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ACCOUNTABLE ASSET RETURN

UK COUNTRY LEVEL
CIVIL SOCIETY REPORT
BY CORRUPTION WATCH
AND TRANSPARENCY
INTERNATIONAL UK

Corruption Watch is a UK based anti-corruption organisation which details and exposes the impact of corruption predominantly but not exclusively in the arms trade.

Transparency International UK (TI-UK) is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

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Accountable Asset Return

UK Country Level Civil Society Report, By Corruption Watch and
Transparency International UK

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1. Country Overview

a. Summary

The UK is an attractive location through which to launder the proceeds of corruption, and mounting evidence points to its role as a safe haven for corrupt assets stolen from around the world.

In recent years, the UK Government has shown that it has the political will to tackle the problem. However, in practice very few assets that are the proceeds of grand corruption have been returned, suggesting asset recovery efforts are being hindered by an insufficiently robust framework for seizing and confiscating corrupt funds, and a lack of resources for law enforcement.

In December 2017, the USA and UK will co-host the Global Forum on Asset Recovery (GFAR) – a meeting of practitioners and policy experts focusing on assistance to Nigeria, Ukraine, Tunisia, and Sri Lanka. GFAR is an opportunity to build bridges to enable future collaboration and make concrete and measurable commitments to improving asset recovery efforts. In light of the approaching event, this paper sets out the strengths and weaknesses of the UK system, analyses cases relevant to GFAR countries, and makes recommendations for improvement.

The UK Government was offered the opportunity for comment but could not and did not comment on any of the cases referenced in the report.

b. Legal Framework

Freezing and Confiscation

The primary legislation on which the UK's asset recovery regime is based is the Proceeds of Crime Act 2002 (POCA). POCA provides UK law enforcement agencies with powers to investigate, freeze and seize assets obtained through illicit activity both following conviction and where there is no conviction. Parts 2-4 of POCA allow for the recovery of assets obtained through unlawful conduct through the imposition of a confiscation order by a Crown Court following a successful conviction of an individual or entity. The Court assesses which assets can be confiscated and the value of those assets.

Part 5 of POCA allows for civil recovery orders to be imposed by the High Court to forfeit assets where there is enough evidence to show that on the balance of probabilities the assets in question are the proceeds of crime.

¹ Further, in the absence of direct evidence, judges can rely on circumstantial evidence to draw an "irresistible inference" that assets are the proceeds of crime. Civil recovery orders allow for forfeiture in the absence of a criminal conviction i.e. Non-Conviction Based Asset Forfeiture (NCBAF). Crucially, under NCBAF there is no requirement to link the assets to a specific criminal act.

There has been considerable criticism of the effectiveness of the UK's confiscation regime from the National Audit Office (NAO)² and UK Parliament's Public Accounts Committee.³ Sums recovered under the regime remain very low, particularly through civil recovery orders, and its over-reliance on foreign convictions has inhibited the freezing and restraining of assets relating to grand corruption.⁴

In response, Transparency International UK convened an expert taskforce on illicit enrichment to identify potential solutions that could improve the UK's performance at freezing and seizing corrupt assets. The taskforce identified Unexplained Wealth Orders (UWOs) as a considerable enhancement to existing NCBAF provisions, which should help reduce law enforcement agencies' reliance on foreign convictions in grand corruption asset recovery cases. After successful lobbying by Non-Governmental Organisations (NGOs), these provisions were included in the Criminal Finances Act 2017 (CFA), which amends POCA and which received Royal Assent in April 2017.⁵ Under these provisions, which are expected to come into force in early 2018, law

1 Arising from case law - *R v Anwoir* [2008] <http://court-appeal.vlex.co.uk/vid/-52549352> [Accessed 28 March 2017]

2 <https://www.nao.org.uk/wp-content/uploads/2016/03/Confiscation-orders-progress-review.pdf> [Accessed 19 September 2017]

3 <http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news-parliament-2015/confiscation-orders-progress-review-report-published-16-17/> [Accessed 19 September 2017]

4 See: <http://www.transparency.org.uk/publications/closing-down-the-safe-havens/>; <http://www.transparency.org.uk/publications/combating-money-laundering-and-recovering-looted-gains-raising-the-uks-game/>; <http://www.transparency.org.uk/publications/corruption-on-your-doorstep/>

5 For latest status of the Criminal Finances Act 2017, see: <http://services.parliament.uk/bills/2016-17/criminalfinances.html> [Accessed 27 March 2017]

enforcement agencies will be able to apply for a High Court to issue a UWO where:

1. the respondent is a Politically Exposed Person⁶ (PEP) outside of the European Economic Area (EEA); or there are reasonable grounds to suspect that the respondent is or has been involved in serious crime;
2. the respondent's known income is insufficient to obtain the asset; and
3. the value of the asset is greater than £50,000.

If the respondent fails to provide an adequate response to the UWO then this can be used as evidence to assist in pursuing a civil recovery order under Part 5 of POCA.

Significantly, under the CFA, a separate freezing order can also be sought alongside a UWO, which should allow UK authorities to act more promptly to freeze suspected stolen assets. The CFA has also extended the time period that the NCA has to consider evidence from a Suspicious Activity Report (SAR) from 31 days to up to six months, with court approval. Law enforcement officers have long argued that 31 days to investigate suspicious activity involving overseas jurisdictions was simply not long enough.

In April 2016, the UK Government had committed to exploring the viability of creating an illicit enrichment offence as envisaged by article 20 of the United Nations Convention against Corruption (UNCAC)⁷ in its action plan for anti-money laundering and counter-terrorist finance.⁸ It is unlikely, however, given the introduction of the UWO regime, that any further changes will be considered in the near future at least until the effectiveness of UWOs can be assessed.

Repatriation of confiscated assets

The UK has no specific domestic legislation that enables assets confiscated on grounds of grand corruption to be repatriated. However, UK authorities consider themselves bound by Article 57 of UNCAC where confiscated proceeds relate to offences under UNCAC. An attempt to include an amendment to the Criminal Finances Bill to introduce repatriation orders was rejected by the UK Government on the grounds that it was already obliged under international law to repatriate assets in these cases, and that introducing domestic legislation might impede its ability to make tailor-made asset return agreements.⁹

Institutional arrangements

The key UK agencies tasked with identifying and applying for the freezing and confiscation of corrupt assets are the NCA, the Serious Fraud Office (SFO), the Financial Conduct Authority (FCA),¹⁰ HM Revenue and Customs (HMRC)¹¹ and the UK's relevant prosecuting authorities.¹² Freezing and confiscation orders for criminal cases must be issued by the Crown Courts; For non-conviction based asset recovery, orders are made in the High Court however, HM Treasury may also impose freezing orders under the Anti-Terrorism, Crime and Security Act 2001, which could be related to instances of corruption abroad.¹³

The NCA has an International Corruption Unit (ICU) formed in May 2015, taking responsibility for fighting overseas corruption over from the Metropolitan Police Proceeds of Corruption Unit and the City of London Police's Overseas Anti-Corruption Unit. The ICU is funded primarily by the Department for International Development (DfID). However, the unit can work with other NCA-funded resources that are not reliant on DfID funding to undertake investigations. The NCA works alongside prosecuting authorities throughout the UK to pursue those suspected of committing money laundering or corruption offences.

The SFO, established in 1988, is a specialist prosecuting authority that is tasked with tackling high-level financial

6 In the Bill, a PEP is defined as 'a) an individual who is, or has been, entrusted with prominent public functions by an international body or by a State other than the UK or other EEA State, b) a family member of a person within paragraph (a), or (c) known to be a close associate of a person within that paragraph.

7 United Nations, *United Nations Convention against Corruption* (2004) p.19 https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf [Accessed 13 September 2017]

8 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering_web_.pdf [Accessed 30 March 2017]

9 https://publications.parliament.uk/pa/cm201617/cmpublic/CriminalFinances/PBC_Criminal%20Finances%201-6%20sits%2022.11.16.pdf [Accessed 19 September 2017]

10 The AML supervisor for the financial and banking sector.

11 The AML supervisor for various sectors, including estate agents and Trust and Company Service Providers (TCSPs), and the UK's tax, payments and customs authority.

12 Crown Prosecution Service (CPS) in England and Wales, Crown Office and Procurator Fiscal in Scotland and the Public Prosecution Service for Northern Ireland (PPS) in Northern Ireland.

13 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636472/financial_sanctions_guidance_august_2017.pdf [Accessed 13 September 2017]

crime, including bribery and corruption. It is unusual in that it combines both investigatory and prosecutorial functions – known as the ‘Roskill model’¹⁴ – enabling lawyers to work alongside investigators throughout what are often complex cases. Its core funding is provided by the Attorney General’s Office, with top-up ‘blockbuster’ funding available from HM Treasury for big cases that cost over a certain percentage of the SFO’s core budget.

The CPS, established in 1986, is the principal prosecuting authority for England and Wales. The CPS has a Specialist Fraud Division (SFD) in place to prosecute offences arising from financial crime, including bribery and corruption. The CPS has a national Proceeds of Crime Service which carries out the asset recovery aspects of the cases prosecuted by SFD. The CPS has an Asset Recovery Strategy, which includes a commitment to recover more UK-based assets on behalf of other countries. The CPS has committed to using its Liaison Magistrates, Criminal Justice Advisors and Asset Recovery Advisors located overseas to raise the awareness of its ability to carry out this work and to encourage them to make appropriate MLA requests. The CPS has also committed to working with its key domestic law enforcement and policy partners to ensure a coordinated approach in the UK to the execution of incoming MLA requests.

International cooperation

The UK has been criticised in the past for being slow to respond to requests for Mutual Legal Assistance (MLA) from overseas jurisdictions. The 2007 Financial Action Task Force (FATF) review of the UK in 2007, noted that there were a number of complaints from overseas authorities that the UK “is considered slower than other countries in executing MLA requests”.¹⁵ This appeared to be particularly the case with ‘routine’ requests rather than urgent requests. The report noted however that the UK Central Authority, which processes such requests, was achieving faster turnaround times for MLA requests in general as a result of new MLA guidelines which included time limits for processing applications. It also noted that staffing levels were improving.

In March 2017, OECD Working Group on Bribery Phase 4 review of the UK’s implementation of the Anti-Bribery Convention also looked at the UK’s record on international cooperation. The OECD found that important efforts had been made by the UK to streamline and improve its processing of MLA requests. The OECD noted that the UK receives a high volume of requests owing to its role as one of the largest financial centres globally. This high volume of requests may, according to the UK’s Central Authority “reduce the speed at which a request is executed.” The OECD consulted members about their experience of international cooperation from the UK. Overall, the UK was found to be performing well in providing cooperation to other members of the Working Group on Bribery, although two delegations raised concerns about lengthy delays they experience from the UK in the processing of MLAs and the high level of proof required.¹⁶

While the OECD welcomed the UK’s efforts to streamline its management of MLA requests, it concluded that it remains “very difficult to assess” whether the UK is providing prompt and effective MLA responses in foreign bribery cases due to a lack of information.¹⁷ The OECD recommended that the UK should gather information on timelines for executing requests for specific offences so that its performance can be properly assessed.

