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ILLICIT FINANCIAL FLOWS AND STOLEN ASSETS VALUE RECOVERY*

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Abstract

Value recovery of stolen assets is both an enforcement of anti-money laundering laws and a potent weapon against corruption. When obtainable, it represents society's credible commitment to ensure that "crimes do not pay." We explore these linkages by reviewing international experiences on the implementation of value recovery. Lessons suggest country-level studies that are more likely to strengthen local initiatives, leading to regional strategies capable of improving negotiations for assistance and cooperation at the global level.

Key Words: Capital flight; illicit financial flows; stolen asset recovery; value recovery; Africa; corruption; financial crime

JEL Classifications: G11; O55; K42

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1. Introduction

Money laundering and the predicate crimes of corruption and theft of public assets share three contemporary characteristics of dire consequences for capital-scarce developing nations: (1) the huge amounts of wealth involved in these illicit schemes amount to billions of dollars;¹ (2) the great mobility of capital nowadays that makes it difficult to identify and freeze or restrain stolen assets long enough to initiate the recovery process with a reasonable and fair chance of recovering them;² and (3) the many ways to hide or camouflage the assets or their transform, thus allowing criminals to (a) easily distance the proceeds of the crime from the crime; (b) separate the proceeds of the crime from its clean transform; and (c) allow the criminals to have easy access to the benefits of the crime in its clean transform.³

The World Bank estimates that the cross-border flow of the global proceeds from criminal activities, corruption, and tax evasion is between \$1 trillion and \$1.6 trillion a year (World Bank and UNODC 2007, p. 1). However, as Baker (2005) cautions, we must be mindful of the fact that there is no place in international financial statistics where you can find dirty money or laundered proceeds of flight capital, trade mispricing, or any account remotely suggesting such figures (p.

¹ Ideally this would include estimates of the amount of money lost by developing countries from the theft of public assets by public officials; theft of public assets by private individuals such as tax evasion; various other types of evasion of public dues; conversion of public assets by private individuals; and estimates of the quantum of cross-border movement of illicit money for laundering purposes, taking care not to double-count these “dirty” monies in summing across the different typologies of illicit financial flows. See Ndiva Kofele-Kale (1995).

² Mark Pieth, President of the Board of the Basel Institute on Governance (<http://baselgovernance.org>), argues that asset recovery is a promising strategy against graft, the embezzlement of public funds, and corruption, but that effective asset recovery requires asset tracing. This in turn requires the cooperation of banks, other non-bank financial intermediaries, and lawyers (collectively known as “gatekeepers”), as well as Financial Intelligence Units, law enforcement agencies, and forensic specialists. Pieth is at pains to note that it is so “fundamental to ensure that funds can be blocked on a provisional basis in just a few hours after detection” that any jurisdiction missing this requirement “has to be considered a safe haven for those committing graft” (Basel Institute on Governance, 2009, p. 7).

³ For more on this, see Baker and Shorrocks (2009).

162).⁴ Nonetheless, even by conservative estimates of the scale of the phenomenon, there is little doubt about the potential and actual devastation that follows when capital of this magnitude continuously bleeds out of a capital-scarce developing region. The studies in Ajayi and Ndikumana (2014) seek to shed more light on this phenomenon, particularly in Africa, with a view to finding lasting solutions. As part of that contribution, this paper explores and elaborates the relationship between stolen asset recovery (StAR) and illicit financial flows. Additionally, we emphasize the potential benefit from pursuing value recovery of stolen assets. Value recovery of stolen assets is a broader approach to combating illicit financial flows than the familiar and traditional stolen asset recovery initiative.

The connection between value recovery of stolen assets and illicit financial flows is twofold: one, the deterrence effect of a value recovery mechanism on potential transgressors; and two, the deterrence effect of the pursuit of consequential damage claims against all those involved in the criminal enterprise value chain. In order to better understand how the deterrence effect is presumed to operate, we should note that the ability of public officials to successfully steal public funds can tempt others into joining politics to pursue this tested means to instant and lasting wealth. The nature of the enforcement system in a country is an important determinant of the degree of likelihood of a successful grand theft scheme.⁵ The bigger the expected gains and the more visible the demonstrated effects through a history of successful takings, the stronger would be this pull. A string of successes would include not only the extra-legal enrichment, but also the ability of the accused individuals to (1) effectively launder these illegally obtained resources; (2)

⁴ Many of the publications cited herein and in Ajayi and Ndikumana (2014) refer to various estimates of the magnitude of the pillage both regionally and internationally. Extant sources include Baker (2005), Boyce and Ndikumana (2001, 2003), and Ndikumana and Boyce (2011).

⁵ For more on the institutional underpinnings of corruption, see Ayogu and Gbadebo-Smith (2014).

convert the looted resources into assets that are not easily traceable; and (3) have full access to the stolen assets in their new, clean, and not-easily traceable form. Therefore, if this type of (predicate) crime —grand theft — ceases to be profitable, then as a rational response by its perpetrators, its supply (production or manufacture) will surely decrease. So will that component of illicit financial flows induced by it. Similarly, all the likely externalities (consequential damages thereof) will be mitigated, and most importantly, the corrosive effects of such activities on governance would be minimized. This also implies two possible channels to mitigate consequential damages—one, the direct abatement of the externalities through a reduction of the effluents (i.e. increase in the number of persons abandoning this line of business), and two, the incentive effect according to which “polluters,” in this case criminals, are forced to internalize the externalities (i.e. do the crime, pay the price).

Going forward, the rest of the paper is organized as follows. Section 2 provides an overview of the value recovery process, highlighting the distinction between value recovery and asset recovery, as well as the importance of prosecuting not just the primary offender but also those engaged in the entire criminal enterprise value chain. Thus, we highlight also the multifarious domestic and international challenges to implementing value recovery. In Section 3, we extend the country-level experiences to the global setting by focusing on the United Nations Convention against Corruption (UNCAC), the quintessential mechanism intended for the harmonization of asset recovery protocols worldwide. UNCAC’s influence is briefly reviewed in order to gauge the global appetite for curbing illicit financial flows, notwithstanding the rhetoric around intentions and commitments. Section 4 concludes with some recommendations for advancing the agenda on curbing illicit financial flows.

2. Overview of value recovery

Value recovery, as it relates to stolen public assets, is an important concept that is not widely known. By contrast, the recovery of stolen public assets is a much more widely known and understood concept since the coming into force of the United Nations Convention Against Corruption (UNCAC) in 2005 and the launch of the Stolen Asset Recovery (StAR) initiative in 2007.⁶ As argued elsewhere (Davis and Giuliano, 2010), value recovery is a much broader concept than stolen asset recovery. Value recovery recognizes that victims of grand corruption can recoup their losses through several channels that extend the course of action beyond those suggested by the narrower constructs of stolen asset recovery. In particular, State Parties can pursue recovery of their stolen assets by exercising several options, which include (1) identifying and tracing the proceeds of the particular stolen assets to where they are hidden; (2) instituting claims against various parties in the liability chain; and (3) all of the above.

