TRANSPARENCY INTERNATIONAL UK
fighting corruption worldwide

CLOSING DOWN THE SAFE HAVENS

ENDING IMPUNITY FOR CORRUPT INDIVIDUALS BY SEIZING AND RECOVERING THEIR ASSETS IN THE UK

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 100 Chapters worldwide, TI has extensive global expertise and understanding of corruption.

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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1. INTRODUCTION

Over 99 per cent of illicit funds flowing through major economies and offshore centres every year are not detected by law enforce-ment

When corrupt politicians, public officials and business people steal public funds, they prefer to keep those funds in safe places. The UK is one such safe place.

The funds can be laundered through legitimate businesses, property, sporting clubs, gambling, expensive cars, jewellery, art, investing in the stock market, or buying a private education for relatives. The funds can also be held in cash, ready to move at a moment's notice, or the UK financial and professional services industry can be used as part of a worldwide laundering process designed to hide the money's origins.

At the same time, the reputation of the asset's owner – the corrupt individual who stole the money – can itself be laundered, for example by employing a PR agency and buying access to a respectable lifestyle in the UK. This makes it harder to believe that the money has been stolen in the first place.

Corrupt funds that are laundered through the UK represent misery for millions of people. The money has been stolen from health and education budgets, from infrastructure and law enforcement, and many other areas of public spending. This both degrades those services and removes funds that should rightfully be invested in their country of origin.

The stolen funds should be identified, frozen, seized and – with proper safeguards – returned to the rightful owners. This is what the recovery of corruptly-obtained assets aims to achieve.

At the moment, no country in the world has a good record in this field. Corrupt individuals are able to use a number of safe havens for their assets in the knowledge they are very unlikely to be found out. They have a large degree of impunity once they have reached the safe haven of the UK, or a similar jurisdiction, and started to launder their money and reputation.

The UK is among the leading jurisdictions in the world in terms of recognising the problem; but still not doing nearly enough to resolve it. In 2011, the United Nations Office on Drugs and Crime estimated that over 99 per cent of illicit funds flowing through major economies and offshore centres every year are not detected by law enforcement. Even out of the tiny proportion of illicit funds that are detected, law enforcement authorities struggle to freeze and recover those funds.

The purpose of this paper is to describe the blocks in the system that are preventing recovery of the proceeds of grand corruption located in, or routed through, the UK. We make three major recommendations that could radically improve asset recovery rates over the longer term; we identify three issues where the UK could learn from international good practice in the short term; we make 16 further recommendations about how to improve current systems for asset recovery in the UK; and we establish three over-arching principles to guide policy in this area.[2]

What needs to happen?

We believe that the current levels of asset recovery in the UK and elsewhere are insignificant compared to the scale of the problem. Bold changes are required in order to detect, freeze and seize the 99 per cent of illicit assets that are likely to be flowing undetected through the international financial system.

The UK is well-placed to use the expertise of its law enforcement and its jurisdiction over the UK financial sector to achieve a step change in asset recovery. However, the UK, and other jurisdictions, will need to take a much more proactive stance, actively hunting down and seeking out corrupt illicit funds.

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1. UNODC Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (Oct 2011), http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

2. This paper builds on the themes and recommendations outlined in the Transparency International UK report entitled Combating Money Laundering and Recovering Looted Gains: Raising the UK's Game (2009), http://www.transparency.org.uk/our-work/publications/10-publications/154-combating-money-laundering-and-recovering-looted-gains-raising-the-uks-game

We believe that three over-arching principles should guide the development of UK policy:

- **Pro-active**. Asset recovery by UK law enforcement should not be dependent on a conviction in the origin state and should address corruption even when the origin state does not support the investigation.
- **De-politicised**. Asset recovery should not be driven by political will, but by law enforcement investigative leads that rely on intelligent and effective private sector reporting of suspicious transactions by public officials and politicians.
- **Unrestricted**. UK asset recovery investigations should have a funding model that allows them to take on cases where there is reasonable suspicion and should no longer be subject to geographical restrictions.

… in the short term

We identify three areas in which the UK could incorporate good practice from other countries relatively quickly:

The UK could make a major contribution to the global effort to end impunity for corruption

- **Enable rapid freezing of assets**. In Switzerland and Canada the authorities have enabled the quick freezing of assets of suspect corrupt public officials and politicians when the origin state has a non-functioning judiciary.
- **Stop relying on other countries**. In France and Spain, asset recovery proceedings have been brought against the corrupt, even when the alleged corrupt suspects are still in public office and when the origin state is actively seeking to defend the suspects. The UK's current approach to asset recovery is hampered by a tendency to tackle corruption only when there is strong bi-lateral political support. This often only occurs several decades after the crimes of corruption have taken place and is prone to an array of problems, explored in this paper.
- **Focus and coordinate law enforcement resources**. In the US, there is a single dedicated Kleptocracy Asset Recovery Unit with a mandate to pursue the assets of foreign corrupt officials, including the use of civil mechanisms to recover the proceeds of corruption.

… in the longer term

We make three major recommendations that could substantially improve asset recovery rates:

- **Consider creating a new law against corrupt enrichment**. The government should consider creating new legislation that allows for suspicious assets of politicians and public officials, which are clearly in excess of reasonable expectations of their wealth, to be seized unless they can be proven to have been obtained legitimately.
- **Improve the front-line defences in the private sector**. The UK's financial sector pours hundreds of millions of pounds each year into anti-money laundering procedures. There is little evidence that they are effective. The private sector – including banks, lawyers and accountants – needs to be engaged by the government as an ally in asset recovery, if necessary, through the use of powerful sanctions to deter complicity.
- **Invest in asset recovery**. The resources currently allocated to investigation and prosecution are inadequate to the size of the task. Moreover, the use of restricted funds from DFID creates an artificial distinction about which countries' citizens can be investigated. A more sustainable way for the government to fund asset recovery would be to recover its own policing costs from the assets seized, before returning them. The UK government should explore this mechanism and develop a new international consensus on it.

Transparency International UK is supportive of the efforts that have been made within the UK to date, within a national system that has narrow confines and a global system that is flawed. We now call on the government to make a step change in its approach to asset recovery and demonstrate that there is no safe haven for corrupt individuals and their assets in the UK. By doing so, the UK could make a major contribution to the global effort to end impunity for corruption.

All countries are doing badly in absolute terms

Why focus on the UK?

We focus on the UK in this paper, but we are clear that this should not let other jurisdictions off the hook – both those that do not cooperate in investigating their own corrupt officials and those that are also destinations for corruptly obtained funds. Our starting point is that the UK can reasonably claim to be doing well among its international peers, but all countries are doing badly in absolute terms. The fact that the UK is one of the top four asset recovering nations in the world merely indicates the scale of the challenge around the world.[3]

While precise figures are not available, it is inevitable that the UK is a major intermediary or ultimate destination for corrupt assets due to its role as a global financial centre and its connection to tax havens. An idea of the scale of the problem is given in Section 3. We believe that the UK has a responsibility to act due to the role of its financial services industry and the role of London and its relationship to the Crown Dependencies and Overseas Territories.

This paper is intended as a critique and not a criticism of the current approach to asset recovery in the UK. We do not believe it would be reasonable or appropriate for non-UK governments to use this paper as a means of criticising the UK efforts. The UK operates within an international system that is clearly flawed.

We recognise that, after years in which UK political will for asset recovery was questionable, there has been a marked increase in the political effort put towards investigation and enforcement of asset recovery. The UK has made political commitments towards securing more stolen assets and returning them to victims. It has recognised that legislative reform is required to improve asset recovery in the UK and to start grappling with the vast flows of illicit funds suspected to enter the UK each year.[4] Interesting and innovative approaches are being trialled by the UK, but all within the narrow confines of a system that is failing to deliver. In fact, it is the very increase in the UK's activity that has served to highlight that, despite the increased efforts and some notable successes, the system is not producing results in proportion to the size of the problem.

While we note that while this paper may be relevant to other states, to British Overseas Territories themselves and to Scottish law, the analysis and recommendations within this paper have been focused on asset recovery through English law courts.

3. http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/Presentations/Achim_Pross_and_Kjetil_Hanssen_OECD.pdf [accessed: 5 Dec 2013].

4. UK Serious and organised crime strategy (Oct 2013), https://www.gov.uk/government/publications/serious-organised-crime-strategy

2. UNDERSTANDING THE PROBLEM

A number of well-respected institutions have published information on the difficulties associated with the recovery of the proceeds of corruption. They include, in particular, the UN Office on Drugs and Crime, the World Bank Stolen Assets Recovery Initiative (StAR), the Organisation for Economic Cooperation and Development (OECD) and the Basel Institute on Governance.[5]

This paper identifies four specific problems with asset recovery performance in the UK

This paper identifies four specific problems with asset recovery performance in the UK:

- **Detection is inadequate**. Banks and other private sector institutions, assisted by professional intermediaries such as lawyers and accountants, are the front line in detecting and reporting suspicious transactions. Yet the UK financial regulator has found widespread evidence that the sector is failing in this role.[6]
- **Freezing assets is slow**. The administrative process to freeze assets in the EU is relatively slow. In addition, meeting the evidential threshold for criminal orders to freeze suspicious transactions in the UK, within the timeframe allowed, is often not achievable.
- **Seizure is difficult**. UK authorities often rely on a conviction in the origin state before they are willing or able to seize assets. This is very difficult to achieve, notably where the individual concerned has or had a powerful position in the origin state.[7]
- **Costs are a deterrent**. Asset recovery investigations for grand corruption are expensive and, in the UK, are limited both in geographical scope and in terms of budget.

Asset repatriation is also problematic, including the governance around how funds are returned, to whom and how they are used. This important issue will not be covered in this paper, but is an area that must be considered as part of a wider debate on asset recovery strategy.