Focussing on countries outside of the EU and measures that require banking and business transaction material, UKCA emphasises that MLA works well if pre- MLA enquiries are made through police channels in the first instance and foreign authorities are encouraged to use this level of cooperation before sending requests to the UKCA. Furthermore, letters of request seeking coercive or intrusive measures need to meet the UK’s legal requirements so that they can be dealt with expeditiously. The UKCA has issued guidance on drafting MLA requests particularly for those cases that require applications before a court.

UKCA has hosted visiting delegations and supported meetings with central authorities in order to strengthen judicial cooperation and ensure that the legal conditions required when seeking MLA in the UK are highlighted.

The UK’s financial system retains strong ties with the Overseas Territories (OTs) and Crown Dependencies (CDs), which continue to provide a variety of offshore financial services that are regularly used in the laundering of corrupt assets. In particular, companies based in these jurisdictions are often utilised to help hide the identity and illicit wealth of corrupt individuals as a result of the secrecy they provide. At the 2016 Anti-Corruption Summit the UK signed a series of Exchange of Notes with a number of the OTs and CDs in order to improve the sharing of company beneficial ownership information between their authorities and UK law enforcement

14 <https://www.sfo.gov.uk/publications/corporate-information/sfo-historical-background-powers/> [Accessed 8 August 2017]

15 <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20UK%20FULL.pdf> [Accessed 19 September 2017], para 1268

16 OECD, ‘Implementing The OECD Anti-Bribery Convention: Phase 4 Report: United Kingdom’ (March 2017) p.69, paragraph 186 <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf> [Accessed 19 September 2017]

17 OECD, ‘Implementing the OECD Anti-Bribery Convention’, p.70

agencies.¹⁸ However, apart from Monserrat, none of the OTs or CDs have committed to establish central public registers of beneficial ownership, which inhibits investigations by businesses and NGOs into potentially illicit assets.

Anti-Money Laundering (AML) regime

The UK is required by the European Union's Money Laundering Directives,¹⁹ to have certain structures and rules in place to prevent money laundering. These include:

AML compliance: legal requirements for regulated parts of the private sector to undertake due diligence on customers, report suspicious activity²⁰ and maintain records that could be used in law enforcement investigations. Sanctions for non-compliance include civil monetary penalties, imposed prohibitions on individuals holding positions of office by AML supervisors, and criminal penalties.

AML supervision: there are currently 25 different supervisors responsible for overseeing business' compliance with these rules.²¹ In August 2017 the UK Government consulted on introducing a new body – the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) – that would provide an oversight function for non-public bodies that have been given a supervisory function under POCA.²² The new body will be housed in the FCA, have the power to inspect and audit professional body AML supervisors, be responsible for ensuring greater coordination amongst the UK's 25 AML supervisors, and have the power to recommend the removal of AML supervisory responsibilities from professional bodies if they do not meet certain standards set out in the Money Laundering Regulations 2017.

Intelligence gathering: the UK's Financial Intelligence Unit (FIU) sits within the UK's NCA, which collates, analyses and actions SARs received from the private sector. It also chairs the Joint Money Laundering Intelligence Taskforce – a Public Private Partnership intelligence sharing group involving government, law enforcement agencies and the banking sector.

Company transparency: the UK is the first G20 country to introduce a central public register of company beneficial ownership through the Person of Significant Control (PSC) register. This requires most types of private legal entities to collect and regularly submit information on who really controls them to Companies House. This information is then published as open data.

The last review by the FATF of the UK's legislative and regulatory framework for combating money laundering and terrorist financing was broadly positive about the UK's compliance with its recommendations for asset recovery and AML. The next evaluation of the UK by FATF will take place in 2018 under the revised set of FATF recommendations from 2012, and will focus heavily on effectiveness. It is less clear how well the UK will perform when evaluated on effectiveness due to various key weaknesses, which include:

- a) **Repeated financial scandals over the past two decades have highlighted that the UK is one of the top locations in the world to launder money, and that UK companies, financial services and other professionals enable money laundering.** The UK's status as a preferred destination for corrupt officials looking to hide their wealth has been apparent at least as far back as 1998 when Nigeria commenced the long process of recovering the stolen assets of former leader General Sani Abacha. It is estimated that Abacha hid well over \$1 billion in the UK²³. A spate of recent scandals suggests that the UK continues to attract corrupt wealth from across the world. The 2016 Panama papers revealed that the UK was the country where the second highest number of intermediaries were based (after Hong Kong).²⁴ Recent money laundering scandals have consistently found British financial institutions and

18 <https://www.gov.uk/government/collections/beneficial-ownership-uk-overseas-territories-and-crown-dependencies> [Accessed 19 September 2017]

19 See Money Laundering Directives I-IV

20 Under POCA, 'Suspicious Activity Reports' SARs must be filed with the NCA every time that a designated staff member of a regulated business suspects, or has reasonable grounds for knowing or suspecting, that a person is engaged in money laundering. When businesses consider their level of suspicion to be so high that they may be open to regulatory or criminal money laundering sanctions if they were to complete the transaction, they can submit a 'consent SAR'. This allows the NCA a limited time period to refuse consent based on the information submitted in the SAR.

21 <http://www.legislation.gov.uk/ukxi/2017/692/schedule/1/made> [Accessed 15 August 2017]

22 <https://www.gov.uk/government/consultations/anti-money-laundering-supervisory-review> [Accessed 15 August 2017]

23 <http://news.bbc.co.uk/1/hi/business/1935631.stm> [Accessed 12 October 2017]

24 <https://www.gov.uk/government/news/taskforce-launches-criminal-and-civil-investigations-into-panama-papers> [Accessed 15 August 2017]

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companies implicated, including the Russia Laundromat²⁵ and Azerbaijan Laundromat²⁶ cases identified by the Organised Crime and Corruption Reporting Project (OCCRP). While the FCA has imposed some significant fines over the past few years for AML failings, including Barclays Bank (£72 million in 2015),²⁷ Deutsche Bank (£163 million in 2017),²⁸ and has announced high profile investigations into others (including HSBC in February 2017²⁹ and Royal Bank of Scotland (RBS) in 2017³⁰), there have been no prosecutions of banks or their employees for involvement in money laundering. Little action appears to have been taken against other potential intermediaries such as estate agents, accountants and company formation agents³¹, and there have only been a handful of convictions of lawyers³² involved in money laundering³³. Weaknesses in the UK's corporate liability regime make it difficult to prosecute large financial organisations for their role in money laundering.

- b) **Weaknesses in the Suspicious Activity Reporting (SAR) regime.** The UK Government has recognised that the current SAR regime is not working as intended.³⁴ Europol noted recently that the level of SARs in the UK was “extremely high in comparison to other countries, which may also be a result of defensive or over reporting”³⁵ and the UK Parliament's Home Affairs Committee has repeatedly noted that the current database for storing SARs, Elmer, is not fit for purpose.³⁶ The OECD Working Group on Bribery Phase 4 report noted the lack of detection of any foreign bribery cases by the UK's FIU, which is responsible for analysing SARs, as evidence of “lack of effectiveness of the reporting regime as it stands.”³⁷ While the Criminal Finances Act will give the FIU greater powers to direct regulated bodies to disclose further information on the basis of a SAR, further reform is needed. However, the UK Government is yet to announce a further Call for Evidence or Consultation about reform of the SARs system.
- c) **Serious failings in the AML supervisory regime.** Despite having a comprehensive AML system on paper, the UK's AML supervisory regime is not fit for purpose in practice. It is fragmented and inconsistent, with 25 different AML supervisors responsible for overseeing business' AML compliance. The UK Government has proposed to establish OPBAS to improve coordination and the effectiveness of AML supervision; however, there are currently no plans to consolidate the number of AML supervisors and OPBAS will not have any oversight role for public sector supervisory bodies – the FCA or HMRC. Enforcement levels across all AML supervisors do not appear robust enough to provide a credible deterrent to the potential scale of the issue. The activities of AML supervisors are highly opaque, with 20 of 22 key AML supervisors failing to meet the level of enforcement transparency demanded by the Macrory standards for effective regulation.³⁸ In 2015, Transparency International UK identified serious conflicts of interest in the sector, with 13 of 22 key AML supervisors also undertaking lobbying activities for the sector they were supposed to be regulating.³⁹
- d) **Offshore companies operating in the UK:** The UK property market is a favoured destination for corrupt money. In March 2017, Transparency International UK identified £4.2 billion worth of property in London

25 <https://www.theguardian.com/world/2017/mar/20/the-global-laundromat-how-did-it-work-and-who-benefited>

26 <https://www.theguardian.com/world/2017/sep/04/uk-at-centre-of-secret-3bn-azerbaijani-money-laundering-and-lobbying-scheme>

27 <https://www.fca.org.uk/publication/final-notice/barclays-bank-nov-2015.pdf> [Accessed 15 August 2017]

28 http://globalinvestigationsreview.com/digital_assets/bc1134ef-e280-44bf-bead-d23fd1293bba/FCA-final-notice-Deutsche-Bank.pdf [Accessed 15 August 2017]

29 <https://www.occrp.org/en/laundromat/> [Accessed 15 August 2017]

30 <https://www.financemagnates.com/institutional-forex/regulation/rbs-fca-investigation-money-laundering-scheme/> [Accessed 15 August 2017]

31 <https://www.thetimes.co.uk/article/convictions-low-for-money-laundering-zzdchfrg>

32 <http://www.scotland-judiciary.org.uk/8/1004/HMA-v-RICHARD-SUTTON-HOUSLEY-And-CAROLINE-JANE-LAING> [Accessed 13 October 2017]

33 <http://star.worldbank.org/corruption-cases/node/19574> [Accessed on 13 October 2017]

34 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/518017/SARs_Review_Call_for_Information_FINAL.PDF [Accessed September 2017]

35 https://www.europol.europa.eu/sites/default/files/documents/ql-01-17-932-en-c_pf_final.pdf [Accessed 13 September 2017]

36 Home Affairs Committee, *Proceeds of Crime* HC25 (July 2016) pp.11-13 <https://publications.parliament.uk/pa/cm201617/cmselect/cmha/25/25.pdf>

37 OECD, *Implementing the OECD Anti-Bribery Convention* p.22

38 Transparency International UK, *Don't Look, Won't Find* pp.20-24

39 Transparency International UK, *Don't Look, Won't Find* (November 2015) p.26 <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/>

bought with suspicious wealth.⁴⁰

Properties in the UK bought with suspected corrupt assets disproportionately involve companies based in secrecy jurisdictions. According to data from the Metropolitan Police's Proceeds of Corruption Unit, between 2004 and 2015 75 per cent of properties under investigation for being bought with the suspected proceeds of corruption were owned via companies based in secrecy jurisdictions. TI-UK has identified that of the 40,000+ London land titles owned by overseas companies, 90 per cent are owned by anonymous companies based in jurisdictions like these. More recent research by TI-UK has identified that, in particular, the British Virgin Islands appears to be a favoured destination for incorporating companies buying property with suspicious wealth.⁴¹

c. Institutional strengths and weaknesses

The UK has introduced a number of measures to make it easier to freeze, seize and repatriate corrupt assets. Overall it has complied with, and in some cases exceeded, international standards for anti-money laundering legislation, including the introduction of its ground-breaking central public register of company beneficial ownership. A recent highlight was the establishment of an International Anti-Corruption Coordination Centre (IACCC) in July 2017.