To provide some context for stolen assets value recovery, the first global instrument to enshrine the practice in international law is the UNCAC. Adopted by the UN General Assembly Resolution 58/4 of October 31, 2003, UNCAC entered into force on December 14, 2005. There are 71 articles organized under 8 chapters, with one, Chapter V, entirely devoted to stolen asset recovery (UNCAC, 2003). The UNODC is both the custodian and the lead agency supporting the implementation of the UNCAC, and also serves as the Secretariat to the Conference of State Parties (to the UNCAC). Subsequently, the UNODC launched the StAR initiative in 2007 with the World Bank. Another useful adjuvant is the United Nations Convention against Transnational Organized Crime (the Palermo Convention, 2000), which entered into force on September 29,

⁶ StAR is a joint project of the United Nations Office on Drug and Crime Control (UNODC) and the World Bank.

2003 as the main international instrument directed at combating international criminal organizations involved in the theft and laundering of public assets, among others (UNTOC, 2000).

Returning to the concept of value recovery, article 53(b) of the UNCAC is clear about the measures available for recouping losses from the illegal taking of public assets. It enjoins each State Party to “[t]ake such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences.” By this provision, we argue that state parties should not only seek the return of stolen assets to their owners or the compensation of the owners for the value of those stolen assets. Rather, they should pursue additional compensation for damages from all parties that contributed materially to the injury. For this and other reasons, which we elaborate subsequently, we emphasize that value recovery is the pertinent concept.

We define value recovery as a composite strategy requiring the investigation and the prosecution of the underlying criminality (the predicate offense) as well as the related offense of concealing the proceeds of the crime. Following Atkinson (2009), we distinguish four sequential stages of the value recovery process, namely, pre-investigative, investigative, juridical, and disposal. In the pre-investigative stage, a state party seeking to recover its stolen assets assesses the substance of the initial lead on the whereabouts of the assets in order to determine whether or not further action is warranted. The source of the preliminary information on the stolen assets can include foreign and domestic informants or whistleblowers. To arrive at the investigative stage, the decision to proceed with the value recovery will have been made by the responsible official following the

pre-investigation. The investigative stage covers asset identification, tracing, and marshaling of all relevant and available evidence. Next is the juridical stage at which the facts are tried and adjudicated; depending on the outcome, applicable remedies are sought and obtained. In line with our emphasis on value recovery, we can expect that claims for collateral damages and legal processes against all those involved in the chain of illegal activities will be part of the remedies sought and obtained. At the disposal stage, the last step in the value recovery process, the enforcement of the judgment takes place. This covers the implementation of all ancillary steps necessary to actualize the court order, including putting in place mechanisms for monitoring the use of the recovered assets where applicable. Consider, for example, the role of a country in which stolen assets are located. A circumstance could arise where legal assistance from, and cooperation of, the country have been conditionally obtained. Those conditions entail the use of the recovered funds to improve the welfare of the citizens of the victimized country; a program would be in place to monitor compliance with that commitment.

2.1. Implementing value recovery of stolen assets

Underpinning the four stages of the traditional approach to recovering stolen public assets is the customary practice of governments requesting other governments' assistance in the recovery process. But Davis and Giuliano (2010) argue that such a customary approach, based as it were on a *mutual legal assistance request* (MLA), is restricting because MLA is best in circumstances where identified traceable funds or their transform can be located. These legal experts argue that, in contrast with the conventional approach, potentially higher levels of recoveries can be achieved if aggrieved countries pursue civil claims against all relevant actors within the liability chain. In other words, seeking to prosecute both the primary offender(s) and those who help them hide or

launder the stolen assets—proceeding against the entire criminal enterprise value chain—is a more effective way to promote value recovery. This legal strategy is what Davis (2011) argues should be viewed as value recovery:

The need to educate appropriate stakeholders continues to be of paramount importance. Most in the anti-corruption community continue to refer to this topic—as do treaties—as stolen “asset” recovery. This label of “asset” recovery is value-laden and leads to stultified thinking when it comes to recovery of stolen wealth. This topic should be defined as stolen “value” or stolen “wealth” recovery.

This is not an academic distinction. Many of the modern treaties and tomes on “asset” recovery assume that there is a traceable asset waiting idly to be identified through tracing principles, then frozen and repatriated. That is usually the exception, not the rule. Much of the “value” to be gained—in the form of damages—can be found in claims against those who have layered and laundered the stolen wealth in such a way that tracing is either impossible or a very difficult and time-consuming process. So one must not think of “asset” recovery but must instead visualize the process as “value” recovery (p. 65).

In conclusion, Davis and Giuliano (2010) recommend that governments enlist the services of civil litigation teams since the former are not set up to pursue such civil claims themselves. Civil litigation teams can then employ available legal devices, and working in conjunction with relevant government agencies such as the police, they can recover the maximum value of the public assets stolen.

In the United States, for example, criminal enforcement is considered a crucial component of the government's anti-corruption effort, yet the U.S. Department of Justice (DOJ) has been developing an asset forfeiture scheme known as the Kleptocracy Asset Recovery Initiative. Lodged in the Criminal Division's Asset Forfeiture and Money Laundering Section, the initiative is underpinned by a commitment to civil actions aimed at securing forfeiture of the proceeds of foreign official corruption.⁷ The first complaint filed under the initiative sought the seizure of over \$1 million in assets (including a \$600,000 home in the State of Maryland) owned by Diepreye Solomon Peter Alamiyeseigha, former governor of the oil-rich Bayelsa State in Nigeria (Williams, 2011). Subsequently, on October 13, 2011, and again on October 25, 2011, a civil forfeiture case was filed in the United States District Court for the Central District of California and the United States Court for the District of Columbia, respectively, in which the DOJ sought the forfeiture of over \$70 million in assets owned by Teodoro Nguema Obiang Mangue, the son of the president of Equatorial Guinea and that country's Minister of Agriculture.⁸ Among the items for forfeiture are a Gulfstream jet, a mansion in Malibu, California, and Michael Jackson memorabilia worth \$1.8 million. In July 2012, the Department secured a restraining order in the US District Court in the District of Columbia against more than \$3 million in corruption proceeds related to James Ibori, formerly the governor of Delta State in Nigeria.⁹ Three months thereafter, in October 2012, the DOJ executed a restraining order issued by the United States District Court

⁷ U.S. Attorney General Eric Holder announced on July 25, 2010, at the Africa Union Summit in Kampala, that the "U.S. Department of Justice is launching a new Kleptocracy Asset Recovery Initiative aimed at combating large-scale foreign official corruption and recovering public funds for their intended—and proper—use: for the people of our nations" (DOJ, 2010).

