

## Following the Money: The Role of Asset Recovery in the Fight against Corruption

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### Introduction

Illicit financial flows, defined as “dirty money” (money that is illegally earned, illegally utilised or illegally transferred) have been singled out as one of the major challenges affecting domestic resource mobilisation efforts in both developed and developing countries. Baker (2005) estimates that corruption, bribery and embezzlement contributes 5% to illicit financial flows whilst commercial transactions by multinational corporations and criminal activities such as the trade in drugs, weapons, and people constituted about 60% and 35% respectively. Corruption is regarded as both source and an enabler of other forms of illicit financial flows. Tax evasion, smuggling, corruption, fraud, drug trafficking and money laundering cost Zimbabwe US\$3 billion every year (Financial Intelligence Unit, 2020). What would US\$3 billion mean to an ordinary citizen especially now when the country is battling with COVID-19? Of course, the immediate impacts of illicit financial flows manifest in poor public service delivery and ultimately compromised access to health, education, water and sanitation and weak social safety nets.

Corruption is at the centre of resource leakages in Zimbabwe both at the point of revenue collection and during redistribution. The Zimbabwe Anti-Corruption Commission (ZAAC) in April 2020 reported that 77 high profile corruption cases, with a potential prejudice of US\$500 million, are being investigated. Whilst it is easier to recover the lost revenue side from the revenue collection side, Zimbabwe has no record of recovering lost property resulting from corruption within the national coffers. From the revenue side, the Zimbabwe Revenue Authority managed to recover a total of ZWL\$ 168.1 million and US\$1.9 million which was lost through smuggling and Intermediate Money Transfer Tax (IMTT) remittances. However, there is a ray of hope after the ZACC reported that it has identified US\$7 billion in cash and properties worldwide stashed by former and current senior Government officials as it intensifies its efforts to recover ill-gotten wealth from the country.

In February 2020, the Money Laundering and Proceeds of Crime Act [Chapter 9:24] through the insertion of Chapter IIIA introduced an important tool in the anti-corruption framework, known as the unexplained wealth order. In terms of the unexplained wealth order, specified authorities such as the Zimbabwe Revenue Authority and the National Prosecuting Authority can, without prior notice to the person concerned, approach the High Court seeking an order that the person explain how they acquired assets in question. The insertion of this important section strengthens the foundation of the non-conviction-based asset-recovery.

### **How Asset Recovery Works?**

Asset recovery is defined as the process by which the proceeds of corruption are recovered and returned to their rightful owners. The rightful owners may be countries, individuals, state owned enterprises etc. The United Nations Convention against Corruption (UNCAC) in Chapter 5, Articles 51 to 59 makes provision for asset recovery by State Parties. Zimbabwe is a State Party to this international anti-corruption treaty. The Stolen Assets Recovery Initiative (StAR) acknowledges that asset recovery is a powerful tool to combat corruption. Further, Sustainable Development Goal 16 ('Peace, Justice and Strong Institutions'), target 16.4 aims to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime. The recovery of assets has a potential of contributing to the development of many countries. In the case of Kenya, the government acquired ambulances for its local health districts from the United Kingdom from the proceeds of a bribe in 2017. Whilst asset recovery has a potential of minimising the rewards of corruption as well as acting as a deterrent to those who might want to engage in corruption, it has certain procedures that must be followed to make it a success. These stages include, identifying assets to prove that the assets in question were acquired through corrupt means, tracing assets which show the processes in which they were acquired, freezing of the assets in which the assets are prevented from being used for further criminal activities, confiscation, recovering, returning assets and most importantly managing the recovered assets.

### **Enforcing Transparency in Asset Recovery**

While asset recovery is an important mechanism in the fight against corruption, it is also important to ensure that recovered assets are protected

from corruption and theft. Phil Mason highlights that, “the asset return must be about closing a scandal and not starting another one.” An example of mismanagement of returned assets include the allegations of mismanagement of the US\$624 million which was returned to Kazakhstan by Switzerland and United Kingdom. As the country follows the identified US\$7 billion in cash and property stashed all over the world, there is need to ensure transparency and accountability in the management of the recovered funds consistent with the provisions of the Money Laundering and Proceeds of Crime Act, which dictates the establishment of a recovered assets fund. Strong monitoring and evaluation mechanisms are needed to ensure that the proceeds of recovered assets are channelled towards the development of the nation.

Asset recovery is necessary in ensuring that proceeds of crime deeds do not continue to benefit the corrupt. The country needs to ensure that the buck does not stop after recovering assets. The recovered assets should be put to tangible good use for the development of the nation.



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