A parallel, but separate issue is the failure of corporate fines and settlements in relation to corruption to provide any compensation to origin states. A 2013 StAR survey revealed that only 3.3 per cent of US$6 billion in corporate settlements between 1999 and mid-2012 were directed towards compensation to origin states.

5. See StAR Initiative's Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Jun 2011) http://star.worldbank.org/star/publication/barriers-asset-recovery

6. UK Financial Conduct Authority Anti-money laundering annual report 2012/13 (Jul 2013) http://www.fca.org.uk/your-fca/documents/anti-money-laundering-report

7. StAR Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery (Nov 2013) http://star.worldbank.org/star/publication/left-out-bargain-settlements-foreign-bribery-cases-and-implications-asset-recovery

3. THE SCALE OF THE CRIME

In 2011, the UN Office for Drugs and Crime estimated that the global detection rate for all illicit funds by law enforcement is as low as 1 per cent for criminal proceeds, and the seizure rate is possibly 0.2 per cent.[8]

Global Financial Integrity, a research and advocacy organisation focused on illicit financial flows, estimates that developing countries lost on average US$585.9 billion per annum through illicit flows over the decade ending 2010, with the rate increasing towards the end of decade.[9] Prior to its abolishment in early 2013, the UK Financial Services Authority provided an estimate on its website, using an IMF methodology, that £23-57 billion (US$37-93 billion) was potentially being laundered in the UK each year.[10]

No country is stemming the flow of corrupt funds around the world in any more than a piecemeal way

Corrupt money flows specifically from bribed public officials and politicians from developing and transition countries are estimated to be between US$20 billion to US$40 billion per annum– a figure roughly equivalent to 20 to 40 per cent of flows of official development assistance.[11] The World Bank estimates that, globally, no more than US$5 billion of corrupt stolen assets have been recovered and returned to origin nations over the 15 year period from 1996 to 2011.[12]

While assessments of undetected financial flows must clearly be estimates, and open to challenge, this paper primarily refers to the 2011 UN Office for Drugs and Crime assessment of undetected illicit flows. Analysis of additional available data, if anything, suggests that this figure is optimistic. A 2010 joint StAR and OECD study revealed that between 2006 and 2009, across 30 OECD countries, an average of only US$0.4 billion of assets had been frozen per annum. This corresponds to just 0.07 per cent of the assessed annual illicit flows over the same period according to the Global Financial Integrity methodology, much lower than the UN Office for Drugs and Crime assessment.[13]

While these estimates are uncertain, they provide a rough idea of the magnitude of the problem and the need for countries to ensure that asset recovery becomes routine in corruption cases. Case studies provide a further indication of the scale of illicit funds flowing through the UK. In the case of General Sani Abacha and his conspirators, an estimated US$1.3 billion of money stolen while he was dictator of Nigeria – a country where the national income is only US$260 per head – is believed to have been laundered through UK banks.[14]

When considering the scale of the problem, the reality is that no country is stemming the flow of corrupt funds around the world in any more than a piecemeal way. The OECD 2010 review found that there was no registered activity to recover stolen assets at the request of a foreign jurisdiction in any other OECD country apart from Australia, Switzerland, the United Kingdom and the United States.[15]

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8. UNODC Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (Oct 2011), http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf
9. GFI Illicit Financial Flows from Developing Countries: 2001-2010 (Dec 2012), http://www.gfintegrity.org/storage/gfip/documents/reports/IFF2012/tip_sheet_iff_2012-embargoed.pdf
10. http://www.fsa.gov.uk/about/what/financial_crime/money_laundering/faqs [accessed: 5 Dec 2013]
11. Baker 2005 in StAR Challenges, Opportunities, and Action Plan (2007) http://www.unodc.org/pdf/Star_Report.pdf
12. StAR Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Jun 2011) http://star.worldbank.org/star/publication/barriers-asset-recovery
13. http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/Presentations/Achim_Pross_and_Kjetil_Hanssen_OECD.pdf [accessed 5 Dec 2013]
14. London has tolerated financial terrorism (5 Oct 2001), http://www.theguardian.com/business/2001/oct/05/warinafghanistan2001.afghanistan1
15. OECD Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action (2011) http://www.oecd.org/dac/governance-development/49263968.pdf

The complexity associated with asset recovery is a global issue that must also be addressed internationally. However, the UK has a specific opportunity because of the importance of London in the global financial system and the sanctuary it may, unintentionally, provide to corrupt assets. The UK is highly likely to have a substantial role both as a host destination for corrupt illicit funds and, through its financial and professional services community, as a provider of intermediary services for corrupt illicit funds.

The UK is the world's largest centre for international banking, with an 18 per cent share of cross-border bank lending in September 2011. UK lists banking sector assets that are, collectively, the second largest in the world after the US. Foreign banks held 48 per cent of total assets, which is a higher proportion than in most other major economies. In addition, 251 foreign banks were physically located in the UK in 2011, more than in any other country.[16] According to the Banker Magazine's 2012 global asset management survey, London has been voted the most attractive financial centre for relocating and expanding asset management operations. London is the largest currency trading centre in the world, with nearly 41 per cent of global foreign exchange trading going through intermediation of dealers in the UK.[17] London is rated as one of the two cities in the world achieving the highest grade of connectivity of firms and businesses throughout the world.[18] 'Parking' assets and investing them in the UK is also very attractive to foreign investors, particularly in the London property market.

It is not surprising that, in the same way that the United Kingdom attracts legitimate business, it is also a target for organised crime and corrupt politicians and officials.

Such a level of recovery is clearly not commensurate with the size and importance of London as a financial centre

The 2010 StAR/OECD study revealed that between 2006 and 2009, the UK froze US$229.6 million (18.7 per cent of the total frozen in all 30 OECD countries), and had recovered and returned $2.2 million (0.8 per cent of the total returned).[19] These statistics, though dated, indicate that the UK appears to have underperformed in comparison to the US and Switzerland in terms of returning what small seizure was achieved and returning it to victims and the origin states. Although, it should be noted that the report identified the UK as one of only four states that had reported any activity in freezing or returning assets to a foreign country at all. A different StAR survey of UK asset recovery between 2006 and 2009 provided a higher figure, indicating that the UK had contributed to recovery and return of £20.7 million (US$33.4 million) of corruptly acquired assets.[20] No further robust data was made available during the period of research for this paper regarding the UK's freezing, seizing and return of stolen assets. Even with a generous interpretation of the available data, the UK is unlikely to have frozen any more than 0.26 per cent of the global corrupt financial flows per year during 2006-09.[21] Such a level of recovery is clearly not commensurate with the size and importance of London as a financial centre.

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16. Thecityuk Financial Markets Series: Banking (May 2012) http://www.thecityuk.com/research/our-work/reports-list/banking-2012/
17. http://www.bankofengland.co.uk/statistics/Documents/bis-survey/fxotcsum13.pdf [accessed: 5 Dec 2013]
18. London and New York are the only "alpha ++" designated cities in the GAWC connectivity analysis of cities throughout the world (2010) http://www.lboro.ac.uk/gawc/visual/globalcities2010.pdf
19. http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/Presentations/Achim_Pross_and_Kjetil_Hanssen_OECD.pdf [accessed: 5 Dec 2013]
20. StAR Towards a Global Architecture for Asset Recovery (2010) http://star.worldbank.org/star/sites/star/files/GlobalArchitectureFinalwithCover.pdf
21. Calculated by taking the 2010 StAR/OECD UK assets frozen figure of $76.5m per annum as a percentage of the mid point of the Baker et al 2003 estimate for corrupt global flows of funds, $30bn.
22. Stolen asset laws to be reviewed as Arab states seek redress (27 Oct 2013) http://www.ft.com/cms/s/0/c73f7ae6-3f23-11e3-b665-00144feabdc0.html
23. https://www.gov.uk/government/news/second-arab-forum-on-asset-recovery-marrakesh-26-28-october [accessed: 5 Dec 2013]
24. The State of Libya v Capitana Seas Limited [2012] EWHC 601 (Com) http://www.lawtel.com/UK/FullText/AC0132797QBD(Comm).pdf .
25. Tunisia was publicly criticised recently by its own Head of the Confiscation Commission tasked with recovering the former President Ben Ali's assets. He apparently criticised officials from the Ministry of Justice involved with asset recovery, calling them "incompetent" and saying they lacked the requisite legal background for this work. This lack of expertise in turn is allegedly hampering negotiations with international organisations, notably the European Parliament, and slowing the asset recovery process: http://www.tunisia-live.net/2013/09/19/government-accused-of-incompetence-in-recovering-ben-ali-assets/

4. RECENT EVENTS AND THE UK POLICY CONTEXT

The UK has a specific opportunity to enhance its recovery efforts and to provide international leadership in achieving a meaningful impact on laundering of corrupt funds. Most importantly, at the Second Arab Forum on Asset Recovery, UK Attorney General Dominic Grieve QC MP committed to a legislative review to support greater asset recovery through the UK.[22]

The practical difficulties of recovering the proceeds of corruption, both from within the UK and elsewhere, have become starker as a result of the Arab Spring and asset recovery initiatives in the wake of regime changes across the region in 2011 and 2012. It has been over two years since longstanding autocratic regimes in the region fell, but, since that time, there has been little tangible progress globally in the repatriation of stolen funds. The people of Egypt, Libya and Tunisia had legitimate expectations that the many billions of dollars that were estimated to have been looted by the deposed ruling families and their close associates would be recovered and returned to help rebuild their countries.[23] Recoveries to date have included the return to Tunisia of US$28.8 million of Ben Ali's money by Lebanon and a US$10.3 million yacht owned by a Ben Ali family member repatriated by Spain. The transitional government of Libya also recovered a £10 million (US$16.1 million) property in North London through private civil proceedings.[24] Yet these are only a tiny fraction of what is believed to have been stolen. Recent upheaval in Egypt, the political instability in Libya and the apparent lack of capacity in Tunisia has led many to believe that these asset recovery initiatives may be faltering.[25]

The UK has responded to asset recovery challenges with a significant degree of innovation.
In response to the Arab Spring asset recovery challenges, the UK developed a 'taskforce model' whereby a range of UK experts from law enforcement, lawyers and prosecution liaison officers can be surged to a particular foreign jurisdiction to support asset recovery proceedings.