Yet despite increased political will to improve asset recovery in the UK, there are a number of key deficiencies in the UK's institutional framework for asset recovery.

These include:

- In the past it has relied too much on the capability of other countries to convict individuals and cooperate with UK law enforcement, which has inhibited the successful recovery of corrupt assets. The introduction of Unexplained Wealth Orders (UWOs) should help overcome this problem.
- The SARs system is not working and needs reform. The new provisions in the Criminal Finances Act to extend the period in which law enforcement can gather evidence on suspicious transactions is a good first step, but the system urgently needs new technology to help store and analyse SARs and there needs to be further reform of the system to ensure it achieves its intended aims.
- Ongoing uncertainty around the UK law enforcement framework for dealing with financial crime and asset recovery, and the respective roles of key organisations, particularly the SFO and NCA, is potentially hindering operational effectiveness. The results of a Cabinet Office review of "the effectiveness of [the UK's] organisational framework and the capabilities, resources and powers available to the organisations that tackle economic crime" are expected to be announced in the autumn of 2017.⁴² The ability of the enforcement agencies to recruit and retain experienced financial investigators in this context has been questioned.
- The funding structure of the NCA's ICU potentially restricts its geographical focus because DfID Overseas Development Assistance (ODA) funds must be spent on activities that promote the development of developing countries. It is not clear what additional resource the ICU has for dealing with investigations of grand corruption involving non-ODA countries that have a high-corruption risk, such as China and Russia.
- Law enforcement agencies that undertake asset recovery face significant resource challenges and exposure to potentially debilitating costs as part of any litigation by defendants, who may use the proceeds of corruption to fund their defence.

40 "Faulty Towers: understanding the impact of overseas corruption on the London Property Market", Transparency International UK, March 2017, <http://www.transparency.org.uk/faulty-towers/>

41 Transparency International UK, *Kept in the Dark* (August 2017) p.4 <http://www.transparency.org.uk/publications/kept-in-the-dark/>

42 <https://hansard.parliament.uk/commons/2016-12-05/debates/EFC77AC7-C901-4300-9F47-9FE2EBE53D23/OralAnswersToQuestions> [Accessed 28 March 2017]

d. Overall assessment of political will

The UK Government has taken a number of steps in recent years to demonstrate political will in relation to asset recovery. These include:

- Hosting the 2016 Anti-Corruption Summit, the first summit of its kind bringing together more than 40 countries and generating over 600 country specific commitments, including the creation of the GFAR.
- Securing an agreement with Nigeria on the return of stolen assets.⁴³
- Producing the UK's first Anti-corruption Plan⁴⁴ and Action Plan for Anti-Money Laundering and Counter Terrorist Financing – which promised that the UK would lead on establishing a “more sustainable funding model for Regional Asset Recovery Teams to ensure their robust response to money laundering linked to serious and organised crime, including through asset confiscation and denial.”⁴⁵
- The introduction of the UWO investigatory power in the Criminal Finances Act.
- Enhancing the SAR regime by allowing an extension of the period the NCA has to respond to consent SARs, and reviewing the SARs regime.
- Providing funding through DfID for the World Bank's Stolen Asset Recovery Initiative (StAR) and the International Centre for Asset Recovery (ICAR), and seconding technical advisors to deal with asset recovery abroad.⁴⁶
- Establishing and launching an International Anti-Corruption Coordination Centre (IACCC) in July 2017.
- Proposing measures that would make the UK more hostile to illicit funds by increasing transparency over the beneficial owners of overseas companies owning UK property and bidding for public contracts.
- Central registers of beneficial ownership information or similarly effective systems are in place in all the Crown Dependencies and in the six Overseas Territories with significant financial centres. OTs and CDs have committed to provide UK law enforcement agencies and tax authorities with information identifying the beneficial owners of corporate and legal entities incorporated in their respective jurisdictions within 24 hours, and one hour in urgent cases.
- The 2017 National Risk Assessment of Money Laundering and Terrorist Financing recommitted the Government to publish an asset recovery action plan by the end of the year which will “set out how the UK is responding to the challenges involved in improving the recovery of the proceeds of crime”.⁴⁷

There are, however, a number of issues which may undermine the UK's reputation for global leadership on asset recovery:

- The UK's performance for asset recovery is still relatively low compared to the level of corrupt wealth estimated to be moving through and into the UK's economy.
- The UK Government's impact assessment for UWOs anticipates its use in only 20 cases per year.
- There is currently no public information on the level of the IACCC's resources other than it is funded at least until 2021.⁴⁸
- While the UK's Overseas Territories and Crown Dependencies have made steps towards the collection of beneficial ownership information, the implementation of public central registers – an essential step towards disrupting illicit financial flows globally – is yet to be agreed.
- There has been no update on how the UK Government will meet its timeline for introducing transparency around the beneficial owners of overseas companies owning property or bidding for public contracts in the UK, and it looks likely that the Government will miss its own deadline.

43 <https://www.gov.uk/government/news/immigration-minister-signs-agreement-with-nigeria-on-returning-stolen-criminal-assets> [Accessed 28 March 2017]

44 <https://www.gov.uk/government/publications/uk-anti-corruption-plan> [Accessed 7 April 2017]

45 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/517992/6-2118-Action_Plan_for_Anti-Money_Laundering__web_.pdf [Accessed 28 March 2017]

46 https://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_uk.pdf [Accessed 28 March 2017]

47 <https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017> [Accessed 20 November 2017]

48 <http://www.nationalcrimeagency.gov.uk/index.php/news-media/nca-news/1138-international-partners-join-forces-to-tackle-global-grand-corruption> [Accessed 8 August 2017]

e. Involvement of civil society

There are a number of mechanisms in place that enable civil society to engage with the UK Government and relevant law enforcement agencies.

Law enforcement

The NCA holds bi-annual meetings with civil society and has a Memorandum of Understanding (MOU) with Transparency International UK, which outlines various ways in which the two organisations cooperate to further shared research objectives.⁴⁹ The SFO has a 'Strategic Relations' division that engages with civil society, and has started attending the NCA/civil society catch-ups.

Judicial processes

As with companies and individuals in the UK, NGOs have the right to bring private prosecutions, but they cannot be parties to a criminal complaint filed by the Government. However, NGOs are able to apply for judicial review of decisions taken by government officials, which includes enforcement bodies. But, previous challenges by NGOs have shown that the courts rarely interfere with prosecutorial discretion.

Policy

Policy officials from the Home Office, Cabinet Office and HM Treasury meet with civil society on an ad hoc basis to seek their views and consider recommendations for change. There are also avenues for UK Government-civil society dialogue as part of the Open Government Partnership, and through regular meetings between officials and the Bond Anti-Corruption Group.

Examples of where there has been constructive outcomes from engagement between civil society and government include:

- Proposals to introduce the UWO power and amend the length of time the NCA has to respond to 'consent' SARs.
- The introduction and implementation of beneficial ownership transparency for UK companies and the commitment to implement a similar mechanism for overseas companies operating in the UK.
- Partial reform of the UK's AML supervisory system.

⁴⁹ <http://www.nationalcrimeagency.gov.uk/publications/671-mou-between-the-nca-and-transparency-international-regarding-research-into-corruption-and-associated-money-laundering-issues/file> [Accessed 31 March 2017]

2. Domestic enforcement of foreign corruption cases relating to corruption in origin countries (foreign bribery, money laundering, civil forfeiture)

a. Resolved cases (in the past 3-5 years) ⁵⁰

There has been only one partially resolved case in the past five years that relates to enforcement in the UK against an actor involved in grand corruption from one of the four countries involved in the GFAR. This case relates to the former Nigerian governor, James Ibori, and his associates.

b. Name, type of proceedings, origin of proceedings, how the case was resolved and the sanctions/penalties imposed

Case 1: James Ibori

James Ibori pleaded guilty in a High Court in London in February 2012 to criminal charges of money laundering and conspiracy to defraud involving an estimated \$250 million. He was sentenced to 13 years in prison, but was released in December 2016 after spending four-and-a-half years in jail. Eight of Ibori's associates were also convicted of similar offences in the UK. These include:⁵¹

- Theresa Ibori (the former wife of Ibori) – sentenced to five years
- Christine Ibori-Idie (Ibori's sister) – sentenced to five years
- Udoamaka Onuigbo – sentenced to five years
- Rowland Nakanda (the brother of Ibori's wife, who helped handle Ibori's money to pay for the private school education of Ibori's children) – two and a half years⁵²
- Bhadresh Gohil (Ibori's solicitor) – sentenced to ten years
- Daniel McCann (a financial agent in Jersey) – sentenced to 30 months
- Lambertus de Boer (a corporate financier) – sentenced to 30 months⁵³
- Ellias Preko – sentenced to four and a half years⁵⁴

⁵⁰ The UK Government was offered the opportunity for comment but could not and did not comment on any of the cases referenced in the report.

⁵¹ <http://news.trust.org/item/20120228120900-19zl6/> [Accessed 5 April 2017]

⁵² http://www.echo-news.co.uk/news/13501142.Essex_man_jailed_for_money_laundering_after_police_investigate_corrupt_Nigerian_governor/ [Accessed 19 September 2017]

⁵³ De Boer and McCann were found guilty of using their company, African Development Finance Limited, to launder the sale of Niger Delta State's shares in a telecommunications company on behalf of Ibori, <https://guardian.ng/features/law/iboris-co-convict-appeals-decision-in-england/> [Accessed 19 September 2017]

⁵⁴ <http://www.reuters.com/article/us-britain-banker-corruption-idUSBRE9B800E20131209> [Accessed 19 September 2017]

Ibory, who was Delta State governor between 1999 and 2007, stole public money while in office to fund a lavish lifestyle, including luxury cars, upmarket houses and international shopping trips.⁵⁵ Funds from the Delta State budget were deposited in the accounts of Nigerian companies owned by Ibory's associates, while front businesses linked to the governor were also awarded lucrative government contracts.⁵⁶ The stolen state funds were laundered using offshore trust structures, with the money ending-up in accounts held at HSBC, Barclays, Abbey National (now part of Santander) and Citibank, and invested in London properties.