⁸ See <http://www.docstoc.com/docs/102367931/Obiang-Forfeiture-Compliant> for the October 25, 2011 filing and <http://www.docstoc.com/docs/102371036/Obiang-CA-Forfeiture-Complaint> for the October 13, 2011 filing.

⁹ <http://star.worldbank.org/corruption-cases/node/19584>

in the District of Columbia against an additional \$4 million in Ibori's assets, including the proceeds from the sale of a penthouse unit in the Ritz-Carlton in Washington, D.C.¹⁰

Whereas the DOJ initiative illustrates the benefits of civil action in augmenting asset recovery activities, the James Ibori case, which is examined in greater detail below, demonstrates the importance of proceeding against all parties involved in the criminal liability value chain. On February 27, 2012, BBC News Africa reported that Ibori had pleaded guilty in London's Southwark Crown Court. He had been arrested and charged in Nigeria in 2007, but the charges against him were dismissed. However, he was rearrested in Dubai in 2010 on a British warrant and extradited to the UK to face ten counts of money laundering and conspiracy to defraud the Delta State of Nigeria. He is now serving a 13-year sentence in UK for his crimes. The following possessions were also confiscated: a house in London valued at £2.2 million; another property in the UK valued at £311,000; a £3.2 million mansion in Sandton, South Africa; a fleet of armored Range Rovers valued at £600,000; a £120,000 Bentley Continental GT; a Mercedes-Benz Maybach 62 bought for €407,000 cash and shipped directly to his mansion in South Africa (BBC News, 2012).

Ibori's case is significant in that it is one of the few asset recovery cases where some of those involved in the criminal enterprise value chain have been brought to book. It is therefore encouraging to observe that June, 2010, juries in the UK convicted Ibori's wife, Theresa Ibori; his sister, Christine Ibori-Ibie; and his associate, Udoamaka Onuigbo. The court issued confiscation orders in the sum of £5.1 million, £829,786.44, and £2.7 million against all three of them, respectively. Furthermore, Solicitor Bhadresh Gohil, Ibori's "bag-man"; Daniel Benedict

¹⁰ <http://www.theparadigmng.com/?p=2371> (accessed January 21, 2014).

McCann, Ibori's fiduciary agent; and Lambertus De Boer, his corporate financier, were all convicted and jailed for a total of 30 years for their role in the criminal enterprise.¹¹

The other notorious case concerns Riggs Bank and its role in facilitating money laundering for corrupt government officials in Equatorial Guinea and Chile.¹² Riggs Bank was punished for its involvement in the criminal enterprise value chain. "The Office of the Comptroller of Currency imposed a U.S. \$25 million fine—the largest ever under the Bank Secrecy Act of 1970—on Riggs Bank, for its failure to report suspicious transactions in the Equatorial Guinean accounts."¹³ Additionally, Riggs Bank was "sentenced to a \$16 million criminal fine in April 2005"¹⁴ for the laundering of accounts owned and controlled by Augusto Pinochet of Chile. The trial judge is said to have called the bank "a greedy corporate henchman of dictators and their corrupt regimes."¹⁵ Seeking to prosecute both the thief and associates sends a clear message to prospective criminal masterminds that the government will make every effort to bring anyone involved in the illegal appropriation of public resources to justice. The decision to seek and prosecute *everyone* involved in the entire grand corruption chain, including those who help the primary offenders launder and hide the proceeds of the crime, would be an encouraging development in the struggle against corruption in Africa. This new approach makes clear that all individuals and institutions in the developed countries that are complicit in the corrupt activities of African officials will be brought to justice.

¹¹ <http://www.westlondontoday.co.uk/content/nigerian-politician-who-stole-250m-was-ruislip-cashier> (accessed March 14, 2013).

¹² For a digest of the Riggs Bank and Augusto Pinochet case, see Open Society Justice Initiative (2005).

¹³ Open Society Justice Initiative (2005, p. 33).

¹⁴ Open Society Justice Initiative (2005, p.34).

¹⁵ Open Society Justice Initiative (2005, p. 34).

These achievements notwithstanding, from a global perspective there are reasons to be skeptical about the pace of value recovery and its deterrence impact chiefly because of the uneven manner in which law enforcement agencies handle natural and juristic persons in money laundering and related matters. In a recent money-laundering case involving HSBC Bank USA and HSBC Bank Holdings Plc. (parent company), the HSBC Group agreed to forfeiture and penalties of about \$1.9 billion for willful violations of U.S. anti-money laundering and foreign sanctions laws.¹⁶ Observers of the anti-corruption crusade criticize this outcome by pointing to the insignificance of the amount in comparison to the annual profit of the group's U.S. operation (Miron, 2013; Lowe, 2013). The bank was ordered to pay \$900 million in penalties, which represents ten percent of its profit for the year. The issue here is whether the fine was punitive enough to force behavioral change in its management.¹⁷ In addition to the questionable effect of the paltry fine imposed on HSBC, critics of the global enforcement of financial transparency regimes decry the subsequent Deferred Prosecution Agreement between the DOJ and HSBC, discussed in section 2.2 below.¹⁸ This example and others underscore the highly asymmetric treatment of natural and juristic persons in matters of money laundering or related offenses.¹⁹

¹⁶ Lowe (2013, p. 1).

¹⁷ It is doubtful that drug dealers, when convicted, are fined ten percent of their annual profits and then sent home. For readers who may protest that grand corruption and drug dealing are incomparable, we argue that over time, the consequences of grand corruption on human life in many developing countries is equally, if not more, devastating. For more on the human costs of grand corruption, including the impact on the Millennium Development Goals, see World Bank (2007, p. 11).

¹⁸ "Given the enormous sums of money apparently laundered by Riggs for the Obiang regime, some question" the adequacy of the civil settlement and criminal fine (Open Society Justice Initiative, 2005, p. 34).

¹⁹ Note that in the case of James Ibori, there was no plea bargain or deferred prosecution once he admitted to his crime.

2.2. Institutions for value recovery of stolen assets

Continuing the preceding discussion, but now under the rubric of institutions, we elaborate on the ramifications of the HSBC dispensation. This is important, not only because it pertains to *Article 26(4)* of UNCAC (2003), but also in view of the questions around penalties imposed for corporate wrongdoings. The HSBC dispensation, like the monetary penalty in the case of Riggs Bank and Equatorial Guinea, raises the issue of whether or not “effective, proportionate, and dissuasive criminal or non-criminal sanctions including monetary sanctions” are being dispensed.²⁰ Furthermore, it appears that one of the more troubling issues in criminal law enforcement in a globalizing world dominated by giant multinationals is the highly asymmetric treatment of natural and juristic persons. This is a major issue in discussions about the prosecution of the pillage of natural resources and white-collar crimes in general.²¹ With recent remarks by U.S. Attorney General Eric Holder, who openly acknowledged the “too big to prosecute” conundrum, the equality of justice before all persons, both natural and juristic, has become an issue of even greater significance. According to Elizabeth Warren, a member of the United States Senate Banking, Housing, and Urban Affairs Committee, “there are district attorneys and United States attorneys out there every day squeezing ordinary citizens on sometimes very thin grounds and taking them to trial in order to make an example, as they put it. I’m really concerned that ‘too big to fail’ has become ‘too big for trial’”(Reilly, 2013, p. 1).