The UK has also established a unique funding model through the UK DFID for specialised units within UK law enforcement agencies to investigate, identify, trace, and retrieve assets resulting from corrupt offences typically conducted by politically exposed persons (PEPs) in other jurisdictions.[26] Since 2006, the DFID has funded a dedicated Proceeds of Corruption Unit within the Metropolitan Police and the City of London Police Overseas Anti-Corruption Unit but this funding is primarily directed at developing countries where DFID has an aid relationship. DFID has also funded Crown Prosecution Service (CPS) confiscation specialists to work in relation to countries of interest to DFID. Ordinarily, these agencies' work would not have included countries like Egypt and Libya.

The UK Govern-ment has made a good start by admitting publicly that there are problems

A new UK National Crime Agency (NCA) was launched in October 2013, replacing the Serious and Organised Crime Agency. The main role of the NCA is to tackle serious and organised crime, including economic crime through its Economic Crime Command. The government's *Serious and Organised Crime Strategy* document published in conjunction with the NCA's launch sets out that the NCA will "lead and coordinate work to investigate corruption in the UK" and will have a unit "to coordinate investigations into the most serious corruption cases in the UK".[27] The strategy recognises that present asset recovery efforts fall short when compared to the actual scale of criminal profits. It indicates ways to improve the asset recovery system including: amending the Governments' powers; ensuring enforcement of court orders; better recovery of assets hidden overseas; and the implementation of new money laundering regulations.

With the above context in mind, the UK Government has made a good start by admitting publicly that there are problems with the effectiveness of the asset recovery regime in the UK, and by acknowledging the lynchpin role that corruption plays to facilitate other serious crimes and harm citizens across the world. Most importantly, through reviewing asset recovery legislation, it has set out an intention to legislate to close loopholes.

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26. StAR Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Jun 2011) http://star.worldbank.org/star/publication/barriers-asset-recovery

27. UK Serious and organised crime strategy (Oct 2013), https://www.gov.uk/government/publications/serious-organised-crime-strategy

5. UK GOOD PRACTICE IN ASSET RECOVERY

The UK has a number of strengths in asset recovery.

The DFID funding model, while not perfect, has ensured that high quality law enforcement expertise from the Metropolitan Police and City of London Police are directed towards international corruption, rather than being subsumed into domestic policing priorities. However, the geographic focus of these units tends to be countries where the UK has an aid relationship through DFID. As such, many jurisdictions, particularly former Soviet Union states, do not fall within the geographic focus of these units.

The UK also has a powerful legal tool in non-conviction based asset forfeiture

The UK also has a powerful legal tool in non-conviction based asset forfeiture (NCBAF). In NCBAF, the standard of proof is on the balance of probabilities – lower than the "beyond reasonable doubt" standard for criminal proceedings – and the issue of PEP immunity can be avoided as the proceedings are brought against the asset rather than an individual. The UK has not generally sought to use civil forfeiture powers to target corrupt assets located both in the UK and even overseas, although it could do so if it could demonstrate a predicate offence. Only one case of this seizure option being used in the UK to target corrupt assets was identified during the course of this research, that of *SOCA V Agidi*.[28]

However it should be noted that, because of low adoption of NCBAF around the world, the UK may lack the necessary mutual legal assistance (MLA) from other jurisdictions to take forward NCBAF cases with international dimensions.[29] TI-UK understands that the UK has pushed for EU-wide consensus on the availability of NCBAF as part of the proposed EU Confiscation Directive, but some EU member states have resisted such an approach on the grounds of proportionality and due process.

In terms of money laundering, UK Proceeds of Crime Act 2002 (POCA) criminal case law appears to have granted authority to restrain assets through a money laundering offence without explicitly identifying a predicate offence. The landmark POCA case *R v Anwoir* [2008] held that prosecutors can prove that property derives from crime "by evidence of the circumstances in which the property is handled which are such as to give rise to the irresistible inference that it can only be derived from crime". This case could potentially be hugely valuable in the targeting of corrupt flows in the UK from both a criminal and NCBAF perspective.

Money laundering powers in the UK can be very useful in the fight against corruption, as demonstrated by the case of James Ibori. More cases of this sort should be brought.

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28. Serious Organised Crime Agency v (1) Christopher Agidi and (2) Angela Agidi [2011] EWHC 175 (QB). The only case of the use of this route identified involved a former Nigerian public official and was successful in the recovery of a house in London (valued at £548,391) and funds held in a UK bank account of over £600,000. Mr Agidi was a life-long civil servant holding various positions with the Nigerian Government from 1967 until 15 March 2002 when he retired from his post as Director of Public Affairs in the Executive Office of the President. The Court found, in summary, that Mr Agidi earned a modest salary whilst in office, was not allowed to hold a UK bank account under Nigerian law, vast sums flowed through Mr Agidi's bank accounts in the UK in the amount of millions of pounds and large sums were withdrawn in cash by him, Mr Agidi entered into five written agreements with a company which was contracting to do business with the State (which the Judge found to be a "corrupt relationship" and a conflict of interests as a senior civil servant), he had not disclosed payments from this company in his Asset Declaration Form and he had no credible explanation as to the legitimacy of those amounts which the Judge described as having the "stench of corrupt bribes or rewards".

29. The MLA process is the bi-lateral channel by which nations make formal requests for law enforcement activity, to obtain orders or to collect evidence from other jurisdictions.

A foreign corrupt politician facing the full brunt of a criminal trial on UK shores

James Ibori case study

The Ibori case is a remarkable and laudable example of the UK taking the lead when the victim state had appeared reluctant or incapable of doing so. The case is a rare example of a foreign corrupt politician facing the full brunt of a criminal trial on UK shores.

James Ibori was the Governor of Delta State in Nigeria from 1999 to 2007. In April 2012, after a lengthy investigation and an extradition process from Dubai, he was sentenced in London to serve thirteen years in prison for ten counts of money laundering, to which he pleaded guilty. It is clear the underlying offences were committed in Nigeria, but the English court was able to maintain jurisdiction because Ibori sought to launder his assets in the UK using a UK lawyer.

The case demonstrates that the UK authorities can bring their own criminal investigation and prosecution against individuals located abroad if they have sought to launder the proceeds of corruption in the UK in contravention of sections 327 to 329 of POCA. If the alleged wrongdoer is located abroad and it is impossible to extradite for trial (even if no immunity exists), legal mechanisms such as NCBAF should be used to ensure that the alleged wrongdoer can at least be deprived of the corrupt asset whilst an investigation and extradition order remains in place.

In terms of the post-conviction confiscation hearing for Ibori, it does not appear to have been straightforward despite his guilty pleas, and a further re-hearing is scheduled to take place in 2014. It appears that even in such favourable circumstances – a guilty plea and identified assets – the process of asset recovery remains slow, expensive and highly intensive of law enforcement and prosecutorial capacity.

6. LESSONS FOR THE UK FROM AROUND THE WORLD

With regard to international good practice, the UK should consider adopting the following good practice from around the world to bolster its own powers and expertise:

- Recognition of the special powers required for grand corruption, as opposed to other criminal asset recovery **(Switzerland and Canada)**
- Pursuing corruption cases even where the origin state is defensive against the corruption allegation **(France)**
- Having the administrative power to freeze assets more quickly **(Switzerland and Canada)**
- Creating sanctions designations for entire organised criminal groups, including PEP families **(Switzerland)**
- Limit defendants from drawing down on frozen assets for legal fees, living and other expenses, where assets are secured in relation to corruption offences **(Australia)**
- Enabling extensions of time to refuse consent for suspicious transactions beyond 31 days, subject to oversight **(Guernsey)**
- Ensuring its jurisdiction captures as much financial activity as possible **(US)**
- Coordinating its law enforcement and international liaison activity in relation grand corruption **(US)**

A thorough review of these international good practice examples is included in Appendix 1.

Adopting further good practice alone will not provide a step change in asset recovery performance

However, it should be remembered that, in relation to the assessed scale of illicit financial flows, all countries are failing to achieve significant asset recovery. The UK is already a strong performer in asset recovery, relative to other countries, and so adopting further good practice alone will not provide a step change in asset recovery performance that is required.

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30. Banks' management of high money-laundering risk situations (Jun 2011) http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf
31. UK Financial Conduct Authority Anti-money laundering annual report 2012/13 (Jul 2013) http://www.fca.org.uk/your-fca/documents/anti-money-laundering-report
32. FATF Laundering the Proceeds of Corruption (Jul 2011), http://www.fatf-gafi.org/media/fatf/documents/reports/Laundering%20the%20Proceeds%20of%20Corruption.pdf
33. See ICAR Tracing Stolen Assets: A Practitioner's Handbook (2009), http://www.baselgovernance.org/fileadmin/docs/publications/books/asset-tracing_web-version.pdf
34. OECD Asset Declarations for Public Officials - A Tool to Prevent Corruption (2011) http://www.oecd.org/investment/anti-bribery/47489446.pdf
35. 'Havoc' as HSBC prepares to close diplomatic accounts (Aug 2013) http://www.bbc.co.uk/news/uk-23565506
36. StAR Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Jun 2011) http://star.worldbank.org/star/publication/barriers-asset-recovery
37. ibid

7. BARRIERS TO ASSET RECOVERY

7.1 DETECTION OF CORRUPT MONEY LAUNDERING

Detection of corrupt money laundering is inadequate. To address the missing 99 per cent, detection must be improved both in the UK and globally. The responsibility for detection and deterrence of grand corruption must reside primarily with private sector anti-money laundering (AML) procedures against current transactions.