At the time of his conviction in 2012, Global Witness called for an investigation into the role of the banks that handled the Ibory money. No UK bank or estate agent has been fined for handling Ibory assets to date.⁵⁷

c. Other cases (in the past 3-5 years)

Number of known cases not investigated

Case study 2: OPL 245 (Daniel Etete and Goodluck Jonathan)

Much of the money from the 2011 sale of Nigeria's OPL 245 oil block to Shell and Italian energy company Eni, a deal which has been beset by allegations of bribery, passed through London's banking system. The Nigerian Government is alleged to have acted in effect as a middleman in the deal, funnelling bribe money from Shell and Eni to senior government officials.⁵⁸

In May 2011, Eni and Shell paid US\$1.1 billion into a JP Morgan escrow account in London set up by the Nigerian Government. JP Morgan subsequently transferred US\$800 million of the money to accounts at two Nigerian banks, which belonged to Malabu, a company owned by former Nigerian oil minister Daniel Etete, who had a 2007 money laundering conviction in France as part of a separate case.⁵⁹ The bank transfers went through despite the fact that JP Morgan had previously filed a SAR about them – UK authorities took no action.⁶⁰ It is alleged that the money from the Malabu accounts was then distributed via five Nigerian companies to top-ranking officials in the country's government.⁶¹

In June 2013, the UK's Metropolitan Police started an investigation named 'Operation Zapfod' into allegations of money laundering linked to the sale of the OPL 245 oil block.⁶² By this time alarming details about the deal had begun to emerge publicly because of two court cases brought by middlemen, Emeka Obi and Ednan Agaev, who were suing Malabu for their 'cut' of the US\$1.1 billion payment from the OPL 245 deal. In 2011, as a result of Obi's case against Malabu, the UK courts froze \$215 million, which was a chunk of the US\$1.1 billion payment that remained in the UK. The UK court adjudicating the middleman's claims awarded \$110 million to Obi in 2014.⁶³ While the Metropolitan Police were said to have wanted to take action to freeze the money held by the UK courts, the Crown Prosecution Service (CPS) declined to initiate proceedings.⁶⁴ Despite this, the majority of the \$215 million remains frozen owing to the efforts of Italian authorities. Following the UK court ruling, the \$110 million award was transferred to a Swiss bank account belonging to Obi, but the money was subsequently frozen at the request of Italian police. A further \$83 million that remained in the court's bank account in the UK was also frozen following a MLA request from the Milan public prosecutor.⁶⁵

55 <https://www.globalwitness.org/en/archive/sentencing-former-nigerian-politician-highlights-role-british-and-us-banks-money-laundering/> [Accessed 5 April 2017]

56 *Private Eye*, 10 August 2012, issue 1320 [Accessed 5 April 2017]

57 <https://www.globalwitness.org/en/archive/sentencing-former-nigerian-politician-highlights-role-british-and-us-banks-money-laundering/> [Accessed 5 April 2017]

58 Global Witness, *Shell Knew* (April 2017)

59 Ibid

60 <https://www.theguardian.com/business/2017/mar/05/the-oil-deal-the-disgraced-minister-and-800m-paid-via-a-uk-bank> [Accessed 13 September 2017]

61 Global Witness, *Shell Knew* (April 2017)

62 <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-eni-misadventures-nigeria/> [Accessed 5 April 2017]

63 <http://www.thecornerhouse.org.uk/resource/secrecy-order-lifted-legal-challenge-corrupt-nigerian-oil-deal-opl-245> [Accessed 13 September 2017]

64 Ibid

65 Transcript of oral judgment handed down by His Honour Judge Taylor at Southwark Crown Court on 8 September 2014 following ex parte restraint hearing

The \$215 million that was the subject of a High Court litigation in London is just a small part of the payment made by Shell and Eni. An ongoing investigation by Italian police into Eni's role has revealed that much of the money from Shell and Eni was subsequently passed on to, among others, two former attorney generals of Nigeria: the country's former president Goodluck Jonathan, and its former oil minister Diezani Alison-Madueke (see Case study 5 below).⁶⁶ Goodluck Jonathan has strenuously denied these claims.⁶⁷ In February 2017, Italian prosecutors charged 10 individuals related to Eni and formally warned four Shell employees, some of whom are British. They have also requested documents from the Netherlands in relation to Shell's involvement.⁶⁸ The Dutch police are also said to have opened an investigation into Shell's role, while Nigeria's EFCC has also brought charges against Shell, Eni, Etete and a former attorney general.⁶⁹

Shell and Eni have denied any wrongdoing. Shell has stated that it does not believe there is any basis for prosecuting the company or any current or former employee.

Goodluck Jonathan reportedly owns a multi-million pound property on the St George's Hill estate in Surrey, a county in south east England.⁷⁰ One news source alleges that Jonathan is behind a BVI registered company, Trans Ocean Group Holdings Ltd, which bought the property.⁷¹ It is not clear what happened to Operation Zafod, or whether UK authorities have an ongoing investigation into the money laundering involved in the case. They do not appear to have frozen Jonathan's assets in the UK.

Case study 3: Dmitry Firtash

Ukrainian businessman Dmitry Firtash is wanted in the US and Spain on corruption and money laundering charges,⁷² but there is no public record that he has faced investigation in the UK where he holds considerable assets. Firtash has been indicted in the US⁷³ for allegedly authorising US\$18.5 million in bribes to officials in India to secure licences for a mining project in the state of Andhra Pradesh. Magistrates in Barcelona have also charged Firtash with money laundering.⁷⁴

Firtash owns property in the London, including a house in Knightsbridge that he bought in 2012 and completely refurbished, installing a swimming pool.⁷⁵ The Times has also named Firtash as the owner of a disused tube station in West London, which he bought from the UK Ministry of Defence for £53 million in 2014.⁷⁶

66 <http://www.ibtimes.co.uk/nigerias-ex-president-goodluck-jonathan-denies-receiving-kickbacks-malabu-oil-deal-probed-italy-1600527> [Accessed 5 April 2017]

67 <http://www.premiumtimesng.com/news/headlines/220059-breaking-malabu-oil-deal-jonathan-breaks-silence-bribe-allegation.html> [Accessed 5 April 2017]

68 <https://www.theguardian.com/business/2017/mar/05/the-oil-deal-the-disgraced-minister-and-800m-paid-via-a-uk-bank> [Accessed 5 April 2017]

69 <https://www.globalwitness.org/en/press-releases/landmark-prosecution-nigerian-authorities-charge-shell-and-eni-over-shady-11-billion-opl-245-deal/>

70 <https://www.thesun.co.uk/news/opinion/1271867/kelvin-mackenzie-after-cops-buried-syrian-sex-attack-claims-what-else-should-we-be-told/>

71 Private Eye, No 1437, 10-23 February [Accessed 5 April 2017]

72 <https://assets.documentcloud.org/documents/2841105/Fail-Firtash.pdf> [Accessed 6 April 2017]

73 <https://www.justice.gov/opa/pr/six-defendants-indicted-alleged-conspiracy-bribe-government-officials-india-mine-titanium> [Accessed 6 April 2017]

74 <https://www.bloomberg.com/news/articles/2017-02-21/austrian-court-grants-u-s-bid-to-extradite-ukraine-s-firtash> [Accessed 6 April 2017]

75 <http://www.independent.co.uk/news/uk/crime/ukrainian-energy-magnate-with-close-links-to-senior-tories-arrested-in-austria-after-fbi-9190366.html> [Accessed 6 April 2017]

76 <http://www.thetimes.co.uk/article/ukrainian-dmytro-firtash-was-brompton-road-tube-station-buyer-9f2xnj68fc9> [Accessed 6 April 2017]

d. Information: Overall assessment of availability and ease of access to information in relation to domestic enforcement of foreign corruption cases

The SFO provides good information about its cases, including regular press releases, maintaining an easily accessible list of public investigations and a court calendar detailing upcoming hearings and trials.

The NCA's recently formed International Corruption Unit (ICU) has so far provided limited public information on its activities. Since being formed in 2015, the Unit has published only one press release about an ongoing investigation. The NCA is also exempt from freedom of information requests. However, the NCA has recently drafted a protocol setting out rules for information sharing between the NCA and civil society organisations, particularly where these organisations provide information on which an investigation can be based. This promising development shows that the NCA is ready and willing to be more open as long as its investigations are not compromised. The NCA has also committed, where possible, to provide sanitised information on ongoing cases, and it has offered to host a workshop in January 2018 for civil society organisations as part of efforts to develop communication channels between the NCA and NGOs.

In September 2017, the Government published a statistical bulletin on asset recovery, which provides an overview of asset recovery efforts in the UK over the last five years, including how much compensation has been paid to victims and the total amount collected each year from confiscation orders. The bulletin, which is largely based on the operational Joint Asset Recovery Database, only provides very general information, and does not give specific information in relation to corruption-linked asset recovery cases. However, the Government is seeking feedback from interested parties on how to improve future asset recovery bulletins and has expressed a desire to increase the types of data included in future reports.⁷⁷ The upcoming Asset Recovery Action Plan gives a further opportunity for the Government to provide a breakdown of this information.

The CPS provides no court calendar of upcoming foreign corruption cases and limited press releases on its activities.

Information is generally difficult to access from courts. Westminster Magistrates' Court, where initial hearings are often held in major economic crime cases, does not provide any online listings of court cases. Daily online listings are available for Southwark Crown Court and the Royal Courts of Justice, where the High Court and Court of Appeal are located. However, access to court documents is very limited – generally only final decisions from the Royal Courts of Justice are available online. Efforts to obtain court documents and evidence submitted to court can be expensive and very time consuming.

⁷⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658375/asset-recovery-financial-years-2012-to-2017-hosb1517.pdf [Accessed 16 November 2017]

3. Experience in relation to freezing, seizing and confiscation of assets

a. Overall picture

Based on open source information, such as court documents and media reports, Transparency International UK has identified that there could be at least £4.2 billion of suspicious assets in London alone that are held by PEPs and other individuals facing corruption allegations abroad. This research identified £839 million in assets across the whole of the UK that are owned by Nigerian and Ukrainian PEPs.⁷⁸ Of these, £169 million are owned by individuals who are either subject to an arrest warrant, have been arrested in connection with corruption allegations or have been convicted for corruption offences.

