. The vetting of PEP lists is an opportunity where CSOs could be greater engaged and help banks to validate and update their information. Moreover, the majority of countries have financial disclosure legislation that CSOs could use to detect abuses and deter corruption. Advocacy work to capture the breadth of the problem could involve greater condemnations of leaders' stealing - there is a need to name and shame when information is known.



There also are clear challenges for civil society to get involved and asset recovery to work. There is limited political space often in these countries for civil society to act and dangers when they do, particularly when they take the lead in investigations and sharing information. Depending on the system, a country's legal framework can make it easy to oppose evidence in courts, even when it is found. This relates to concerns about political will on the part of governments – both in the financial centres where the assets have gone (often in the North) and the countries requesting the return of their assets (often in the South). The private sector may not be willing partner. Although PEP lists are useful and mandated, financial institutions are not always interested in whether it is accurate. Finally, the national sovereignty argument against involving NGOs in the process, especially foreign organisations, is too often used.

Recommendations, Follow-up Actions

The consensus among presenters and participants was that there must be prevention of corruption as well as its detection. Once assets leave the country, it begins a long chain of actions that take time and cost money and may never be resolved, as the case against former Prime Minister Benazir Bhutto shows.. Stopping it from starting is the most effective action. Also, without political will by both countries, any work will be quickly stalled.

The cases being pursued by the Bern Declaration and Sherpa are important for focussing work on future cases brought forth by CSOs. Finally a review mechanism of the UNCAC, as has been called for by TI and other partners, would provide an important mechanisms for following whether countries are meeting their obligations on asset recovery.

Finally, the World Bank argued that by strengthening asset recovery work, it will demonstrate to kleptocracies that there is no safe place to put their money.

The World Bank is part of joint United Nations initiative called StAR: Stolen Assets Recovery. StAR is producing a how-to-guide for civil society on “non-conviction based forfeiture” to help CSO partners get at proceeds without having to deal with criminal conviction.

They also are calling for increased advocacy on asset recovery around Anti-corruption Day on 9 December. The UN Office on Drugs and Crime (UNODC) has variety of materials free of charge on their website to be used for this work. They also are building national capacities through training, such as with International Centre for Asset Recovery (ICAR). Finally, the StAR initiative is going to use the outputs of consultations with civil society, which were launched at the IACC, to produce a white paper on the topic.



13th International
Anti-Corruption Conference
IACC

Global Transparency:
fighting corruption for a sustainable future.
Athens, Greece | 30 October - 2 November 2008

Workshop Highlights (including interesting quotes)

Work done in countries where the financial centres are based was highlighted and provided some interesting lessons:

- In the United Kingdom, the "Proceeds of Crime Act" (2002) helped to set up a unit within the UK police force. It has helped to identify violations and recover assets. It assisted Zambia to recover US\$ 57 million which was stolen between 1995 and 2001.
- In France, research done by Sherpa helped to launch a police investigation in June 2007 which found luxury properties and cars owned by key African leaders and their families in the country. It discovered 60 properties and cars and 184 bank accounts. The Obiang clan of Equatorial Guinea alone had US\$ 5 million in luxury cars. It was the first such case ever launched in France, although it was dismissed despite the presentation of hard evidence.
- In Switzerland, different cases are being pursued by civil society. These include the case against Angola which is still in progress. It was launched after a collective of Swiss NGOs wrote a Geneva investigating judge. Claims were based on work done by Global Witness and its paper "Time for Transparency" in 2004. The funds are to be returned to the country for humanitarian projects, although the current government is claiming that it should reserve the right of decision on how to use it (which is still part of the same government that had stolen the assets).

Signed