Recently, the U.S. Department of Justice entered into a Deferred Prosecution Agreement (DPA) with HSBC Bank Group as part of its settlement over the bank’s violation of U.S. anti-money

²⁰ Article 26(4) states that “Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate, and dissuasive criminal or non-criminal sanctions including monetary sanctions.”

²¹ A very informative account of the issues can be found in Stewart (2010).

laundering and foreign sanctions laws (Lowe, 2013). The fact that the Justice Department declined to prosecute HSBC's long-running, flagrant abuse, citing possible collateral damages as a reason, have reinvigorated the debate over the inadequacies of DPAs and no-prosecution agreements (NPAs) as deterrents as well as the moral hazard problems that they pose (Huffington Post, 2013). U.S. Assistant Attorney General Lanny Breuer, head of the criminal division of the DOJ, stated that "over the last decade, DPAs have become a mainstay of white collar criminal law enforcement" (FCPA, 2012a, p. 1). Furthermore, "[o]ne of the reasons why deferred prosecution agreements are such a powerful tool is that, in many ways, a DPA has the same punitive, deterrent, and rehabilitative effect as a guilty plea: when a company enters into a DPA with the government, or an NPA for that matter, it almost always must acknowledge wrongdoing, agree to cooperate with the government's investigation, pay a fine, agree to improve its compliance program, and agree to face prosecution if it fails to satisfy the terms of the agreement" (p. 1). Citing the DOJ's reasons as bogus, some legal scholars have vehemently disagreed with their opinion that DPAs surmount the supposed inability to gain compliance programs for structural reforms through guilty pleas.²²

We would like to conclude our discussion of country-level cases of value recovery and enforcement of anti-corruption and money-laundering regimes by noting that our emphasis on institutions in the U.S. is because precedents in the latter are important for gauging global trends in combating illicit financial flows. Institutions in the U.S. are functional compared to those in many countries that would be the object of illicit financial flows either as source or destination. Also, the U.S. is a bellwether onshore financial center and secrecy jurisdiction as epitomized by

²² For more on this and other related excuses for NPAs and DPAs, see Markoff (2012) and FCPA (2012b).

destinations such as Delaware, Nevada, and Wyoming.²³ Therefore, there is much to be learned from understanding the structure of incentives in the U.S. and the resulting response from domestic organizations. The evolution of asset recovery in the United States should condition expectations from developing countries on the extent of cooperation forthcoming internationally. On this note, we next review the global institutional setting for asset recovery.

3. Global record of UNCAC institutionalization

Chasing dirty money across international borders necessarily involves multiple jurisdictions. UNCAC and UNTOC provide the necessary platforms. Under the relevant provision of the United Nations Convention against Corruption (UNCAC), States Parties can trace, identify, freeze, and confiscate the proceeds of corruption and repatriate them to their legitimate owners (UNCAC, Chapter V). Both the United Nations and the World Bank concur that this provision is the most potent assault on corruption. However, in order to recover stolen assets legitimately under the UNCAC framework and international law, the stolen assets or their transforms have to be identified, thus implicitly making *financial transparency* (particularly the identification of beneficial ownership), the *domestication of UNCAC*, and the *streamlining of mutual legal assistance procedures* the most pressing issues in the global fight against corruption. These requirements can be summed up as two crucial policy obligations, namely, *domesticate the convention* and *cooperate with each other*. The essential elements of the latter are enshrined in Chapter IV of UNCAC whereas those of the former are in Chapter III, which focuses on criminalization and law enforcement. Since both of these policy obligations (domestication and

²³ See <http://www.financialsecrecyindex.com/>, p.3.

cooperation) underpin Chapter V on the recovery of stolen assets, we examine the global trends in these two aspects of the value recovery process.

In this section, the term “institutionalization” narrowly refers to progress in meeting the two crucial policy obligations identified above. “Pursuant to article 63 of the Convention, the Conference of the States Parties to the United Nations Convention against Corruption was established to improve the capacity of and cooperation between States parties to achieve the objectives set forth in the Convention and to promote and review its implementation.”²⁴ As part of the UNCAC mechanism, the Conference of States Parties to the Convention (COSP) established a Review Mechanism to “compile the most common and relevant information on successes, good practices, challenges, observations, and technical assistance needs contained in the country review reports” (CAC, 2012, p. 2). The first session of Cycle 1 of the Implementation Review Group was held in Vienna from June 28 to July 2, 2010. In July 2012, the review process entered its third year of the assessment of national UNCAC implementation in the areas of international cooperation, criminal law, and enforcement.²⁵ This implementation of the peer review mechanism is limited to countries that have ratified the treaty and who then act either as reviewers or as reviewed countries.²⁶

Taking stock of the review process so far, Dell (2012, p. 1) rates the process as “progressing slowly but steadily,” and in some countries it appears to be prompting some reforms. He further states that “[t]he bad news is that the process continues to fall short of its potential due to lack of transparency and inclusiveness” (Dell, 2012, p. 1). The UNODC, acting as the Secretariat to the

²⁴ <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP.html> (accessed January 20, 2014).

²⁵ <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP.html> (accessed January 20, 2014).

²⁶ As of April 2013, a total of 164 countries have ratified the convention. Germany, Japan, and Saudi Arabia have not ratified.

States Parties, advises that it is not at liberty to disclose information about when and how the reviews are conducted. But this lack of transparency and inclusiveness seems to be changing. For example, the government of Panama posted notice of an impending visit in November 2012 of the review team to the country and invited non-governmental organizations to comment and provide necessary input. The government of Zimbabwe invited Transparency International-Zimbabwe to meet the country review team and informed the public that the visit had occurred.²⁷ Besides the lack of inclusiveness by design, as only state parties to the convention can participate and make inputs, the process is opaque and information is delimited. The public is guaranteed access to a short summary of the full review report. Thus, the only available avenue for the public to access a full report is at the discretion of the government concerned or upon successful application for access to information, where obtainable. Furthermore, UNODC publications of cross-country thematic reports on findings of the country reviews are in aggregated form and so do not uniquely identify countries (Dell, 2012, p. 2). With regard to the latest findings, the two main thematic reports for the November 2012 meeting in Vienna covered 24 countries that had been reviewed for compliance with UNCAC chapters III and IV. The reports found that overall “implementation was inadequate in the areas of misappropriation of public funds, bribery of foreign public officials . . . and that the highest number of technical assistance requests related to articles 32 and 37,” respectively, on witness/victim protection and cooperation with law enforcement authorities (Dell, 2012, p. 2).