At the time of writing it is unclear exactly how many of these assets are subject to freezing orders or have been seized, but from the piecemeal data available it seems that a very low proportion of corruption-tainted assets in the UK have been restrained.

Detailed figures or information on ongoing asset recovery processes linked to international corruption cases are not proactively or routinely published by UK law enforcement agencies and the Home Office. Public figures available relating to asset recovery are based on media reports and press releases from law enforcement agencies. The Home Office has released annual asset recovery statistics which give a high level picture of asset recovery performance, but does not provide disaggregated data about asset recovery in relation to specific offences or jurisdictions⁷⁹.

In November 2016, the UK's NCA reported that it had frozen £170 million of suspicious wealth as part of 27 cases relating to international corruption.⁸⁰ However, this did not provide any breakdown as to the suspected origins of the funds, how much of this money has been seized, or any details of historical asset restraint and recovery rates. The SFO reported in April 2014 that it had seized \$23 million in assets connected to corruption in Ukraine,⁸¹ although these assets were subsequently unfrozen (see Case study 4 below).

In March 2014, the Council of the European Union imposed an EU-wide freeze on assets held by individuals it had identified as being involved in the misappropriation of Ukrainian state funds. This was extended in March 2017 until 6 March 2018, covering 14 individuals.⁸² The SFO has confirmed that it does not currently have any Ukrainian assets frozen however there is no other public information about assets frozen under this decision by the NCA or other UK agencies.

Apart from international sanctions, there is no regular information published on the triggers for asset freezing and seizure in the UK. The UK does not for instance publish statistics on the number of Mutual Legal Assistance requests it receives in relation to stolen assets though it does keep statistics on the number of MLAs it receives in relation to bribery.⁸³

The NCA does not routinely confirm or deny whether or not an investigation is taking place in response to allegations it receives. The SFO publishes the details of cases it is undertaking on its website, but this will not necessarily include what triggered the case, making it difficult to determine the speed at which assets are frozen in response to information being provided. There are on-going discussions between civil society and both the NCA and SFO about how best to communicate the progress of cases where information has been provided by civil society.

78 <http://www.transparency.org.uk/publications/faulty-towers-understanding-the-impact-of-overseas-corruption-on-the-london-property-market/> [Accessed 28 March 2017]

79 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/658375/asset-recovery-financial-years-2012-to-2017-hosb1517.pdf

80 http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/08_11_16_fo4_londoncalling.pdf [Accessed 28 March 2017]

81 <https://www.sfo.gov.uk/2014/04/28/money-laundering-investigation-opened/> [Accessed 28 March 2017]

82 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1490782049845&uri=CELEX:32017D0381> [Accessed 29 March 2017]

83 OECD, Implementing the OECD Anti-Bribery Convention: Phase 4 Report, United Kingdom (March 2017) p.70 <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf> [Accessed 7 April 2017]

b. Examples of specific proceedings ⁸⁴

Case study 4: Ukrainian national

In April 2014, the SFO opened a criminal investigation into potential money laundering arising from suspicions of corruption in Ukraine. As part of this investigation, the SFO sought a court order to freeze \$23 million of assets without notice, which were held in a UK bank account and belonged to a Ukrainian national. The application for the freezing order was sought because there were reasonable grounds to believe that the defendant had engaged in criminal conduct in Ukraine, and that the funds in the UK accounts were the proceeds of such criminal conduct.

The court order was granted and the accounts were frozen. It is reported that the SFO also requested Mutual Legal Assistance from their Ukrainian counterparts in the General Prosecutor's Office (GPO) in 2014 to assist with their enquiries whilst the assets were frozen.

The assets remained frozen until a successful appeal was made by the defendant in late 2014. As part of the judge's summary to the appeal, it was disclosed that the SFO had omitted to include a number of documents in the initial hearing that would have had bearing on the original decision to issue a freezing order. The judge also concluded that none of the evidence provided by the SFO during the appeal hearing was sufficient to establish reasonable grounds for a belief that the defendant's assets were unlawfully acquired as a result of misconduct in public office.

Whilst the draft judgement was being finalised in early 2015, the SFO notified the judge that Ukraine's GPO had initiated a criminal investigation into the defendant and a Ukrainian judge had issued a separate 'without notice' order to seize the funds currently frozen in the UK. When considering this new information, the judge noted that no new evidence had been provided by the Ukrainian investigation to help substantiate the claim of the SFO. It has been reported that the GPO's delayed actions and lack of assistance meant the SFO was not in a position to provide enough evidence to keep the freezing order in place.⁸⁵

Case study 5: Diezani Alison-Madueke

The UK's NCA arrested Nigeria's former petroleum minister, Diezani Alison-Madueke, and four other individuals in October 2015 as part of an investigation into suspected bribery and money laundering that began in 2013.⁸⁶ Alison-Madueke, who was petroleum minister between 2010 and 2015, was granted bail after several hours in custody. Law enforcement officials in Nigeria also searched one of Alison-Madueke's properties in Abuja.

At the time of the arrests, the NCA seized £27,000 in cash in the UK belonging to the former oil minister. The NCA also seized a further £5,000 and US\$2,000 in cash from Beatrice Agama, Alison-Madueke's mother, as well as £10,000 in cash from Melanie Spencer, the wife of Ghanaian businessman Kevin Okyere. In March 2017, a UK court extended the NCA's asset freezing order for Alison-Madueke's cash for a third time until October 2017.

Alison-Madueke has also been charged with money laundering by Nigeria's EFCC,⁸⁷ which claims to have traced \$487.5 million in cash and properties belonging to the former oil minister.⁸⁸

The allegations against Alison-Madueke are serious and numerous. The former governor of the Nigerian central bank, Sanusi Lamido Sanusi, has previously alleged that between January 2013 and June 2014, while Alison-Madueke was petroleum minister, \$20 billion in state oil revenue went missing.⁸⁹ Auditors have also found that the state-owned Nigerian National Petroleum Corporation (NNPC) failed to keep credible accounts for

⁸⁴ The UK Government was offered the opportunity for comment but could not and did not comment on any of the cases referenced in this report.

⁸⁵ Sarah Lain and Alisa Voznaya, *Anti-Corruption Reform and Business Security in Ukraine* (October 2015) p.11 https://rusi.org/sites/default/files/201510_op_anti-corruption_reform_and_business_security_in_ukraine_0.pdf and see the following article for more details from a Ukrainian civil society perspective <https://antac.org.ua/en/analytics/burisma-group-of-companies-are-still-under-criminal-investigation-in-ukraine-despite-case-against-mykola-zlochevskiyi-was-dumped-by-the-general-prosecutor-s-office/> [Accessed 29 March 2017]

⁸⁶ <http://www.nationalcrimeagency.gov.uk/index.php/news-media/nca-news/718-international-corruption-unit-arrests> [Accessed 7 April 2017]

⁸⁷ <https://efccnigeria.org/efcc/news/2446-n23bn-diezani-bribe-inec-staff-plead-guilty-two-others-to-face-trial> [Accessed 13 September 2017]

⁸⁸ <https://efccnigeria.org/efcc/news/2706-diezani-alison-madueke-what-an-appetite> [Accessed 13 September 2017]

⁸⁹ <http://foreignpolicy.com/2016/06/14/trouble-is-brewing-in-nigerias-oil-country/> [Accessed 13 September 2017]

“discretionary” spending averaging US\$6 billion a year between 2011 and 2013.⁹⁰

Alison-Madueke has specifically been criticised for allegedly taking bribes in return for steering contracts to ill-equipped Nigerian companies with limited capital and technical expertise. According to the US Department of Justice (DOJ), Alison-Madueke used her senior government position to award contracts to two shell companies: Atlantic Energy Drilling Concepts Nigeria and Atlantic Energy Brass Development.⁹¹ The contracts allowed the Atlantic Energy companies to sell more than \$1.5 billion of crude oil, much of it to Glencore Energy UK. The companies, which are controlled by two Nigerian businessmen – Kolawole Akanni Aluko and Olajide Omokore – were allegedly poorly qualified to fulfil their obligations under the terms of the contracts, such as providing technical training facilities for Nigerian Government staff and paying part of the operating costs of the state-owned oil company.⁹²

In return for lucrative oil contracts, Aluko and Omokore allegedly bought £11.5 million worth of property in the UK for the use of Alison-Madueke and her family, and spent large sums of money renovating the houses and filling them with luxury furniture and art works. Aluko and Omokore allegedly bought and refurbished the following properties:⁹³

- 96 Camp Road, Gerrards Cross, Buckinghamshire, SL9 7PB for £3,250,000
- 39 Chester Close North, London NW1 4JE for £1,730,000
- 58 Harley House, Marylebone Road, London NW1 5HL for £2,800,000
- Flat 5 Park View, 83-86 Prince Albert Road, London NW8 7RU £3,750,000

According to reports, Benedict Peters – a Nigerian billionaire and founder of oil and gas company Aiteo Group – allegedly used his Seychelles-registered company, Rosewood Investments Ltd, to finance the purchase of the Harley House property.⁹⁴ Aiteo, a company founded by Peters, flourished during Alison-Madueke’s time in office and is now the largest Nigerian oil production company. Peters denies any allegations of wrongdoing.

In September 2016, the CPS of England and Wales obtained a restraint order for three of the properties linked to Alison-Madueke as well as a piece of land in the north London suburb of East Finchley.⁹⁵ The restraint order forbids Alison-Madueke’s jeweller Christopher Aire, her cousin Donald Amamgbo,⁹⁶ Peters, Aluko and Omokore from selling the land and properties.

It is a matter of concern that the Chester Close North property was not included in the restraint order as it was sold in July 2015 for £2,224,000. The sale went through despite an ongoing investigation by the NCA and public allegations at the time of wrongdoing against Alison-Madueke, Aluko and Omokore.⁹⁷

It is also a matter of concern that asset recovery efforts in the US are at a noticeably more advanced stage than those in the UK despite the fact that UK authorities started investigating corruption linked to Alison-Madueke over four years ago. In July 2017, the US DOJ filed a civil complaint in a federal court in Texas seeking to recover \$144 million of Aluko’s assets, including properties in New York and California and a 65-metre yacht called the Galactica Star.⁹⁸

Nigerian authorities are also pursuing Aluko’s assets across the world, including in the UK. According to Nigerian press reports in September 2017, the EFCC has sent a mutual legal assistance request to the UK in relation to two London properties belonging to Aluko⁹⁹:

- 32 Grove End Road, NW8
- Flat D.03.01 at One Hyde Park, SW1X

90 ‘The Great Oil Chase’, Africa Confidential, 31 March 2017, Vol 58, No 7

91 <https://www.justice.gov/opa/pr/departments-justice-seeks-recover-over-100-million-obtained-corruption-nigerian-oil-industry> [Accessed 13 September 2017]

92 United States of America vs assets of Aluko, 2017, United States District Court Southern District of Texas Houston Division [Accessed 13 September 2017]

93 Ibid

94 Africa Confidential, 4 August 2017, Vol 58, No 16

95 Ibid

96 Both of whose oil trading companies were awarded lucrative contracts during Alison-Madueke’s time in office.

97 <http://naijagists.com/nigeria-is-broke-how-corrupt-nigerian-politicians-looted-trillions-in-oil-revenue/> [Accessed 13 September 2017]

98 United States of America vs assets of Aluko, 2017, United States District Court Southern District of Texas Houston Division [Accessed 13 September 2017]

99 <http://punchng.com/1-7bn-fraud-efcc-writes-to-us-uk-to-freeze-diezani-ally-alukos-accounts/> [Accessed 29 September 2017]

It has not been possible to ascertain whether Aluko's London properties are currently frozen, or whether UK authorities took independent steps to restrain them prior to receiving a request from the Nigerian government.