A third of the banks dismissed serious allegations about their customers without adequate review

Whilst corrupt officials are in office and active in their crimes, more can be done to identify and prevent those PEPs laundering their illicit gains. In light of this, it is clear that further consideration needs to be given to the UK's AML framework and its implementation – particularly its application to PEPs. The Financial Service Authority's 2011 thematic review of banks' management of high money laundering risk situations revealed systemic failings in AML compliance by financial institutions with high risk customers and PEPs.[30] The report found that three quarters of the banks reviewed, including a number of major banks, were not managing AML risk effectively. Over half the banks failed to apply meaningful enhanced due diligence (EDD) measures in higher risk situations and more than a third of the banks visited failed to put effective measures in place to identify customers as PEPs. Appallingly, around a third of the banks dismissed serious allegations about their customers without adequate review. The UK Financial Conduct Authority's June 2013 Anti-Money Laundering Report restated the failure of banks to prevent the proceeds of corruption filtering through their systems.[31]

Weaknesses in AML are not just limited to financial institutions. The role of "gatekeepers" is evident in most if not all corruption cases. The Financial Action Task Force (FATF), an AML standard setter, describes gatekeepers as individuals that "protect the gates" to the financial system through which potential users of the system, including launderers, must pass in order to be successful".[32] Gatekeepers include lawyers, accountants, financial advisors, and trust and company service providers. Unscrupulous skilled professionals assist launderers to set up corporate structures to disguise the source and ownership of the funds, as well as to acquire assets through which corrupt money is disguised, such as property and shares.

UK money laundering legislation obliges financial institutions, regulatory authorities, and some non-financial businesses and professions (such as lawyers, accountants, estate agents, fine art dealers and dealers in precious metals and stones, and trust and company service providers) to file suspicious activity reports (SARs) with law enforcement Financial Intelligence Units (FIUs). Regulations require particular vigilance concerning PEPs – senior government officials, their family members, and close associates. Effective and intelligent SARs submitted to FIUs are critical in tracing corrupt assets and triggering criminal investigations.[33]

To be more effective in managing risk and submitting SARs, financial institutions will require better access to Income and Asset Disclosure (IAD) registers for PEPs. Such registers are produced by many nations but not in a uniform way and some are not available to the public. A recent OECD survey pointed to limited use of IAD registers for taking forward criminal investigations.[34] Without intelligent AML, assessments of PEP risk can be reduced to simply which country they come from and lead to blanket denials of financial service.[35] The lack of publicly available registries, including company registries, land registries, registries of non-profit organisations and trusts – in addition to IAD registries – was recognised by the World Bank as a key barrier to successful asset recovery.[36] Ideally, the registries should be published as shared data in an electronic and real-time format.

The battle for law enforcement to identify a particular account holding the assets is considered one of the most significant difficulties encountered in the early stages of a case.[37] It is exceptionally difficult without financial institutions producing intelligent SARs. Even in the UK, Transparency International UK understands that the current "work around" solutions to sharing information on suspect PEPs between law enforcement and banks leave the financial institution at considerable uncertainty as to the legal basis

for any service restrictions to pre-identified customers, and may fail to offer legal protection for banks having acted on the information provided by UK law enforcement.

In order for AML to become more effective, the system must be able to depend on a legally sound basis for financial institutions flagging suspicious activity reports on PEPs, based on IAD registers, and then efficient sharing of these SARs across FIUs. This could be strengthened.

In October 2013, the UK has made an outstanding contribution to corporate transparency by committing to an open public registry of corporate beneficial ownership.[38] The same level of ambition needs to be developed throughout other major markets regarding beneficial ownership and strengthened for IAD registers. Financial institutions should be obliged to use them and sanctioned effectively for failing to manage PEP risk.

7.2 RELIANCE ON THE ORIGIN STATE

The Financial Action Task Force notes "in nearly all recent cases of grand corruption, the detection and investigation of the criminal activity of heads of government occurred only after there was a change of government, specific corrupt individuals fell out of favour, or there was widespread public outcry after wrongdoing was publicly exposed. Whilst the PEPs were in power, there was no real opportunity for domestic law enforcement agencies to investigate their financial crimes."[39]

Difficulty in waiting for a cooperative regime to emerge in an origin state is the time that has passed

The UK's preferred asset recovery process for grand corruption is to focus on active and supportive origin states where, ideally, a collaborative investigation leads to a process of MLA for international transfer of evidence and a confiscation following a criminal conviction.

A difficulty in waiting for a cooperative regime to emerge in an origin state is the time that has passed between the act of corruption and any investigation, sometimes only emerging decades after the crimes and money laundering has taken place. With the passage of time, former corrupt officials and politicians will have concealed and layered corrupt assets, likely in multiple jurisdictions, mixing illegitimate income with legitimate income. As William Bourdon, founder and President of Association Sherpa recently noted "Time is the great ally of the kleptocrats. Every minute lost equals millions of dollars."[40]

Once a supportive regime does eventually emerge in the origin state, a substantial amount is expected of them.

From a UK perspective, ideally, the origin state should demonstrate – across the party political spectrum – a sustained commitment to domestic conviction of the accused and ensure that the convicted are not acquitted at a later date. This is the case regardless of any domestic reconciliation process and despite the lingering influence of the corrupt former official or politician in question. Origin state law enforcement will need to identify the relevant banks, assets and accounts associated to the alleged corrupt party, despite widespread use of secret banking and corporate and trust vehicles to conceal ownership. Investigators should also develop an understanding of the UK common law system and command a standard of the English language such that they do not miscommunicate on precise legal terms. As they engage with their UK counterparts, they must establish suspicion to a UK law enforcement standard, and identify the criminal conduct and supporting evidence with a view to securing the domestic conviction against the suspect. All of this must be taken forward within a timeframe that makes tracing the asset a realistic possibility.

These expectations for the origin state law enforcement are, in the majority of cases, likely to be unrealistic.

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38. https://www.gov.uk/government/speeches/pm-speech-at-open-government-partnership-2013 [accessed: 5 Dec 2013]
39. FATF Specific Risk Factors in Laundering the Proceeds of Corruption: Assistance to Reporting Institutions (Jun 2012), http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf
40. Campaigners target suspicious assets of foreign leaders in France (6 Oct 2013) http://www.ft.com/cms/s/0/78467c94-2cd3-11e3-8281-00144feab7de.html

The basis for the MLA process for gathering evidence in cross border asset recovery investigations is a criminal one and typically a conviction in the origin state. This can prove impossible or extremely difficult due to a number of reasons:

- The wrongdoer is dead or has fled.
- The wrongdoer has immunity and/or his family or close associates have continuing significant influence within government preventing or derailing any criminal investigation.
- The judiciary is inexperienced in dealing with asset recovery matters, and in some instances its lack of independence prevents cases reaching a positive or even any conclusion.
- The investigating and prosecuting authorities do not have the capacity or legal framework to investigate complex corruption cases.
- The evidence establishing some form of predicate crime has been destroyed or lost, perhaps due to the wrongdoer's many years in power.
- Enforcement of confiscation orders can be difficult, sometimes impossible, particularly when they are owned by corporate vehicles and trusts located in foreign jurisdictions which successfully mask the beneficial ownership.

Some countries make use of illicit enrichment laws – a criminal offence that is not recognised in the UK

Other difficulties, regarding supportive origin states typically include:

- **Inability to freeze assets at an early stage**. Whilst restraint orders in the UK (in support of criminal investigation) under POCA are granted on the basis of satisfying the balance of probabilities (like the civil standard), the prosecution still has to show that – on the balance of probabilities – there is reasonable cause to believe that the suspect has benefited from the corruption. Reasonable suspicion is not enough. Reasonable cause is a higher standard, such that there can be no reasonable belief other than criminality, and may be difficult to establish in corruption investigations, particularly at the beginning of any initiative to freeze assets and perhaps relying on immature legal and law enforcement authorities in the origin state for evidence.

- **Inability to secure domestic conviction**. Even if an origin state can demonstrate there is a predicate offence and secure a criminal conviction, which has historically been shown to be very difficult, there is no guarantee a domestic conviction would meet the due process and legal requirements of the requested state. Indeed, the greater risk is an acquittal in the requesting state. This leaves a requested state, such as the UK, which may have seized the assets, in a precarious position where it may need to lift the freeze and be subject to damages claims.

- **Dual criminality and so-called lawful corruption**. It is generally the case that a requested state – receiving an MLA request – will only act if the crime which gave rise to the assets in question also constitutes a criminal offence under its own national laws; this is called "dual criminality". One problem with this is that, in many instances, assets have been acquired through so-called "lawful corruption"; the use and manipulation of power to implement legislation for private gain. Alternatively, some countries make use of illicit enrichment laws – a criminal offence that is not recognised in the UK. Therefore the UK may find it difficult to establish dual criminality associated to such a request.[41]

- **Lack of expertise or understanding of the MLA process**. Many of the delays in sharing information and freezing assets through the MLA process from the UK perspective can be attributed to a lack of understanding in the origin state as to the requirements that must be fulfilled for a successful MLA request. These can include ensuring that justification submitted in an MLA request meets the UK standard for evidence and suspicion, and that an MLA request for evidence should ideally take place after an investigative dialogue on intelligence of criminal conduct. While the UK is committed to education and communication activity around the UK MLA process, more needs to be done.

41. Illicit enrichment is criminalised under Article 20 of the United Nations Convention against Corruption (UNCAC), which defines it as the "significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income."

- **Absence of trust between agencies**. A lack of trust between competent authorities can create unnecessary hurdles to mutual cooperation. In particular, this can manifest itself around the issue of repatriation of assets and the potential conditions that may be imposed by a requested state – such as the UK – on their return.