²⁷ According to Dell (2012), a Transparency International publication in June 2012 reported on experiences from the review process in 51 first and second cycle countries. These refer to countries that have elected to participate in those rounds of review. Thus cycle 1 countries are the set of countries participating in the first cycle of review.

In March 2013, supplemental information to the 2012 thematic reports on the implementation of chapters III and IV was released (CAC, 2013). Based on country reviews, as of March 4, 2013, the latest regional report draws on information included in the review reports of 34 States Parties whose country reports had been completed or were close to completion under the first and second years of cycle 1 of the Review Mechanism.²⁸ In the supplemental information, two topics were selected for further review: legal basis for international cooperation with regard to extradition and MLA, and the nomination and role of central authorities for MLA (CAC, 2013). The regions covered were Africa (6), Latin America and the Caribbean (2), West European and Other States (7), Asia-Pacific (10) and Eastern European (9), where the numbers in parenthesis refer to the number of countries from a particular region. With regard to the requirement for a legal basis for international cooperation, the report found that 9 out of the 34 countries made extradition conditional on the existence of a treaty but that no regional trend is discernible regarding whether or not a treaty was required (CAC, 2013, p. 3). By contrast, almost all States Parties provided MLA in the absence of a treaty. By far the most common legal basis absent a treaty was the principle of reciprocity and good relationship.

On the question of whether States Parties can use the UNCAC as a legal basis for extradition where no treaty exists (but is required), most countries indicated affirmatively, although in practice this did not appear regularly to be the case. Again in contrast, countries indicated that the Convention could be used as a legal basis for MLA. This response was uniform across regional and legal systems. Applying the Convention as a legal basis for MLA seems to have become

²⁸ See CAC (2013) for elaboration.

common cause. In this, UNCAC appears to have succeeded hugely in fulfilling one of its primary functions, namely, to “facilitate international cooperation in the absence of a bilateral treaty or to bridge the differences between legal systems” (CAC, 2013, p. 6). On the designation of central authorities for MLA, the review finds, based on official notifications sent by States Parties, that “there is no notable disparity between regions” (CAC, 2013, p. 7). A country’s ministry of justice emerges as the commonest single point of contact, followed by the General Prosecutor’s Office.

What can we conclude about the uptake of UNCAC across regions? In the two policy pillars of cooperation and streamlining MLA procedure, progress is clearly slow as can be inferred from the number of States Parties participating in the review mechanism (34 out of 164 eligible countries) and the pace at which the reports are being concluded. According to the report on the implementation of Chapter IV of UNCAC, “[p]rocedures, legal systems, and conditions governing the admissibility of a request were found to differ from State to State” (CAC, 2013, p. 12). Not only is this variation an obvious source of delay; it also raises the transaction costs of value recovery. One other key component of international cooperation—*financial transparency*—is not happening. This finding should not come as a surprise, given that appreciable progress in this regard requires major changes in domestic legislation in many of the key countries. However, domestic politics can be captive to powerful interest groups and can account for delays or inaction. Corporations and their deep purses are clearly influential in electoral campaigns given the overwhelming role of finance in political campaigns nowadays. To reinforce this point, we offer the following example. Although the latest data available are over four and half years old, Tables 1 and 2 show the top 20 U.S. and U.K. firms (ranked by assets) and their corresponding number of offshore subsidiaries. In this league, the top 10 U.S. firms account for approximately 70 percent of the 3,858 subsidiaries, whereas in the U.K., the top 10 firms account for

approximately 91 percent of the subsidiaries. Note, however, that in the U.K. league, the 5 top firms are all banks. On the breadth and intensity of the presence and influence of banks, we find the following statement instructive:

Rudolf Strahm, a Swiss parliamentarian and leading opponent of bank secrecy, makes an important point for foreign governments trying to stem tax evasion via Switzerland. Because of the offshore center's strong and venerable roots in Swiss society, politics, and history, domestic pressure to restrict secrecy has never succeeded. Foreign pressure aimed directly at the Swiss government has routinely failed, too. The successful foreign interventions have been directed against Swiss banks, which have in turn forced changes domestically . . . "It is no use pressuring the Swiss government," Strahm said. "To get change, you must pressure a bank." (Shaxson, 2011, pp. 61-2)

3.1. And it can be done: StAR achievements

There have been some successes in stolen asset recovery, though fewer in value recovery. Until financial institutions, lawyers, accountants, trustees, and other corporate service officers who facilitate the crime and the laundering of its proceeds are also made to pay, we will not advance from asset recovery to value recovery, a very important requirement in clamping down on the scourge.

After 18 years of pioneering struggle to recover stolen national assets that finally concluded in February 2004, the Philippines succeeded in recovering from Swiss banks the amount of \$624 million plundered by its former dictator Ferdinand Marcos (World Bank and UNODC , 2007, p. 20). Between August 2001 and 2004, Peru recovered about \$185 million from several

jurisdictions such as Switzerland, Cayman Islands, and the United States, which had been stolen by its former Intelligence Chief, Vladimiro Montesinos (World Bank and UNODC, 2007, p. 19). From September 1999 to 2008, approximately \$1.2 billion was repatriated to the Federal Republic of Nigeria, \$700 million of that from Switzerland and the remaining from Luxembourg, Jersey, Liechtenstein, Belgium, and the UK (Zinkernagel and Attisso, 2013, p. 3). In May 2007, an agreement reached between the governments of the United States, Switzerland, and Kazakhstan allowed for the repatriation of \$84 million to the Kazakh people (Zinkernagel and Attisso, 2013, p. 5). In February 2010, Switzerland was diplomatically and legally forced to repatriate over \$6 million stashed in its banks by Haiti's former dictator, Jean-Claude Duvalier. These funds were returned to the people of Haiti for use in development and humanitarian projects (Swissinfo.ch, 2009, p. 1). While more can be accomplished in the area of asset recovery, it is important to recognize the constraints imposed by the lack of political will on the part of many governments around the world (Ayogu, 2011; Stephenson et al., 2011; OSCE, 2012; Tax Justice Network, 2013). Ayogu and Gbadebo-Smith (2014) analyze the nexus of governance and illicit financial flows and suggest ways to effectively address the political constraints endemic to the problem.