Case study 6: James Ibori

Despite pleading guilty in 2012 to money laundering and fraud, Ibori's assets are yet to be confiscated by UK authorities.

During initial confiscation hearings in September 2013, the CPS sought to confiscate £89.78 million from Ibori of which close to £50 million were known assets, and the remainder hidden.¹⁰⁰ However, it now seems that prosecutors are seeking to confiscate a smaller amount. In a December 2016 email, details of which was disclosed as part of a recent High Court litigation, an official in the UK's Home Office stated that prosecutors were attempting to recover a sum of "at least £57 million".¹⁰¹

Efforts to freeze and confiscate Ibori's assets in the UK have been ongoing for many years. In 2007, the Metropolitan Police obtained a freezing order from Southwark Crown Court for Ibori's worldwide assets. The BBC reported at the time that the freezing order covered only £17 million worth of assets.¹⁰²

In June 2008, the High Court in London issued a restraint order for properties and accounts owned by Ibori and a number of companies linked to the former governor: Haleway Properties Limited, Telaton Quays Limited, Stanhope Investments Limited, and Erin Aviation Limited. The High Court restraint order has also resulted in the freezing of millions of dollars of assets in the US belonging to Ibori and his associates, including a property in Houston, Texas.

In the UK, Ibori is alleged to have amassed a sizeable property portfolio, including houses in Hampstead, St John's Wood, Dorset and Harrow. However, the CPS has faced repeated difficulties confiscating the former's governor's assets in the five-year period since his conviction.

c. Overall assessment of availability and ease of access to information

There is currently no mechanism that allows civil society to accurately monitor the UK's performance at freezing, seizing and repatriating the proceeds of corruption. Under the Terrorist Asset-Freezing etc. Act 2010 (TAF 2010), HM Treasury must report to Parliament, quarterly, on its operation of the UK's asset freezing regime for terrorist finance.¹⁰³ However, there is no equivalent arrangement for its performance in meeting the UK's commitments under the UNCAC.

The NCA publishes some details of its international asset recovery work in its annual report, but there is no set format for how this is recorded and it focusses on high-level statistics that do not provide a comprehensive overview of its performance in this area.¹⁰⁴ The NCA does not announce when it opens an investigation, and there is currently no information published proactively on completed cases, meaning there is little transparency about the outcome and effectiveness of UK asset recovery work undertaken by the NCA in relation to global corruption.

The SFO publishes some headline information on the progress of its cases online, including insights into asset seizures related to corruption cases, which provides a greater amount of transparency and accountability for its actions.¹⁰⁵ However, this does not appear to contain up-to-date information about all cases. For example, the details of Case Study 1 above is based on court documents, not information disclosed by the SFO. And overall, there is no official consolidated UK report on asset freezes, seizures and repatriation relating to corruption cases.

The CPS has so far failed to provide information to civil society about its foreign corruption asset recovery work. In the past it has provided information about its confiscation efforts in response to freedom of information

¹⁰⁰ <https://publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/942/942we03.htm> [Accessed 19 September 2017]

¹⁰¹ Ibid

¹⁰² <http://news.bbc.co.uk/1/hi/world/africa/7035427.stm> [Accessed 29 September 2017]

¹⁰³ <https://www.gov.uk/government/collections/operation-of-the-uks-counter-terrorist-asset-freezing-regime-quarterly-report-to-parliament> [Accessed 29 March 2017]

¹⁰⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/583545/NCA_Annual_Report_and_Accounts_2015-16__web_.pdf [Accessed 30 March 2017]

¹⁰⁵ <https://www.sfo.gov.uk/our-cases/> [Accessed 30 March 2017]

requests.¹⁰⁶

The Home Office, which has overall authority over the NCA and regional police forces, has not been forthcoming with information despite multiple freedom of information requests (FOI) by Corruption Watch for data about UK asset recovery efforts in relation to Nigeria, Ukraine, Tunisia and Sri Lanka. The Home Office has disclosed that it holds some of the information sought in the requests, but has refused to release the data as it fears this will prejudice the administration of justice and harm relations between the UK and other states.

Accessing court documents related to asset freezing and seizure is particularly difficult in the UK context. Although it is understandable that ‘without notice’ hearings are not published proactively, the difficulty in obtaining court summaries and hearings is not something particular to these proceedings. Frustratingly, there is no central location where court documents, hearings, summaries and judgements are published. They are made available in a variety of locations, including a UK Government online portal,¹⁰⁷ a charitable trust website,¹⁰⁸ for-profit legal services,¹⁰⁹ and in paper form at the courts themselves. The absence of a central location for these documents makes it particularly difficult to find the details of specific cases.

In overseas bribery cases, confiscation orders will generally be issued by Southwark Crown Court, which does not make any court documents available online. Attempts to access documents directly from the court itself can be time consuming, often slowed by excessive red tape.

106 https://www.cps.gov.uk/publications/docs/foi_disclosures/2012/disclosure_66.pdf [Accessed 30 March 2017]

107 <https://www.judiciary.gov.uk/judgments/> [Accessed 30 March 2017]

108 <http://www.baillii.org/> [Accessed 30 March 2017]

109 <http://www.thelawpages.com/index.php> [Accessed 30 March 2017]

4. Experience of repatriation

a. Amounts repatriated and countries involved

Corrupt assets seized in the UK by law enforcement agencies should be returned to the recipient country, minus reasonable expenses, in accordance with the UNCAC. Return of assets is arranged on a case-by-case basis and facilitated by bilateral memorandums of understanding between the UK and other countries.

Apart from Nigeria, which will be discussed later, the UK has had limited success in returning corrupt assets despite evidence of potentially corrupt wealth being held in the UK. Only one illicit asset belonging to a former member of a political elite from an Arab Spring state has been recovered in the UK. This is despite the fact that a number of individuals from Arab Spring countries, who are implicated in corruption scandals, are known to have sizeable holdings in Britain, including: Syrian president Bashar al-Assad's associate Soulieman Marouf; the Syrian president's uncle Rifaat al-Assad; the family of deposed Egyptian president Hosni Mubarak; and two senior Libyan army officers who were loyal to Muammar Gaddafi, former general Ahmed Mahmoud Azwai and former brigadier Guima Elmaarfi.¹¹⁰

Despite a general lack of success in repatriating the assets of corrupt individuals, there have been a handful of notable asset recovery cases in the UK. These include:

- **Frederick Chiluba** – Zambia pursued a civil case in London against Chiluba, the ex- president of Zambia, and a number of former government officials over allegations that they stole millions of dollars while in power. The UK Government's DfID paid towards the Zambian Government's legal costs. In 2007, the High Court ruled that Chiluba and his co-defendants stole \$46 million¹¹¹. However, the High Court decision has reportedly proved difficult to enforce¹¹², and parts of it have been appealed¹¹³.
- **Saadi Gaddafi** – Through a civil claim in the High Court in London, in 2012 Libya recovered a property that belonged to the son of Muammar Gaddafi¹¹⁴. The house, which is located in an upmarket north London suburb, was estimated to be worth £10 million¹¹⁵.
- **Ao Man Long** – In 2015, Macau announced that the UK had agreed to repatriate over US\$44 million in corrupt assets accrued by the former Portuguese colony's ex-public works and transport minister, Ao Man Long.¹¹⁶ The funds were returned in November 2015.

In a handful of cases the UK has also returned funds confiscated from companies that are accused of bribing foreign government officials. The OECD Working Group on Bribery's March 2017 Phase 4 report on the UK states that there have been 23 foreign bribery cases that resulted in sanctions since 1999. The following bribery cases have resulted in the repatriation of assets:

- **Ananias Tumukunde** – Tumukunde, who acted as an adviser to the president of Uganda, pleaded guilty in London in 2008 after being accused by prosecutors of accepting bribes to steer government contracts to UK-based company CBRN¹¹⁷. DfID said £35,000 has been returned to Uganda.¹¹⁸
- **Mabey & Johnson** – In 2009, engineering company Mabey & Johnson was sentenced at Southwark Crown Court for conspiring to corrupt officials in Ghana and Jamaica, as well as violating sanctions on Iraq. The court ordered the firm to pay over £6 million in fines, which included £767,000 in reparations

110 Transparency International UK, *Spring Cleaning* (November 2016) <http://www.transparency.org.uk/publications/spring-cleaning/>

111 [http://www.baillii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2007/952_2.html&query=\(chiluba\)](http://www.baillii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2007/952_2.html&query=(chiluba)) [Accessed 19 September 2017]

112 http://www.osisa.org/sites/default/files/dont_bank_on_prosecuting_grand_corruption_as_an_international_crime_-_abdul_tejan-cole.pdf [Accessed 19 September 2017]

113 [http://www.baillii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2008/1007.html&query=\(chiluba\)](http://www.baillii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2008/1007.html&query=(chiluba)) [Accessed 19 September 2017]

114 http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Libya_v_Capitana_Seas_UK_High_Ct_Judgment_Mar_2012.pdf [Accessed 19 September 2017]

115 <https://www.theguardian.com/world/2012/mar/02/libya-acts-seize-gaddafi-house-london> [Accessed 19 September 2017]

116 <http://star.worldbank.org/corruption-cases/node/18463> [Accessed 19 September 2017]

117 <https://www.theguardian.com/uk/2008/sep/23/ukcrime.law> [Accessed 19 September 2017]

118 <https://publications.parliament.uk/pa/cm201213/cmselect/cmintdev/130/130we14.htm> [Accessed 19 September 2017]