- **Statute of limitations**. In many jurisdictions that the UK may be seeking to cooperate with, it is prohibited to initiate criminal proceedings after the expiration of a legally determined period of time from the date of the offence. Such provisions are known as periods of prescription or statutes of limitation. If the period of prescription has expired, in either the origin state or in the UK, an MLA or a foreign confiscation order may be refused.[42]

An over-reliance on the origin state will mean that asset recovery is not likely to be effective

Where a state has been the victim of corruption and it has the political will to pursue the wrongdoers and their assets, a criminal conviction in the origin state can be the most effective means of obtaining justice. However, because of all the difficulties referred to in this section, an exclusive focus on this outcome and an over-reliance on the origin state will mean that asset recovery is not likely to be effective against the scale of the corrupt funds.

42. StAR Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action (Jun 2011) http://star.worldbank.org/star/publication/barriers-asset-recovery

8. THE ROLE PLAYED BY THE UK'S OVERSEAS TERRITORIES

British Overseas Territories (OTs) and Crown Dependencies (CDs) are also believed to play a substantial role in facilitating illicit funds.

In 2011, the UN Office on Drugs and Crime and the StAR initiative analysed over 150 grand corruption cases and found that out of the corporate vehicles involved in money laundering associated with the cases, the following territories had hosted the secret corporate vehicles: British Virgin Islands (91); United Kingdom (24); Cayman Islands (15); Bermuda (12); Jersey (12); Isle of Man (7)).[43] Oxfam estimates US$7.18 trillion is held in accounts situated in British OTs and CDs.[44]

Responsible financial centres must provide adequate resources to financial investigations

Responsible financial centres must provide adequate resources to financial investigations and enforce adequate AML requirements. All of the recommendations in this paper should likewise be considered by the law enforcement and policy arms in the OTs and CDs.

The UK Government should continue to work with the smaller OT financial centres to ensure that their FIUs and regulatory authorities have capacity commensurate with the size of their financial activity, and that practical training and technical assistance are provided for this purpose.

An indicator of success will be the scale and quality of SARs filed in the OTs and CDs shared with the UK FIU, and their role in tracing and tracking illicit funds and facilitating asset recovery. Financial centres should be aspiring to the same level of SARs received by the UK mainland, in proportion to their size as a financial centre, provided that the UK can improve the effectiveness of its own AML regime. The UK authorities currently receive around 250,000 money laundering SARs per year from financial and legal professionals.[45]

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43. StAR The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It (2011) http://star.worldbank.org/star/publication/puppet-masters

44. http://www.oxfam.org.uk/media-centre/press-releases/2013/05/tax-haven-cash-enough-to-end-extreme-poverty [accessed: 5 Dec 2013]

45. "Money Laundering: Dealing with Risk and Suspicion" (Summary of event in 2006): http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/il191006.pdf [accessed: 5 Dec 2013]

9. EXPLORING A PROACTIVE LEADERSHIP AGENDA FOR ASSET RECOVERY IN THE UK

The UK can take actions, independently, to improve the detection of corrupt money laundering and end the over-reliance on the origin states to take forward grand corruption investigations and asset recovery.

A reliance on supportive origin states and bi-lateral political support for criminal prosecutions and asset recovery is not sufficient to meet the scale of the problem. Waiting for political will on both sides and for well-resourced and independent investigative and judicial capacity in the origin state, is producing a mere trickle of results against a torrent of corrupt illicit funds. As a strategic choice, it unfortunately enables the current environment of:

- allowing the corrupt to steal with impunity
- enabling only a tiny proportion of assets to ever be seized, let alone repatriated
- creating considerable difficulties in recovery and return, even in prominent cases with guilty pleas
- providing safe havens for corrupt assets in the international financial system, not least in London and British OTs
- failing to deter those who have laundered the money through their financial or professional institutions
- ultimately, facilitating the severe harm caused by corruption, often directed at the most vulnerable citizens

An alternative is for the UK to change its approach from one which demands a considerable amount from the origin state, to a proactive leadership approach. Such an approach should actively seek out and pursue corrupt funds, fully utilising the strength of UK investigative and judicial capacity, the importance of London as a financial centre, and the opportunity for its legal jurisdiction to capture corrupt money laundering.[46]

The UK may require a political decision to make asset recovery less political

To achieve this, the UK may require a political decision to make asset recovery less political.

Objectivity and automaticity are needed at the level of private sector AML and at the level of police investigations. There should be a clearer legal basis for detecting, restraining and seizing suspicious assets belonging to PEPs, such that law enforcement can investigate corruption closer to the point of the crime and not be reliant on a supportive political environment, both in the UK and in the origin state.

Justice is best secured by criminal prosecutions, convictions and confiscation, in those cases where it can be achieved.[47] However, a policy shift may also be required to recognise that in the majority of corruption cases, the circumstances of the case will mean that asset recovery will be unlikely if the individuals alone are pursued with the aim of seeking a criminal conviction. Success will require targeting the assets themselves in parallel with, or in place of, pursuing the individual where a conviction is not possible. As Australia's Federal Justice Minister recently put it which may be equally applicable to corruption: "Arguably the most effective way to combat organised crime is to seize the funds and the assets that they make from their criminal behaviour".[48]

It should be understood that a proactive approach to asset recovery will need to be funded. By relying on UK taxpayers and policing budgets alone, at current resourcing levels, the UK is not going to be able to investigate the vast scale of corrupt funds likely to be flowing into the UK. Police and prosecutor funding for asset recovery needs to be sustainable and scalable.

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46. StAR A Good Practices Guide for Non-Conviction Based Asset Forfeiture (2009) http://star.worldbank.org/star/sites/star/files/Non%20Conviction%20Based%20Asset%20Forfeiture.pdf
47. The Ibori case is currently a rare example of a foreign corrupt politician facing the full brunt of a criminal trial on our shores, and hopefully leading to the repatriation one day of the proceeds of his crime.
48. New laws to grab the unexplained wealth of bikies and Mr Bigs (9 Oct 2013) http://www.heraldsun.com.au/news/law-order/new-laws-to-grab-the-unexplained-wealth-of-bikies-and-mr-bigs/story-fni0ffnk-1226735677516

10. RESPECT FOR CIVIL LIBERTIES, ILLICIT ENRICHMENT AND PROPORTIONALITY IN ASSET RECOVERY

There is a point at which strengthened asset recovery powers for law enforcement may breach civil liberties. For example, objections have been raised to illicit enrichment offences, not least over concerns around a shift in the burden of proof, undermining the legal principle of being innocent until proven guilty and removing the suspect's rights against self-incrimination.

However, beyond the international precedent outlined in this paper, there is legal opinion in support of specific enhancements to asset recovery powers that can be justified as a proportionate response to the public harm caused by grand corruption.

44 countries, predominantly from the developing world, had created an offence of illicit enrichment

At the time of the StAR Initiative's 2012 study *On the take: Criminalizing Illicit Enrichment to Fight Corruption*, 44 countries, predominantly from the developing world, had created an offence of illicit enrichment. The study indicated that those countries that actively prosecuted the offence found it to be a valuable tool in combating corruption. The report states, "experience in several jurisdictions that have overcome these challenges shows that illicit enrichment offences can be defined and implemented in a manner that fully respects the rights of the accused. Human rights clearly delineates that the presumption of innocence does not prevent legislatures from creating criminal offences containing a presumption by law as long as the principles of rationality and proportionality are duly respected".[49]

Furthermore, the European Court of Human Rights has accepted, in principle (though not in jurisprudence related to illicit enrichment), that it can be appropriate to shift some of the evidentiary burden of proof to the accused where the legislature has decided that this would be in the public interest, as determined by the court, taking into account the facts of the case and being within reasonable limits that respect the rights of the defence.[50]

Both the UK and Australian Proceeds of Crime Acts, permit the burden of proof to be placed on the defendant to demonstrate that the assets in question have not been acquired illicitly, provided a criminal conviction has been obtained in relation to certain offences such as drug trafficking and money laundering and the prosecution can demonstrate that the defendant has a "criminal lifestyle". These powers have been largely used in connection with narcotics offences.[51] In the Netherlands, the country modified its criminal code (Article 36e) through the "Pluk-ze" ("Squeeze 'em") Act in 1993 to allow the partial reversal of the burden of proof in cases associated with illicit proceeds that are the product of committing a specific set of crimes, such as drug trafficking. The Dutch Supreme Court also has upheld that the provision does not violate the European Convention on Human Rights, which declares the presumption of innocence (Article 6(2)).[52]

The issue is complex and this paper is not intended to provide a comprehensive list of the pros and cons of the above approach. Nevertheless, it signals a need for both the UK and the international community to consider the matter in further depth both domestically and through bilateral discussions with state parties to the UN Convention against Corruption (UNCAC). In November 2009, the third session of the Conference of State Parties of UNCAC adopted Resolution 3/3 which urged "further study and analysis of, inter alia, the results of asset recovery actions and, where appropriate, how legal presumptions,

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49. StAR On the Take: Criminalizing Illicit Enrichment to Fight Corruption (Dec 2012) http://star.worldbank.org/star/publication/take-criminalizing-illicit-enrichment-fight-corruption
50. ibid
51. http://www.transparency.org/whatwedo/answer/illicit_enrichment_regulations [accessed: 5 Dec 2013]
52. http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205401377_text [accessed: 5 Dec 2013]

measures to shift the burden of proof, and the examination of illicit enrichment frameworks could facilitate the recovery of corruption proceeds."[53]

Public officials and politicians already face enhanced money laundering monitoring

It should be noted that public officials and politicians already face enhanced money laundering monitoring, on account of FATF AML recommendation relating to PEPs. There is already enhanced financial disclosure for public officials and politicians, through IAD registers, although their use is patchy and they are produced to different standards in different countries, if at all. As such, a move towards shifting in the burden of proof for substantial unexplained wealth, specifically for public officials and politicians, is not a radical departure from the direction of AML regulations and is arguably proportionate and appropriate, when considering the power and responsibility that comes with choosing public office. For this reason, experts have argued that an illicit enrichment offence should be restricted to public officials and politicians.[54] For the purpose of this paper we describe such an offence as a "corrupt enrichment" offence, rather than an illicit enrichment offence.