3.2. Understanding UNCAC record

We recognize two dimensions to the challenge of moving the UNCAC forward. One lies in victimized countries (those whose assets have been plundered) and the other in destination countries (the recipients of the stolen resources). In victimized countries, governments are called upon to prosecute grand corruption and recover stolen public assets, which often are in the

possession of politically exposed persons (PEP).²⁹ This makes cleaning up from within rather difficult, as has been demonstrated in Kenya, Nigeria, and South Africa, where the anti-corruption special units have been *de facto* weakened.³⁰ On this score, it is worth mentioning that most, if not all, of the public asset recoveries listed here have happened when there has been political discontinuity—a break with the previous cabal or change in the prevailing power base (even within the same political party). These include Nigeria, in the case of Sani Abacha and James Ibori, and the Philippines, in the case of Ferdinand Marcos. No internal prosecution has occurred in Equatorial Guinea in the notorious Obiang case, despite the unilateral action by the U.S. Department of Justice. For the same reason, the Ibori case in Nigeria was dismissed in 2007 when his political power was based in Nigeria. Later, the tide turned, and in response he absconded, only to be caught in Dubai and extradited to the U.K. to face charges. Cast in this light, asset recovery is severely weakened when it begins to appear as a political witch hunt—as part of a repertoire of devices for political control by disorganizing or preying on the opposition and, when necessary, keeping dissidents within the same party in check.

Destination countries can also exploit asset recovery politically to reward or withhold cooperation from jurisdictions or regimes regarded unfavorably. Little surprise, therefore, that in our review of the record of UNCAC, a Conference of States Parties review regarding MLA requests finds a distinct preference for cooperation based on bilateral relations instead of a multilateral

²⁹ Politically exposed persons is the standard term in FATF recommendations and anti-corruption lexicon for highly placed persons politically or politically-connected persons, particularly with regard to the filing of suspicious transactions reports by financial institutions or the performance of other due diligence duties as part of the anti-money laundering effort. FATF means Financial Action Task Force, the global standard setter in anti-money laundering matters.

³⁰ Examples are Integrity Center in Kenya, which the former director John Githongo left due to the lack of support from the regime; EFCC (Economic and Financial Crimes Commission) in Nigeria where the former head, Mr. Nuhu Ribadu, was relieved of his duties for no grievous cause; and South Africa, where the asset forfeiture units have been restructured into obscurity.

relationship framework (CAC, 2013, p. 3). Furthermore, as we have shown throughout this paper, the position of developed countries is shaped by domestic and global political considerations. Rudolph Strahm emphasizes the workings of these forces in the Swiss example above (Shaxson, 2011, pp. 61-2), but other examples such as the City of London are also elaborated (pp. 244-78).

The February 2013 issue of *The Economist* (2013a, 2013b) features “offshore finance.” The magazine’s around-the-shores review of financial havens reveals an alignment of formidable forces on both sides of the battle line. It suggests that, whereas politics may not be captive to interest groups in all the countries reviewed, public policy everywhere is still “the outcome of the efforts of politicians to gain and retain political office within a structure of domestic political institutions, sometimes to the benefit of particular interests, and other times not” (Bates, 1994, p. 12). Fighting global corruption are reformists like Transparency International, the World Bank, the IMF, the United Nations, Global Witness, and the Tax Justice Network. The OECD, on the other hand, pays lip service to reforms. In fact, “[s]ome of the biggest tax havens are in fact in OECD economies, including America and Britain, that many would see as firmly onshore” (*The Economist*, 2013a, p. 1). Austria is home to UNODC, but of all OECD countries, Austria is still “the furthest from meeting the requirements of the Financial Action Task Force (FATF)” with regard to due diligence in anti-money laundering (*The Economist* 2013a, p. 5).³¹ We close by noting that the UNCAC implementation review mechanism is a process about transparency that ironically is in some ways as opaque as the regime that it seeks to reform. This, of course, is an issue that is occurring at the global level and reflects the underlying hypocrisy at country levels.

³¹ FATF is the standard setter in the global anti-money laundering regime, especially the preventative aspects.

Countries condemn the ravages of illicit financial flows, but condone the institutions that engage in or contribute to this criminality.

4. Conclusions and recommendations

The efficacy of the UNCAC, particularly MLA requests pertaining to tracing and identifying stolen assets, demands international cooperation to the fullest extent feasible.³² International cooperation of the kind envisaged is a global public good. Therefore, having a global appetite for combating illicit financial flows is equivalent to a general willingness to supply this public good in response to the requirements of UNCAC. Clearly, as this study has revealed, the supply of this global public good appears to be problematic. It is an issue because it entails dispersed expected benefits and concentrated immediate costs. When a policy has distributional consequences, self-interested groups will be in conflict. This conflict can be a political constraint leading to delays or inaction in adopting policies that seem beneficial to society on balance.

Scholars of political economy, such as Robert Bates (1994), have persuasively argued that economic policy reforms tend to correlate with discontinuous changes in the composition of governments, a result that would be expected were economic reforms to generate policies that favor some interest groups (and their political representatives) more than others. This suggests that overcoming the challenges to effective asset recovery may not happen within the same institutions, which sustain or help engender the menace. Reformers can seek to change the

³² Legal experts emphasize reciprocity as an important factor in the enforcement of prejudgment remedies. For instance, the refusal by a foreign court to recognize and enforce a domestic prejudgment order could lead the domestic court to equally refuse an order such as a pretrial injunction from the same foreign court. Pretrial remedies are very crucial in asset recovery because “often it will be impossible or nearly impossible for the victim to even begin a lawsuit . . . without the sort of information that can be gained through the use of prejudgment remedies” (Davis and Giuliano, 2010, p. 7). Even in cases where the location of the asset has been ascertained, pretrial reliefs such as “injunctions or freeze orders are crucial in making it harder to relocate the asset *pendente lite*” (p. 7).

structure of those political institutions, which shape the selection of policies. An element of these institutions is “political will.” The political will for a particular policy is essentially a politician’s response to the preferences of his or her political principals. When particular preferences are selected, it is because they secure immediate positive economic rewards for *influential political constituents*. Coalitions for a particular purpose such as anti-money laundering can gain political influence by organizing themselves accordingly, an injunction that is easier said than done.

We have learned much about what needs to be done. Awareness is essential in gaining constituencies, and sustaining the growing coalitions domestically and internationally requires commitment and resources. Because AML and curbing illicit financial flows are global public goods, organizing and sustaining the momentum for change is more challenging than the contrary. Organizing to maintain the status quo benefits specific interest groups who face limited free-rider problems. Therefore, for further investigation, we recommend research activities that seek to uncover innovative ways of overcoming collective action problems in specific circumstances. Moreover, research is called upon to expose the nature, preferences, and impact of external agents that intrude on domestic politics in Africa. These external agents influence, in one way or another, the likelihood of forging stronger regional coalitions against illicit financial flows. In a recent resolution, a High Level Panel on Illicit Financial Flows in Africa has stated that it will work “to increase collaboration and cooperation amongst African countries, their Regional Economic Communities, and external partners to promote better global understanding of the scale of the problem for African economies as well as encourage the adoption of relevant national, regional, and global policies, including safeguards and agreements to redress the situation” (ECA, 2012, p. 1). Working with external partners is fruitful only when the preferences and interests that drive those external cooperation efforts are better understood. Under such circumstances, Africans are

better able to engage more strategically and with a higher likelihood of securing more favorable outcomes.