- to Ghana and Jamaica.¹¹⁹
- **BAE Tanzania** – In 2010, British aerospace manufacturer BAE pleaded guilty in the UK to false accounting for failing to properly record commission payments made in relation to a deal to sell radar equipment to Tanzania. As part of the plea agreement, BAE consented to paying £29.5 million to Tanzania.¹²⁰
 - **Julian Messent** – Messent, who authorised 46 bribes to Costa Rican officials, was the CEO of insurance company PWS. In October 2010, he was ordered to pay £100,000 to the government of Costa Rica.¹²¹
 - **Weir Group** – In 2010, Glasgow-based engineering firm Weir Group was ordered to pay £17 million in financial penalties in Scotland for paying bribes in Iraq and violating UN sanctions. £1.5 million was returned to Iraq and Afghanistan to support water and humanitarian programmes¹²².
 - **Oxford Publishing Limited** – In addition to a 2012 £1.9 million civil recovery settlement resolving bribery allegations, the publishing company also said it would contribute £2 million to not-for-profit organisations for teacher training in sub-Saharan Africa.¹²³
 - **Bruce Hall** – In 2014, Bruce Hall the former CEO of Alba (Bahrain's state-owned aluminium producer) was sentenced in London to 16 months in prison for accepting millions of dollars in bribes. Hall was ordered to pay £500,000 in compensation to Alba.¹²⁴
 - **Smith and Ouzman** – The printing company was convicted at Southwark Crown Court in 2014 of paying bribes to influence contracts in Kenya and Mauritania. The court did not order any compensation, but the SFO worked with other UK government departments to ensure that £395,000 was paid in compensation to Kenya and Mauritania.¹²⁵
 - **Standard Bank** – In 2015, as part of a \$33 million court-approved deferred prosecution agreement (DPA) resolving foreign bribery allegations, Standard Bank agreed to \$7 million in compensation directly to Tanzania.¹²⁶

Following the UK Anti-Corruption Summit, three agencies - the SFO, CPS and NCA - adopted a set of principles to guide the provision of compensation to victim countries in foreign bribery cases. The principles aim to ensure that the three agencies work closely with the Treasury, the Foreign and Commonwealth Office and DfID to: identify victims, obtain evidence to support compensations claims, ensure transparency and accountability, and take precautions to prevent compensation money being used corruptly.¹²⁷ However, it is not clear how accountably and consistently these principles are being applied. The recent Deferred Prosecution Agreement (DPA) with Rolls-Royce in which it was fined £497 million, for instance, did not include compensation to the seven countries in which bribes were paid.¹²⁸ Similarly the SFO's £6.5 million DPA in July 2016 with XYZ - a small business the identity of which cannot be reported due to related ongoing legal proceedings - did not provide for any compensation.¹²⁹ Furthermore, the SFO continues to use a restrictive understanding of compensation that is based solely on the amount of bribe paid rather than broader harm done and it is not clear what efforts the SFO makes to communicate foreign bribery proceedings including DPAs to the authorities of countries where the bribes were paid and enable them to join as plaintiffs to the proceedings.

Of the four countries that are the focus on the 2017 GFAR, the UK has only repatriated assets to Nigeria. There have been two forms of repatriation. One where the money was repatriated as a result of proceedings by UK law enforcement and the other where the Nigerian Government recovered money through private civil proceedings in UK courts. Generally, the amounts returned to Nigeria via the latter route have been significantly higher than the former.

There is no publicly available total for the amount of money repatriated to Nigeria, however the following amounts have been identified through open source material.

119 <http://www.oecd.org/daf/anti-bribery/UnitedKingdomphase3reportEN.pdf> [Accessed 19 September 2017]

120 Ibid

121 <http://www.bbc.co.uk/news/uk-11629094> [Accessed 29 September 2017]

122 <http://www.gov.scot/News/Releases/2011/02/14085030> [Accessed 29 September 2017]

123 <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf> [Accessed 29 September 2017]

124 <https://www.sfo.gov.uk/2014/07/22/bruce-hall-sentenced-16-months-prison/> [Accessed 29 September 2017]

125 Ibid

126 Ibid

127 <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf> [Accessed 29 September 2017]

128 <http://www.cw-uk.org/2017/01/19/a-failure-of-nerve-the-sfos-settlement-with-rolls-royce/> [Accessed 29 September 2017]

129 <https://www.sfo.gov.uk/2016/07/08/sfo-secures-second-dpa/> [Accessed on 13 October 2017]

Governor Diepreye Alamieyeseighe

\$1.5 million was returned to Nigeria by the UK Government in May 2006, which had been held by former Governor Diepreye Alamieyeseighe.¹³⁰ Alamieyeseighe was said to have had four properties in London worth \$15 million, money in UK bank accounts of \$2.8 million and £1 million in cash at home.¹³¹ The money from the bank accounts and the sale of the four properties was recovered directly by the Nigerian Government through private civil proceedings. The Nigerian Government appointed UK lawyers to confiscate and sell Alamieyeseighe's properties.¹³² Alamieyeseighe died in October 2015. Just a few days before he died the British High Commissioner in Nigeria stated publicly that he had an outstanding charge of money laundering to face in the UK, as he had skipped bail in November 2005.¹³³

Governor Joshua Dariye

£300,000 was returned to Nigeria by the UK Government in September 2007, which had been held by former Governor Joshua Dariye and an associate, Joyce Oyebarjo.¹³⁴ This was said at the time to be a 'fraction' of the amount that Dariye had in assets in the UK. Dariye allegedly misappropriated more than \$11.9 million from Nigeria, using some to buy property in the UK.¹³⁵ The Nigerian Government used private civil proceedings to recover further Dariye assets but there is little publicly available data on how much was recovered and returned this way. The StAR database states that \$422,000 has been returned to Nigeria.¹³⁶

General Abacha

Assets held by former dictator, General Abacha, and related parties include sums in the UK, which are due to be repatriated imminently by the US DOJ. The total sum of \$480 million forfeited by the US includes \$303 million held in Jersey, a UK Crown Dependency.¹³⁷ In 2014, when Jersey was just on the point of returning this money to Nigeria, a last minute legal claim by Abacha associates was successful in stopping the repatriation.¹³⁸ The US sum also includes \$27 million held in UK and Irish banks accounts. An additional four investment portfolios based in the UK worth \$148 million and three UK bank accounts associated with Abacha's associate, Atiku Bagudu were still "pending" in 2014.¹³⁹ A US court dismissed legal attempts by Bagudu and associates in March 2015 to challenge the forfeiture on the investment portfolios.¹⁴⁰ It is not clear what the status of the \$148 million in the UK is and whether it is to be returned by the US DOJ. Despite the fact that a final legal hurdle was cleared in September 2016 for the Abacha money to be returned by the US, it has still not been returned to Nigeria as of September 2017. Reports in the Nigerian media suggest that the delay was purely bureaucratic.¹⁴¹ It is not clear why the UK has not taken action under its own legal framework to recover and return the assets in the UK bank accounts and investment portfolio.

130 http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Alamieyeseigha_StAR_Case_Study_2.pdf [Accessed 31 March 2017]

131 Ibid

132 <https://web.archive.org/web/20091120153416/http://234next.com:80/csp/cms/sites/Next/News/National/5451341-147/story.csp> [Accessed 31 March 2017]

133 <http://oddyta0-newsreel.blogspot.co.uk/2015/10/should-alamieyesigha-be-extradited.html> [Accessed 31 March 2017]

134 <http://news.bbc.co.uk/1/hi/world/africa/7015765.stm>; <http://star.worldbank.org/corruption-cases/node/18521> [Accessed 31 March 2017]

135 <https://issuu.com/world.bank.publications/docs/9781464803703?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Flight%2Flayout.xml&showFlipBtn=true>, p 40 [Accessed 31 March 2017]

136 <http://star.worldbank.org/corruption-cases/node/18521> [Accessed 31 March 2017]

137 <http://www.premiumtimesng.com/news/top-news/172273-states-jersey-return-315-million-abacha-loot-nigeria.html> [Accessed 31 March 2017]

138 <http://www.bailiwickexpress.com/jsy/news/court-battle-over-300-million-hidden-jersey-corrupt-former-nigerian-president/#.WN0mh1LMyt8> [Accessed 31 March 2017]

139 <http://star.worldbank.org/corruption-cases/node/20317> [Accessed 31 March 2017]

140 <http://desertherald.com/consolidating-the-lootocracy-how-atiku-bagudu-failed-to-save-his-stolen-assets/> [Accessed 31 March 2017]

141 <http://sweetcrudereports.com/2017/01/17/550m-abacha-loot-repatriation-not-blocked-by-us-nigerian-govt/> [Accessed 31 March 2017]

Christopher Agidi

£1.25 million belonging to a former Nigerian high-ranking official, Christopher Agidi, was confiscated by a UK court in February 2011.¹⁴² There is no publicly available information about whether and when this amount was returned to Nigeria.

In 2009, the UK said that £40 million would be returned to Nigeria from the UK subject to further court judgements.¹⁴³ This corresponds to the figure of \$70 million of money that the Metropolitan police said it had frozen through court orders from three former Nigerian governors: Ibori, Dariye and Alamieyeseighe.¹⁴⁴ However, it does not appear from publicly available material that any further money has been returned by the UK Government since that date.

In May 2016, Nigerian sources told media outlets that around 60 former Nigerian officials had assets in the UK, which were estimated to be worth around \$150 million. These included Ibori and Dariye.¹⁴⁵

b. Any agreements made on the nature of the return/mechanisms for accountability and involvement of civil society

As far as it is possible to ascertain there were no agreements made about the nature of the return in any of these cases, no mechanisms for accountability and no involvement of civil society in the return of the small amount of money returned by the UK Government so far. Private civil proceedings by the Nigerian state, meanwhile, de facto involve no mechanisms for accountability or involvement of civil society. This is cause for concern.

In the case of the money returned from Alamieyeseighe, allegations emerged in 2010 that the money returned to Bayelsa state had been misappropriated.¹⁴⁶

In late August 2016, the UK Government and the Nigerian Government entered into a MOU on returning stolen criminal assets.¹⁴⁷ This agreement was not made in relation to any specific assets being returned. The agreement is published on the website of the Nigerian Government.¹⁴⁸ The agreement states that the following principles will govern return of stolen criminal assets:

- Partnership based on mutual understanding, trust and confidence.
- Recognition in the mutual interest that assets returned are not misappropriated and that both governments have a duty to provide that assurance to their citizens.
- Recognition of the importance of ensuring the highest possible standards of transparency and accountability.
- Acknowledgement that the fundamental purpose of asset return is to enable the funds to be used for the purposes from which they were diverted or to something similar.
- Acknowledgement that the Nigerian Government has primary responsibility for determining the use of such funds.

The MOU states that both sides attach great importance to returned assets being used for the benefit of the people, particularly for projects that benefit the poorest in Nigeria and that improve access to justice for all Nigerians. The Nigerian Government agreed to provide a report of how returned assets are used to the Nigerian National Assembly and the UK DfID covering the two years after return of assets, and that it would publish this report.