53. This was again reflected in the Resolution 4/4 following the fourth session of the Conference of State Parties of UNCAC in 2011 http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0988538e.pdf

54. U4 The accumulation of unexplained wealth by public officials: Making the offence of illicit enrichment enforceable (Jan 2012), http://www.u4.no/publications/the-accumulation-of-unexplained-wealth-by-public-officials-making-the-offence-of-illicit-enrichment-enforceable/downloadasset/2638

55. StAR A Good Practices Guide for Non-Conviction Based Asset Forfeiture (2009) http://star.worldbank.org/star/sites/star/files/Non%20Conviction%20Based%20Asset%20Forfeiture.pdf

56. notwithstanding the benefits of the NCBAF measure in criminal proceedings

57. The State of Libya v Capitana Seas Limited [2012] EWHC 601 (Com) http://www.lawtel.com/UK/FullText/AC0132797QBD(Comm).pdf.

11. PRIVATE LITIGATION OPTIONS

Private civil actions are where the origin state itself institutes civil proceedings for damages or to recover assets in the courts against corrupt officials, their corporate vehicles or even complicit intermediaries.

Tools available to private litigants to freeze and recover corrupt assets are powerful

While criminal prosecution and non-conviction based asset forfeiture by the UK government is the preferred option for justice, in some cases a private civil route may be the better option to secure and recover stolen assets. In English courts, tools available to private litigants to freeze and recover corrupt assets are powerful. They can include the following:

- Freezing injunctions, including worldwide freezing orders (WFO), can be ordered on funds suspected of being the proceeds of corruption, pending the outcome of the claim. Freezing orders can also be issued here in support foreign proceedings. This is usually made without notice, and often before the claim has been issued, where the plaintiff has demonstrated:
  - sufficient evidence as to the existence and location of assets
  - a real risk of dissipation of the assets before a judgment could be enforced
  - that the injunction is 'just and convenient'
  - Search and seizure orders
- Ancillary orders, which may be used to order the handover to the court of the defendant's passport, if the defendant is within the jurisdiction of England and Wales
- Orders for the repatriation of assets outside the jurisdiction back to England and Wales
- Orders preventing third parties, such as banks, from informing defendants of the existence of a freezing order
- An order requiring the defendant to disclose the identity and location of his assets
- In exceptional and justifiable circumstances, an order for the cross-examination of the anticipated defendant's disclosure affidavit[55]

Provided a sufficient case can be made, these considerable powers can be available to an origin state taking forward a private civil case. In addition to the speed with which the litigation tools can be deployed, civil proceedings have an advantage of the lower burden of proof (compared to the criminal standard).[56] Cases are decided on the balance of probabilities standard, which is particularly useful in corruption cases where evidence is incomplete and inferences need to be drawn from the evidence available.

However, beyond awareness issues, a major drawback of the private civil option is cost. Private litigation costs in the UK are often, or are perceived to be, prohibitive for origin states to take forward. More imagination and ambition needs to be provided here to ensure that the power of private litigation is brought to bear against corrupt officials, where it is appropriate and where a criminal or a non-conviction based asset forfeiture route is not possible. Civil proceedings can deliver effective results, as was shown by the transitional government of Libya when it recovered a £10 million (US$16.1 million) property in North London belonging to the third son of Muammar Gaddafi through civil proceedings, and should not be overlooked.[57]

In the UK system there is no basis for civil society to bring private civil proceedings in the UK. Rights of action generally lie with the government or state entity that has been harmed by corruption. Consideration needs to be given to how civil society or citizens can be provided with a direct right of action against corrupt assets, also including how their rights under statute in their home country can provide for this. However, whilst not as formal as the "partie civil" process in France, civil society can provide evidence to UK law enforcement for them to take forward an investigation.

In certain cases, it may be possible for a more efficient model of cooperation to be developed between a UK public prosecution and a private civil case brought by the origin state. This could include information sharing and developing a common strategy about how to go after the spread of assets, some of which may be more appropriate for the origin state to pursue through a private case. Care needs to be taken over evidence and information obtained using compulsory powers and to respect the CPS obligation to provide full disclosure to the courts, but if the stakeholders can develop relationships of trust they may be able to develop a joint legal strategy and provide for a more effective overall outcome.

12. RECOMMENDATIONS

To achieve the radical improvement of asset recovery that is needed, and to tackle the vast flows of funds from grand corruption that are likely to enter the UK undetected, Transparency International UK makes the following recommendations:

1. **Consider creating a corrupt enrichment offence**. Substantial, suspicious and unexplained funds belonging to public office holders, far beyond their declared official income and assets, should be the basis for a 'corrupt enrichment' criminal offence in UK law, in line with article 20 of UNCAC. The jurisdiction of such an offence would be any suspicious transaction, relating to the public official's assets, passing through the UK financial system. The offence would have an extra-territorial reach, in similar form to the Bribery Act, such that a foreign PEP using the UK to transfer funds far in excess of their IAD would generate suspicion that they had committed the offence. Such an offence would provide the basis to end the over-reliance on convictions in the origin state and to empower the UK to take an assertive role in fighting corruption as it flows through the UK financial system. As distinct from "illicit enrichment", which has also been targeted at drugs offences, the corrupt enrichment offence would reverse the burden of proof, upon reasonable suspicion, specifically for those individuals who have chosen the responsibility and power of public office. At the same time, such an offence in the UK, may have the causal effect of encouraging foreign PEPs to have completed and filed accurate IADs.

2. **Incentivise private sector detection of corrupt funds**. The UK financial regulator should follow up with tough sanctions in response to the recent regulatory findings of low standards in the UK financial sector around PEP AML procedures. To improve the overall system, the UK should encourage the creation of an international standard for registers of income and assets of public officials and politicians. This standard should require that the information is published as shared data, available to the private sector, updated on a regular basis and subject to audit. Using these IAD registers, as part of basic AML systems, financial services providers should be obliged to identify if PEP transactions are far in excess of what would be expected from their declared income. Consideration should also be given to providing banks with a statutory defence to civil proceedings from PEP customers where banks could be expected to justify in court their suspicions of money laundering.

3. **Enable quicker freezing of assets**. Private sector SARs should result in assets being frozen when a prosecutor judges that there is reasonable suspicion of criminality. The initial restraint of assets could be made easier if the cash forfeiture principles under POCA were applied to a wider asset pool for PEPs, including bank accounts. As such, consideration should be given as to whether asset restraint orders in the UK should be authorised on the basis of reasonable suspicion, not the higher standard of reasonable cause. Reasonable cause is very difficult to establish in corruption investigations, when the only information to work from may be a private sector SAR. With regard to administrative sanctions, the UK should follow the lead of Switzerland and Canada and introduce legislation to enable the rapid freezing of assets in post-revolutionary situations or improve the speed of the EU sanctions process. The UK should also consider developing a legal framework for designating corrupt officials and their networks as organised criminal groups, such as utilised to significant effect by the Swiss.

4. **Forge a new consensus on how to fund asset recovery investigations**. Pro-active asset recovery investigations against grand corruption require funding. Relying on UK taxpayers and policing budgets alone, at current resource levels, the UK is not likely to be able to tackle the scale of corrupt funds flowing into the UK. The UK should help develop a new international consensus that allows for policing and legal costs to be recovered from seized assets. This would enable the UK to upscale its investigative effort and move beyond the geographical restrictions of DFID funding. The alternative is for only a small number of these expensive investigations to be funded in the UK.

In addition to the above recommendations, the following changes are arguably more achievable in the short term in order to buttress the UK asset recovery regime:

Support cross-border investigations and communication

5. **Coordinate the UK corruption law enforcement and international liaison effort**. Consideration should be given as to whether an official enforcement unit, like the US Department of Justice's kleptocracy unit, should be established with specific focus on investigating and prosecuting foreign corruption. As identified in the 2013 UK government Serious and Organised Crime Strategy, the new NCA Economic Crime Command could provide this coherence and coordination role. Expanding on the lessons learned by the UK "taskforce" approach to Arab Forum asset recovery, the unit could pool expertise and coordinate the ongoing international liaison work that is currently being carried out by the Metropolitan Police Service, the City of London, the NCA, the Home Office and the CPS with regard to corruption investigations. A new unit, if supported by CPS lawyers, may also be able to make strategic decisions at an early stage as to whether to pursue criminal or civil forfeiture mechanisms, or both, and it may possibly enable restraint and asset freezing orders to be triggered more quickly. Consideration should be given at an early stage as to whether private civil proceedings may be quicker and more effective in some instances for a supportive origin state at the outset of any asset recovery initiative. All avenues must be explored, and recommendations made to the origin state.

6. **Publish performance statistics for UK MLA**. To address negative perceptions of the UK MLA regime, the UK should publish performance statistics and demonstrate that it takes a conduct-based approach to MLA requests. Confidence in the MLA regime is important to encourage its use and the development of investigations. The reasons that MLA requests are being rejected (in an anonymised form) should be published in order to lead to greater understanding and research about the underlying reasons for that rejection. In addition, the UK should consider developing an online tool for requestor states so they can check up on the progress of their MLA requests, as in the Swiss model.