There are several ways in which Africa and its global partners can forge a formidable assault on illicit financial flows. First, mutual cooperation and financial transparency are canonical features of a successful value recovery landscape. Second, witness/victim (whistleblower) protection is a highly valuable resource in the repertoire. Third, the asymmetric treatment of natural and juristic persons is a dangerous vice regardless of the spin; thus every effort should be made to redress it. Fourth, more effort should be given to streamlining MLA procedures and promoting cooperation. Fifth, insofar as widespread variation in legal procedures escalate the transaction costs of value recovery, mechanisms need to be put in place to address this impediment to combating illicit flows. Sixth, and finally, global developments reflect country-level dynamics; the sources of international cooperation lie in domestic politics and are shaped by the structure of political institutions and the preferences of the political elites. This appreciation underscores our earlier recommendation that the locus of action should be on local political participation, sensitization, organization, advocacy, and the search for innovative approaches to collective action problems in the public policy arena.

References

- Ajayi, S. I. and Ndikumana, L. (Eds.). (2014). *Capital Flight from Africa: Causes, Effects and Policy Issues*. Oxford: Oxford University Press, forthcoming.
- Atkinson, P. (2009). Introduction. In *Tracing Stolen Assets: A Practitioner's Handbook* (pp. 19-22). Basel, Switzerland: International Centre for Asset Recovery, Basel Institute on Governance.
- Ayogu, M.D. (2011). Non-State Actors and Value Recovery: Ganging up to Create Political Will. In D. Thelesklaf and P-G. Pereira (Eds.), *Non-State Actors in Asset Recovery* (pp. 93-108). Berne, Switzerland: Peter Lang.
- Ayogu, M.D., and Gbadebo-Smith, F. (2014). Governance and Illicit Flows. In I. Ajayi and L. Ndikumana (Eds.), *Capital Flight from Africa: Causes, Effects and Policy Issues*. Oxford, UK: Oxford University Press (forthcoming).
- Baker, R.W. (2005). *Capitalism's Achilles Heel: Dirty Money and How to Renew the Free-Market System*. Hoboken, New Jersey: John Wiley & Sons, Inc.
- Baker, S. and Shorrocks, E. (2009). *Gatekeepers, Corporate Structures and their Role in Money Laundering*. In D. Thelesklaf and A. Lugon-Moulin (Eds.), *Tracing Stolen Assets: A Practitioner's Handbook*. Basel, Switzerland: International Centre for Asset Recovery, Basel Institute on Governance.
- Basel Institute on Governance. (2009). *Tracing Stolen Assets: A Practitioner's Handbook*. Basel, Switzerland: International Centre for Asset Recovery, Basel Institute on Governance.
- Bates, R.H. (1994). *Comment: The Politics behind the Technocrats*. In J. Williamson (Ed.), *The Role of Technocrats in Economic Policy Reform*. Washington D.C.: Institute for International Economics.
- BBC News Africa. (2012). Former Nigeria Governor James Ibori Jailed for 13 Years. *BBC News* April 17. <http://www.bbc.co.uk/news/world-africa-17739388>. Accessed 14 March 2013.
- Boyce, J. and Ndikumana, L. (2001). Is Africa a Net Creditor? New Estimates from Severely Indebted Sub-Saharan African Countries, 1970-96. *Journal of Development Studies*, 38(2), 27-56.
- CAC. (2012). Implementation of Chapter IV (International Cooperation) of the United Nations Convention against Corruption. Implementation Review Group Resumed Third Session, Vienna, November 14-16, 2012. Conference of the States Parties to the United Nations Convention against Corruption CAC/COSP/IRG/2012/8.
- CAC. (2013). Regional Implementation of Chapter IV (International Cooperation) of the United Nations Convention against Corruption. Implementation Review Group Fourth Session, Vienna, May 27-31, 2013. Conference of the States Parties to the United Nations Convention against Corruption CAC/COSP/IRG/2013/11.

- Davis, E.H. (2011). Transnational Civil Asset Recovery of the Proceeds of Crime and Corruption: A Practical Approach. In Thelesklaf, D. and Pereira, P-G. (Eds.). *Non-State Actors in Asset Recovery* (pp. 63–92). Berne, Switzerland: Peter Lang.
- Davis, E.H. and Giuliano, D.J. (2010). Leveling the Playing Field: The Use of Civil Litigation to Locate and Recover Assets Misappropriated through Corruption. Paper presented at the Workshop on Non-State Actors in Asset Recovery, Basel Institute on Governance and UN Anti-Corruption Academy. Laxenburg, Austria, September 1–3, 2010.
- Dell, G. (2012). What’s up in the UNCAC Review Process? December 13. <http://www.uncaccoalition.org/learn-more/articles/195-what-s-up-in-the-uncac-review-process?> Accessed April 27, 2013.
- Department of Justice. (2010). Kleptocracy Asset Recovery Initiative. <http://www.justice.gov/ag/speeches/2010/ag-speech-100725.html>. Accessed September 2011.
- Economic Commission for Africa. (2012). Mbeki Panel on Illicit Financial Flows Adopts Framework Action Plan for Africa. Thabo Mbeki Foundation Newsletter, Africa Union 10th Anniversary Edition, p.1.
- The Economist*. (2013a). Onshore Financial Centres: Not a Palm Tree in Sight—Some Onshore Jurisdictions can be Laxer than the Offshore Sort. Special Report: Offshore Finance, Feb. 16 Print Edition.
- The Economist*. (2013b). Switzerland and its Rivals: Rise of the Midshores—The Offshore Industry’s Centre of Gravity is Shifting Eastwards. *Special Report: Offshore Finance*, Feb. 16 Print Edition.
- Foreign Corrupt Practices Act [FCPA]. (2012a). Assistant Attorney General Breuer’s Unconvincing Defense of DPAs/NPAs. September 17, 2012. <http://www.fcpaprofessor.com/assistant-attorney-general-breuers-unconvincing-defense-of-dpas-npas>. Accessed May 6, 2013.
- Foreign Corrupt Practices Act [FCPA]. (2012b). Arthur Anderson And The Myth Of The Corporate Death Penalty. August 23, 2012. <http://www.fcpaprofessor.com/arthur-anderson-and-the-myth-of-the-corporate-death-penalty>. Accessed May 6, 2013.
- Government Accountability Office (2008). Report GAO-09-157 of December 2008. Washington DC.
- Huffington Post*. (2013). Eric Holder Admits Some Banks Are Just Too Big to Prosecute. www.huffingtonpost.com/.../eric-holder-banks-too-big_n_2821741.html. Accessed May 1, 2013.
- Kofele-Kale, N. (2005). Patrimonicide: The International Crime of Indigenous Spoliation. 28 *vand. J. Transnati’l L.* 59, 1995. Quoted in Open Society Justice Initiative, *Legal Remedies*