142 <https://www.transparency.org.uk/wp-content/plugins/download-attachments/includes/download.php?id=5043>. [Accessed 31 March 2017]

143 http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/documents/arw/Dariye_UK_FCO_Return_Apr_24_2009.pdf [Accessed 31 March 2017]

144 <http://news.bbc.co.uk/1/hi/world/africa/7015765.stm> [Accessed 31 March 2017]

145 <https://www.today.ng/news/nigeria/121777/anti-corruption-coalition-dariye-ibori-58-nigerians-lose-assets> [Accessed 31 March 2017]

146 <http://allafrica.com/stories/201003191034.html> [Accessed 31 March 2017]

147 <https://www.gov.uk/government/news/immigration-minister-signs-agreement-with-nigeria-on-returning-stolen-criminal-assets>; <http://www.standard.co.uk/news/london/stolen-millions-to-be-returned-to-nigeria-in-deal-to-shed-londons-reputation-for-dirty-money-a3334311.html> [Accessed 31 March 2017]

148 <http://www.justice.gov.ng/documents/MOU%20Between%20UK,%20Ireland%20and%20Nigeria%20on%20Modalities%20for%20the%20Return%20of%20Stolen%20Assets%20Confiscated%20by%20the%20UK.pdf> [Accessed 31 March 2017]

c. Overall assessment of availability and ease of access to information.

The UK provides no easily accessible database of returned assets, and information about asset repatriation more generally is hard to obtain. All the information above had to be put together using public information from multiple sources.

5. Current debates

Many of the measures that will change the UK's asset recovery regime introduced by the Criminal Finances Act 2017 are expected to come into effect in early 2018.

The main issues raised by the Act are as follows:

Unexplained Wealth Orders

Overall, the UWO power has been welcomed by civil society and received cross party political support. It is important that, once the power commences, it is utilised with immediate effect to tackle the UK's role as a safe haven for corrupt assets.

Suspicious Activity Reporting regime

An extension was introduced in the Criminal Finances Act to the period that transactions can be held up following a SAR from 31 days to up to six months.¹⁴⁹ This is a welcome change as the current time period allowed is often insufficient for law enforcement to gather the evidence needed. The Act allows businesses subject to AML regulations to share information where the NCA has been notified of a suspicious transaction related to money laundering. It also gives law enforcement agencies powers to obtain additional information in the case where a SAR contains insufficient detail or indicates the involvement of another entity. While these are welcome initial steps to reforming the SARs regime, as noted earlier, the regime needs urgent reform. The UK Government is yet to publish any further consultations, findings or legislative proposals for such reform.

The following issues are also being debated:

Transparency

As outlined in this paper, there are concerns over the difficulty of accessing the following:

- court documents related to asset freezing and seizure
- easily accessible data on returned assets, and information on asset repatriation
- information on assets frozen by UK law enforcement agencies
- information from the CPS on upcoming court cases relevant to overseas corruption

While some information must be kept confidential during live investigations in order to ensure that targets are not tipped off, there are many instances where this is no longer necessary but the information remains difficult to access.

AML regulatory enforcement

The lack of prosecutions of financial services companies for money laundering remains a cause of serious concern given recent money laundering scandals revealing the role of UK banks and other intermediaries. In particular, there are ongoing concerns about the quality of AML checks on those buying high-end property, acting as Trust and Company Service Providers (TCSPs) and opening bank accounts in the UK. Although the FCA has started imposing higher fines arising from AML failings in banks, this still does not appear to be enough of a deterrent, and other sectors appear to be performing much worse.

The setting up of a new oversight body for professional AML supervisors, the Office for Professional Body Anti-Money Laundering Supervisors (OPBAS), promises some progress towards ensuring greater consistency in the oversight of different sectors. However, as mentioned above, there remain a number of issues outstanding with the UK's framework for AML supervision and it is unclear whether OPBAS will be given the mandate and resources to work effectively in practice.¹⁵⁰ In addition, the UK's current laws are still relatively weak at establishing corporate liability for failing to prevent money laundering.

¹⁴⁹ The period following the NCA refusing the progress of a transaction submitted to them through a consent SAR.

¹⁵⁰ http://www.transparency.org.uk/publications/ti-uk-submission-to-money-laundering-supervision-call-for-information/#.WhP6e0p_IU [Accessed 21 November 2017]

Beneficial Ownership property register

At the 2016 Anti-Corruption Summit, the then UK Government committed to introduce legislation before April 2018 that would bring transparency over the beneficial owners of overseas companies owning UK properties. The scope of the register would also include overseas companies bidding for public contracts. Since then it has undertaken a Call for Evidence on the mechanics of this system. However, it is yet to announce the findings of the Call for Evidence or publish any draft legislation.¹⁵¹

Law enforcement framework, capacity and resourcing for dealing with asset recovery

The review being carried out by the Cabinet Office into the UK's law enforcement framework for dealing with economic crime created some uncertainty about the future of the SFO – one of the main agencies involved in dealing with bribery and corruption, including asset recovery. This uncertainty was exacerbated by a proposal in the Conservative Party Election Manifesto to incorporate the SFO into the NCA. The results of the review are expected in the autumn of 2017.

Both the SFO and NCA face difficulties in recruiting and retaining experienced financial investigators, as well as facing ever increased workloads. The introduction of UWOs will only work if law enforcement agencies have the capacity and resources to enable them to use UWOs as part of a proactive enforcement strategy to recover illicit assets.

¹⁵¹ <https://www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-overseas-companies-and-legal-entities-beneficial-ownership-register> [Accessed 19 September 2017]

6. Civil Society Recommendations

a. Key asks

The GFAR should be the culmination of discussions that precede the meeting and be focused on enabling future collaboration and making concrete and measurable commitments to improve asset recovery.

Outlined below are recommendations for the UK Government specifically to improve the effectiveness of its own asset recovery work and increase international cooperation.

b. Recommendations for the UK Government

Recommendation 1: Identify Illicit Assets

Introduce public beneficial ownership transparency for companies owning UK property

The UK Government should fulfil its commitment to introduce a public register of beneficial ownership for overseas companies that own UK property and overseas companies bidding for public contracts in the UK. This should help stop corrupt individuals and illicit wealth entering the UK economy. The UK Government set themselves a deadline of April 2018 to introduce legislation and it should fulfil this commitment without delay.

Recommendation 2: Resource the use of enforcement powers

Ensure that measures set out in the Criminal Finances Act are implemented effectively, with proper coordination and resourcing

New measures, such as Unexplained Wealth Orders (UWOs) and improvements to the Suspicious Activity Reporting (SAR) regime, must be used effectively by law enforcement agencies. In order to ensure there is accountability over the use of these powers, there should be transparency about the amount of funds successfully seized using UWOs, the powers provided for under POCA more generally, and the impact of the modifications to the SARs regime on improving reporting and intelligence. The UK Government should produce an annual public report, in consultation with law enforcement agencies, on the experience of, and obstacles to using, UWOs and the impact of modifications to the SARs regime.

Additionally, the UK Government should ensure that the law enforcement agencies responsible for implementing the changes made by the Criminal Finances Act have the capacity and resources to take forward a proactive asset recovery enforcement strategy. It should also give serious consideration to introducing an indemnity scheme for law enforcement bodies to cover the risks of adverse cost awards in relation to the first 20 Unexplained Wealth Orders, or for the first year after their introduction. This would ensure that prospect of adverse awards for costs does not create a risk aversion to using UWOs.

Recommendation 3: Improve transparency and accountability in the asset recovery process

There should be the highest standards of transparency in the asset recovery process. This should include:

- UK authorities publishing clear data on an annual basis about assets linked to grand corruption that have been frozen, seized or confiscated in the UK, and assets that have been repatriated. The UK should consider developing a public national database of asset recovery relating to grand corruption;
- The UK should ensure that key court documents in civil and criminal asset recovery proceedings linked to corruption, including sentencing remarks, are published and made available to the public. In criminal cases, documents (such as opening notes, written statements and formal admissions) that have been placed before a judge and referred to during proceedings should be published unless there are strong

countervailing reasons against doing so. Similarly, in civil proceedings UK authorities should take steps to ensure that all statements of case are published, including claim forms, particulars of case and defences;

- The UK should ensure that authorities in countries from which assets have been restrained are kept informed on a regular basis of relevant stages of an investigation and any court proceedings, as well as give them detailed information on how they can contribute evidence and join as a party to proceedings;
- Transparency and accountability should apply equally to compensation given in foreign bribery cases, with public statements being made prior to return;
- Assets should be repatriated in line with the UNCAC with the highest possible standards of transparency and accountability at all stages of the process, including the UK making a public statement in advance about assets to be returned.

Recommendation 4: Strengthen Accountability in the private sector

Ensure the UK's AML supervision is fit for purpose.

There are a number of potential issues with the proposals relating to the Office for Professional Body Anti-Money Laundering Supervisors (OPBAS) and the current system remains fragmented and ineffective. The UK Government should consolidate the number of AML supervisors, increase transparency around their enforcement action and the effectiveness of their sanctions, and institutionally separate AML supervisors' lobbying and supervisory functions.

Improve the system for reporting suspicious activity

The UK Government should pursue urgent improvements to the Suspicious Activity Reporting (SAR) regime by introducing new technology to store and analyse SARs, and working with AML supervisors and businesses to improve the quality of what is submitted to the UK's Financial Intelligence Unit.

Review the current system for corporate liability

The UK Government should reform existing corporate liability laws to ensure large financial sector businesses are held to account for their role in laundering corrupt assets by:

- Introducing a failure to prevent style offence for money laundering;
- Ensuring that there is a policy statement made at the highest possible level that the prosecution do not need to prove that money laundering was intended or undertaken in order to establish a failure to disclose offence under Section 330 of POCA, but should rather be based on where there was reasonable suspicion that it had or was about to take place;
- Undertaking a full review of the UK's corporate liability regime and replacing the restrictive identification doctrine as the guiding principle for corporate liability, which has made it very difficult to prosecute large organisations.

Further Reading

- *Spring Cleaning: How UWOs could have helped address the UK's role in laundering corrupt wealth from Arab Spring states*, Transparency International UK (2016) <http://www.transparency.org.uk/publications/spring-cleaning/>
- *Empowering the UK to recover corrupt assets*, Transparency International UK (2015) <http://www.transparency.org.uk/publications/empowering-the-uk-to-recover-corrupt-assets/>
- *Don't Look, Won't Find: Weaknesses in the supervision of the UK's anti-money laundering rules*, Transparency International UK (2015) <http://www.transparency.org.uk/publications/dont-look-wont-find-weaknesses-in-the-supervision-of-the-uks-anti-money-laundering-rules/>

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