7. **Enhance UK support for international asset recovery networks**. Investigator dialogue and spontaneous information sharing are an important part of asset recovery investigations. UK support for international asset recovery networks, particularly as part of the 2013 G8 presidency, and the City of London and Metropolitan Police activity to establish personal relationships with counterpart investigators should be expanded. The networks need wider, more comprehensive support from the UK government and from international agencies like Interpol and the UN Office on Drugs and Crime. There should be more international dialogue about how to bring coherence and increased capability, reach and tempo of activity to the patchwork of networks that currently provide forums for investigator dialogue.[58]

8. **Create greater certainty around the environment and conditions for asset repatriation**. Trust in eventual asset repatriation is vital to motivate political leaders, citizens, civil society and law enforcement in origin countries to engage in and support asset recovery proceedings. The UK should provide greater clarity about the expectations for repatriation through both conviction and non-conviction based forfeiture, recognising the distinctions between supportive origin states and corrupt-defender states and the need to recover policing costs.

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58. Including the Camden Assets Recovery Inter-Agency Network (CARIN), Stolen Asset Recovery/Interpol Focal Point List; World Customs Organization; Arab Anti-Corruption and Integrity Network; Asociación Iberoamericana de Ministerios Públicos; IBERRED – Red; Iberoamericana de Cooperación Jurídica Internacional Hemispheric Information; Asset Recovery Inter-Agency Network for Southern Africa (ARINSA); Exchange Network; and the Organization of American States network.

Increase the scope of UK investigations

9. **Increase monitoring of UK professional intermediaries**. While the shortcomings of the UK finance sector in managing money laundering risk have been surveyed by the UK financial regulator, lawyers and accountants have not been subject to similar AML monitoring by their own regulatory authorities. This must be addressed as, if anything, such professions may have a higher PEP AML risk than large financial institutions. Intermediaries may have more direct personal relationships with PEP clients and may be more personally reliant on maintaining the income stream from such clients, all reducing the likelihood of effective AML risk management.

10. **Widen the net for UK law enforcement investigations**. The UK corruption law enforcement units in the Metropolitan Police Service and the City of London Police should ideally have an explicit global coverage, beyond DFID priority countries, and be resourced for the task.

11. **Ensure the breadth of UK financial activity is covered by money laundering jurisdiction, including currency settlement**. The Ministry of Justice should provide guidance on the financial sector jurisdiction of English courts and follow the US example to ensure that the Bank of England currency settlement infrastructure – and, therefore, sterling accounts held abroad – would fall within that jurisdiction. It is further suggested that the government should consider removing the right of defendants to challenge the asset-based jurisdiction in the UK in any circumstances if corrupt funds have passed through the UK jurisdiction.

Arrest the assets, if not the individuals

12. **Strengthen non-conviction options for seizing the assets**. Even without new powers, NCBAF could potentially be used more effectively as a powerful tool against corruption. Anti-money laundering offences could possibly be used to form the basis of an allegation that the assets are derived from corruption, with suspicion triggered by transactions in excess of a declared official income and assets. The UK should continue to encourage countries to introduce NCBAF in order to ensure that MLA can be provided to the UK in relation to investigation and enforcement of NCBAF.

13. **Extend the period to refuse consent for a suspicious transaction**. The UK's present regime gives the NCA a period of seven days within which to refuse its consent to a suspicious financial transaction. If it refuses its consent NCA has a period of 31 days (the moratorium period) to obtain a court order freezing the account. A period of 31 days is insufficient time in which to investigate complex corruption cases with international dimensions. The UK provides for an extension of the moratorium period, with judicial oversight, when there is an investigative requirement to do so.

14. **Update POCA with Bribery Act offences**. The government should publish a Statutory Instrument to update POCA Schedule 2 'criminal lifestyle' offences so that any Bribery Act offences are included.

15. **Limit the use of frozen assets to fund legal costs of the defence**. The risk that frozen assets will be depleted in the legal costs of the defence should be negated. Transparency International UK recommends that the use of frozen assets to fund the legal costs of the defence be limited to the cost of legal aid in the UK.

Improve information sharing

16. **Improve IAD information sharing**. FIUs, and ideally financial institutions, should have access to IAD registers for public office holders that exist in many countries, and be able to link them to traditional AML data of PEP registers and beneficial ownership registers. Currently such information is limited and restricted in its use, and also managed differently throughout the world, often not produced as

'data' or not online at all. Where the information and IAD registers already exist, they need to be incorporated into FIU intelligence pictures as soon as possible. IADs would assist in relation to NCBAF applications. As much IAD information as possible should be made available to financial institutions for AML suspicious activity reporting, so they are able to understand if a transaction is suspicious on the basis of the PEP's declared income and assets.

17. **Develop a high quality UK interest and asset declarations register for public officials**. Building on the leadership that it has shown in corporate beneficial ownership transparency, the UK should bring consistency to its IAD regime and publish the information as data, seeking to achieve a gold standard model.

18. **Provide better data on UK asset recovery performance**. As identified by the UNCAC implementation peer review of the UK, published by the UN Office for Drugs and Crime in March 2013, data quality for UK bribery settlements and fines is an issue of concern.[59] The same is certainly true for available public data on assets frozen, seized and returned. The UK should, as part of the Open Government Partnership, provide annual performance figures for assets seized and repatriated in relation to corruption. It was not possible to secure this data for the purpose of this paper. Without better publication of data, it will be more difficult to provide a deterrent to corruption and communicate any improvement in results.

Enhance private civil recovery and compensation options

19. **Improve use of private civil proceedings route for victim states**. Where criminal or non-conviction based forfeiture proceedings are inappropriate or difficult for whatever reason, victim states should be informed about the use of private civil proceedings. In certain prescribed circumstances, documents and information collected as part of a criminal investigation in the UK should be permitted for use in civil proceedings. The opportunity to take forward private civil proceedings, based on UK financial jurisdiction, should be widely advertised to origin states. The UK should also engage in international dialogue to consider how civil society or citizens can be provided with a right of action to take forward private civil cases, including how their rights under statute in their home country can provide for this.

20. **Explore innovative financing methods for private civil asset recovery litigation**. While criminal and non-conviction based asset forfeiture arguably provide a greater opportunity for justice at lower cost, better awareness of private civil funding models should be encouraged in circumstances where criminal routes are not possible. Consideration should be given to how funding can be provided to origin states to support private civil litigation, possibly including greater use of professional litigation funds or public fundraising. Consideration should also be given as to whether an international asset recovery trust fund, available with donations from governments, could provide loans or grants for origin states to bring civil proceedings. Contingency fee litigation for asset recovery cases, where the law firm only gets paid if it makes a successful recovery, should also be explored.

21. **Ensure fines, compensation orders and settlement agreements are maximised as opportunity for asset return**. Transparency International UK believes that prosecution should be the norm in overseas bribery cases and that the level of penalties should be sufficiently high to provide an effective deterrent and provide restitution to victims. In bribery cases, if compensation is not obtained through the criminal process, origin states should be advised that they have a potential civil claim against bribing companies to secure compensation. In parallel, financial institutions that support illicit corrupt funds through money laundering need to be held accountable with the same vigour as the corrupt official, according to the level of breach of money laundering regulations and restitution paid to origin nations.

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59. http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/UK_Final_country_review_report_18.3.2013.pdf [accessed: 5 Dec 2013]

APPENDIX 1:

ASSET RECOVERY – GOOD PRACTICE AROUND THE WORLD

Country	International case study	Why does it not happen in the UK?
Switzerland	*Exceptionally quick asset freezing and shifting the burden of proof onto the alleged wrongdoer in the case of grand corruption in a post-revolutionary environment.* Switzerland has generally frozen assets relating to fallen dictatorships on the basis of Article 184 of its constitution (in order to safeguard the interests of Switzerland), and in the case of Mubarak assets did so hours after the regime collapsed in February 2011. In 2011, Switzerland passed legislation, nicknamed the "Lex Duvalier Act" after the former Haitian President, to enable freezing of corrupt assets if the origin state was unable to take forward an MLA process.[60] Under the legislation, assets of a PEP or their close associates may be frozen at Switzerland's own instigation when certain conditions are satisfied.[61] In May 2013, this was followed by proposed legislation which seeks to regulate and codify the existing practice on asset recovery in Switzerland.[62] The new legislation allows Switzerland to instigate administrative freezing of PEP assets in the circumstances that the origin state government or its judiciary have collapsed.[63] Significantly, the bill allows for confiscation of those assets, if the origin state cannot meet due process standards, the wealth of the PEP increased extraordinarily in connection with their time in public office and the country was notorious for corruption whilst the PEP was in office. This presumption can be overturned if the accused can show that the assets were legitimately acquired. Switzerland also allows for the reversal of the burden of proof in relation to members of any organised criminal network, requiring those alleged wrongdoers	The UK (and the rest of the EU) took thirty-seven days to freeze assets relating to Mubarak, compared to Swiss action within hours after the regime collapsed in February 2011. The UK and EU rely on a lengthy process for agreeing designated sanctions in order to freeze assets following a regime change. The UK relies on a conviction in the origin country or in the UK for criminal asset recovery proceedings. In countries emerging from dictatorship, or where the judiciary or law enforcement lack the capacity or independence to carry out corruption investigations, convictions can prove elusive. The UK's legal requirement to restrain suspected criminal assets is based on reasonable cause, rather than the lower bar of suspicion, and a defined link to a predicate offence. These hurdles can be very high when dealing with corruption. Unlike Switzerland, the UK asset recovery regime makes no distinction between the harm and difficulty of asset recovery relating to grand corruption and PEPs, and any other domestic criminal gain.

60. The MLA process is the channel by which nations make formal requests for law enforcement activity, to obtain orders or to collect evidence.