- for the Resource Curse: A Digest of Using Law to Combat Natural Resource Corruption* (pp. 9–10). New York: Open Society Institute.
- Lowe, H. (2013). HSBC Deferred Prosecution Agreement: The Caymans Connection. <http://www.financialtaskforce.org/2013/01/02/hsbc-deferred-prosecution-agreement-the-cayman-connection>. Accessed February 24, 2013.
- Markoff, G.H. (2012). Arthur Andersen and the Myth of the Corporate Death Penalty: Corporate Criminal Convictions in the Twenty-First Century. *University of Pennsylvania Journal of Business Law* (forthcoming), 15. <http://ssrn.com/abstract=2132242>. Accessed May 1, 2013.
- Murphy, R. (2011) “Jersey Claims This is Tax Information Exchange”, <http://www.financialtaskforce.org/2011/01/18/jersey-claims-this-is-tax-information-exchange/> (accessed 18 January 2011)
- Murphy, R. (2011) “Offshore is Endemic in Corporate Britain,” <http://www.taxresearch.org.uk/Blog/2011/01/23/offshore-is-endemic-in-corporate-britain/comment-page-1/>(accessed January 24, 2011)
- Miron, R. (2013). Bringing the Banks to Account. PSD Blog. blogs.worldbank.org, February 5.
- Ndikumana, L. and Boyce, J. K. (2003) “Public Debts and Private Assets: Explaining Capital Flight from Sub-Saharan African Countries” *World Development*, 31(1): 107-130
- Ndikumana, L. and Boyce, J. K. (2011). *Africa’s Odious Debts: How Foreign Loans and Capital Flight Bled a Continent*. New York: Zed Books.
- Open Society Justice Initiative. (2005). *Legal Remedies for the Resource Curse: A Digest of Experience Using Law to Combat Natural Resource Corruption*. New York: Open Society Institute.
- OSCE. (2012). Identifying, Restraining, and Recovering Stolen Assets in the OSCE Region. Consolidated Summary of a Seminar held at Ratsaal, Hofburg in Vienna, Austria, September 3–5 ,2012. <http://www.osce.org/event/stolenassets2012>. Accessed April 24, 2013.
- Reilly, M. (2013). Elizabeth Warren Takes On Eric Holder’s “Too Big To Jail’ Statement.” *Huffington Post*. http://www.huffingtonpost.com/2013/03/06/elizabeth-warren-eric-holder_n_2823618.html. Accessed May 1, 2013.
- Shaxson, N. (2011). *Treasure Islands: Tax Havens and The Men Who Stole the World*. London: The Bodley Head.

- Stephenson, K., Gray, L., Power, R., Brun, J.P., Dunker, G., and Panjer, M. (2011). *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*. Washington D.C.: StAR-The World Bank and UNODC.
- Stewart, J.G. (2010). *Corporate War Crimes: Prosecuting the Pillage of Natural Resources*. New York: Open Society Institute.
- Swissinfo.ch. (2009). Ex Dictator's Assets Set to Help Haitians. February 12, 2009. http://www.swissinfo.ch/eng/politics/Ex-dictators_assets_set_to_help_Haitians.html?cid=986822. Accessed January 20, 2014.
- Tax Justice Network. (2013). The Politics of Secrecy. *Financial Secrecy Index*. http://www.financialsecrecyindex.com/significance.html#pol_of_secrecy. Accessed May 1, 2013.
- The Wall Street Journal* (2013) More U.S. Profits Packed Abroad, Saving on Taxes. Accessed on April 29, 2013 at: <http://online.wsj.com/article/SB10001424127887324034804578348131432634740.html#project%3DFORCASH20130311%26articleTabs%3Dinteractive>
- United Nations Convention Against Corruption [UNCAC]. (2003). *United Nations, Treaty Series*, 2349: 41 Doc.A/58/442. <http://treaties.un.org/>
- United Nations Convention Against Transnational Organized Crime [UNTOC]. (2000). <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>
- United States General Accounting Office (2008). The Government Accountability Office Report GAO-09-157 of December 2008.
- The Wall Street Journal (2013). "More U.S. Profits Packed Abroad, Saving on Taxes." <http://online.wsj.com/article/SB10001424127887324034804578348131432634740.html#project%3DFORCASH20130311%26articleTabs%3Dinteractive> (accessed April 29, 2013).
- Williams, R. (2011). Putting Kleptocrats on Notice. <http://opiniojuris.org/2011/11/10/putting-kleptocrats-on-notice/> (accessed May 6, 2013).
- World Bank and United Nations Office for Drug Control and Crime. (2007). *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan*. Washington, DC: The World Bank.
- World Bank and United Nations Office for Drug Control and Crime (2009a) *Stolen Asset Recovery: Towards a Global Architecture for Asset Recovery* UNCAC Conference Edition. <http://siteresources.worldbank.org/> (accessed 18 February 2011).
- World Bank and United Nations Office for Drug Control and Crime (2009b) *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* in T. S. Greenberg, L. M. Samuel, Wingate Grant, and Larissa Gray (Eds) on behalf of Stolen Asset Recovery (StAR) Initiative. Washington, DC: The World Bank.

Zinkernagel, G.F., and Attisso, K. (2013). *Returning Stolen Assets—Learning from Past Practice: Selected Case Studies*. Basel, Switzerland: International Centre for Asset Recovery, Basel Institute on Governance.

Table 1: Top 20 U.S. Firms (ranked by assets) and number of offshore subsidiaries

1. General Electric Corporation	40
2. Pfizer Inc	356
3. Microsoft Corporation	14
4. Merck & Co	199
5. Johnson & Johnson	175
6. IBM Corporation	70
7. Exxon Mobil Corporation	122
8. Citigroup	1,240
9. Cisco Systems	201
10. Apple	1
11. Abbott Laboratories	168
12. Proctor & Gamble Co	581
13. Hewlett-Packard Co	N/A
14. Google	N/A
15. PepsiCo	356
16. Coca-Cola	72
17. Chevron Corporation	45
18. J.P. Morgan Chase	163
19. Goldman Sachs Group	55
20. Bristol-Myers Squibb Co	N/A
Total	3,858

Sources: The Wall Street Journal (2013) and United States General Accounting Office (2008).
N/A means “not available.”

Table 2: Top 20 U.K. Firms (ranked by assets) and number of offshore subsidiaries

1. Barclays	298
2. Lloyds Banking Group	135
3. Royal Bank of Scotland	121
4. BP	85
5. HSBC	62
6. Vodafone	50
7. Shell	47
8. BAT	41
9. Tesco	40
10. Standard Chartered	37
11. BHP Billiton	24
12. Rio Tinto	18
13. GlaxoSmithKline	13
14. BG Group	10
15. Diageo	7
16. Xstrata	7
17. Unilever	5
18. AstraZeneca	3
19. Anglo American	N/A
20. SAB Miller	N/A
Total	1003

Source: Murphy (2011).