61. (1) Mutual assistance proceedings concerning a PEP must have been commenced to show the willingness of the requesting state to collaborate; (2) The power of disposal of the assets rests with the PEP or close associates; (3) Mutual legal assistance proceedings in criminal matters must have proven unsuccessful due failures in state structures; and (4) There must be a need to safeguard Switzerland's interests.

	to prove that they have acquired their assets legitimately. This legal provision was successfully and innovatively used in the case of General Sani Abacha, who was dictator of Nigeria from 1993 to 1998, where members of the Abacha family and close associates were classed as members of an organised criminal fraternity. However, the issue for Switzerland going forward is whether countries like Egypt, Tunisia or Libya can be said to have failed state systems, and so even with its potential new proposed law in place, Switzerland may not be able to maintain the freeze on the assets they hold. Switzerland may once again need to rely on the 'organised crime' designation and the assistance of the origin states, which is likely to take years and face numerous challenges.	
Canada	*Fast-tracked asset freezing and recognition of the special considerations required for grand corruption.* In Canada, a similar law to the Swiss Lex Duvalier was introduced in 2011. The Foreign Assets of Corrupt Foreign Officials Act allows the Government of Canada to freeze assets where: 1. there is a written request to do so from the origin state 2. the person who owns the assets that will be frozen is a PEP 3. there is an uncertain political situation in the victim state and the making of an order to freeze the assets in question would be in the interest of international relations However, the legislation does not deal with the confiscation of the assets and repatriation of them outside of the normal conviction then confiscation route (either domestic or foreign).	As in relation to the stronger Swiss legislation, the UK primarily relies on criminal investigations with international cooperation from their counterparts in the origin state to establish reasonable cause or uses – relatively slow – EU administrative sanctions to take hold. The UK makes no legislative distinction between money laundering and the special circumstances of asset recovery relating to PEPs and grand corruption, than any other domestic crime.

62. The official name is "The Federal Act on the Freezing and Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means"

63. See more at http://www.internationallawoffice.com/newsletters/detail.aspx?g=3b70d1f4-3132-4801-a070-9c6486f5edd8. And P. 180, Emerging Trends in Asset Recovery, Bassel Institute of Governance, 2013; Article entitled "The proposed Swiss comprehensive act on asset recovery" by Rita Adam and Valentin Zellweger.

France	*Asset recovery has been used against active and incumbent corrupt officials, despite diplomatic pressure and a defensive origin state.* Transparency International France and their legal counsel, Sherpa, is supporting criminal investigations against stolen assets through the French courts. This was enabled through a 2010 legal ruling in France which accepted that non-governmental organisations such as Transparency International can instigate anti-corruption investigation cases against alleged corruption as being a "partie civile" to the proceedings. Luxury houses in Paris, fleets of cars and bank accounts have all been restrained and sold in relation to Teodoro Nguema Obiang, son of the President of Equatorial Guinea and recently appointed "second vice president". Despite active diplomatic pressure from Equatorial Guinea, corruption proceedings are progressing against his assets in France and in the US. Similar proceedings have been started based on allegations that Rifaat al-Assad – exiled uncle of Syrian president Bashar al-Assad – had illegally funded millions of dollars in property assets in France and the UK. None of the actions, including that against Mr Assad, were initiated by the French government – although Tracfin, the French FIU, is reported by the Financial Times to have supplied court investigators with evidence of alleged money laundering in several African cases.[64]	The UK has not pursued cases where the origin state is defensive against the corruption allegation. The UK does not allow NGOs to instigate criminal proceedings on behalf of an origin state, or intervene as an interested party in criminal proceedings. Further, UK law does not allow origin states to formally intervene as interested parties to criminal the proceedings (which is allowed in Switzerland and France). In addition, the UK has been far more reliant on criminal routes for prosecution and asset recovery, with non-conviction based forfeiture routes under-utilised. Private civil proceedings have been utilised in the UK but the cases are few and far between compared to the estimated amount of corrupt flows in the UK.
USA	*Coordinated law enforcement and prosecution effort against foreign grand corruption, and effective use of the reach of the US financial system to assert jurisdiction over corruption taking place overseas.* The US Department of Justice has established a Kleptocracy Asset Recovery Unit.[65] Its aim is to pursue the assets of foreign corrupt officials, focusing on civil mechanisms to recover the proceeds of corruption. In the US, civil forfeiture proceedings were successfully brought against assets located in Singapore and where the predicate offence took place in Bangladesh. The Department of Justice successfully argued that the transfer of US currency between financial institutions outside the United States necessarily transited through US correspondent banks. Supporting the establishment of jurisdiction was the fact that the foreign company alleged to have made the bribe was registered on the New York Stock Exchange. As such, the US established that they had jurisdiction on the basis that the US dollar-based transactions would have moved through the US currency settlement system. The funds recovered were eventually returned to Bangladesh.	The UK's law enforcement and international liaison activity in relation to kleptocracy is currently being carried out by the Metropolitan Police Service, the City of London, the NCA, the Home Office and the CPS. However, the recent innovation of a joint taskforce approach to Arab Spring asset recovery is believed to have helped focus this effort. UK law enforcement and public prosecution have not yet argued that the jurisdiction of English courts extend to currency settlement taking place in UK financial institutions, i.e. foreign-held sterling accounts. While substantially less significant than the dollar, sterling is still the world's third reserve currency on current IMF figures. Also, in interpreting the reach of the Bribery Act in the UK, the UK Ministry of Justice guidance stipulates that it does not necessarily extend to foreign companies registered on the London Stock Exchange.

64. Campaigners target suspicious assets of foreign leaders in France (6 Oct 2013) http://www.ft.com/cms/s/0/78467c94-2cd3-11e3-8281-00144feab7de.html

65. http://www.whitehouse.gov/blog/2013/11/04/combating-corruption-and-supporting-transition-countries-asset-recovery-efforts [accessed: 5 Dec 2013]

Australia	*Provides a legal basis for seizing funds belonging to criminals, where the convicted party cannot demonstrate a legal source of wealth to explain the assets.* In October 2013, the Australian Government announced that it intended to introduce tougher and more effective "unexplained wealth" legislation. The proposals include removing the discretion of judges to refuse to grant unexplained wealth confiscation orders even when the case has been satisfactorily proved, and removing the right of defendants to pay for their legal expenses by using cash and property restrained during unexplained wealth proceedings. This new initiative is in response to an Australian Crime Commission report that concluded that organised crime is costing Australia US$15 billion annually.[66] It also follows on from legislation introduced by the State of Queensland which allows the courts to issue unexplained wealth orders on the basis of reasonable suspicion that the respondent's assets are the proceeds of unlawful conduct.[67] However, Australia has focused these powers on drugs offences and not used them in grand corruption cases.	The UK has no offence of unexplained wealth or "illicit enrichment". The UK does have the power to issue wide confiscation orders under the UK POCA where it can show the accused, post-conviction, leads a 'criminal lifestyle' – but corruption is not listed as a 'criminal lifestyle' offence under Schedule 2 of POCA. The UK can also make use of powers within Part 5 of the UK POCA with money laundering offences where no predicate offence is required, though it is rarely used in corruption cases. In the UK, grand corruption defendants are able to draw down on frozen assets for legal fees, living and other expenses, where assets are secured in relation to corruption offences.
Guernsey	*Authority to effectively maintain asset freezes despite the lack of conviction in the origin state.* In Guernsey, the FIU retains the authority to refuse consent for transactions indefinitely where there are strong grounds for suspicion of criminality. These powers were used to powerful effect in relation to approximately €36 million (US$49 million) held there with BNP Paribas Bank through a corporate vehicle, Garnet Investments Limited, incorporated in the British Virgin Islands, and beneficially owned by Tomi Suharto, the son of former Indonesian President Suharto. The Government of Indonesia obtained a freezing injunction for a significant period of time but was unable to successfully obtain a court judgment in Indonesia, as directed by the Guernsey Court, which would be enforced against the assets in Guernsey. Accordingly the freezing order was discharged by the Guernsey Court of Appeal in January 2009. However, the assets still remain in Guernsey. This is because Guernsey's FIU has steadfastly refused to grant its consent to release the assets and has fought a judicial review application by Garnet's lawyers to overturn the decision. The judicial review application was rejected.[68] Where there is a 'no consent' decision by the Guernsey FIU it is highly unlikely a bank will move any identified funds, and it effectively amounts to the assets being frozen.	The UK's present regime gives the NCA a period of seven days within which to refuse its consent to a suspicious financial transaction. If it refuses its consent NCA has a period of 31 days (the moratorium period) to obtain a court order freezing the account. A period of 31 days is insufficient time in which to investigate complex corruption cases with international dimensions. Recognising the difficulties of prosecuting PEPs for corruption, the present regime of a maximum window of 31 days in which to commence an investigation and either launch proceedings domestically or trigger criminal proceedings abroad is plainly not fit for purpose and inadequate in this respect.

66. http://www.crimecommission.gov.au/publications/organised-crime-australia/2013-report/introduction#2 [accessed 5 Dec 2013]
67. https://www.legislation.qld.gov.au/LEGISLTN/ACTS/2013/13AC021.pdf [accessed 5 Dec 2013]
68. The Chief Officer, Customs & Excise, Immigration & Nationality Service v Garnet Investments Limited – Court of Appeal (File No. 432) – 6 July 2011, Judgment 19/2011 http://www.gov.gg/CHttpHandler.ashx?id=80267&p=0 [accessed 5 Dec 2013]

GLOSSARY

Anti-Money Laundering (AML)

British Overseas Territories (OTs)

Crown Dependencies (CDs)

Crown Prosecution Service (CPS)

Department for International Development (DFID)

Enhanced Due Diligence (EDD)

Financial Action Task Force (FATF),

Financial Intelligence Unit (FIU)

Income and Asset Disclosure (IAD)

Mutual Legal Assistance (MLA)

National Crime Agency (NCA)

Non-Conviction Based Asset Forfeiture (NCBAF)

Organisation for Economic Cooperation and Development (OECD)

Politically Exposed Persons (PEPs)

Proceeds of Crime Act (POCA)

Suspicious Activity Reports (SARs)

UN Convention against Corruption (UNCAC)

World Bank Stolen Assets Recovery Initiative (StAR)

Worldwide freezing orders (WFO)

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