

Enforcement of Court Orders in Transnational Corruption

By

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Enforcement of Court Orders in Transnational Corruption

Chair: Prof. Michael H. Hoeflich

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Abstract

Corruption is an evil on the international scale affecting both developed and developing countries and causing an enormous drain on the national resources, impairing socio-economic development, and impairing populations' access to fundamental social services. While some corrupt public officials or private persons appropriate budgetary funds and conceal them in safe havens in international banks. The international effort on international financial crime investigation and cross-border order (CBO)/ asset recovery is intensifying to ensure that illegally embezzled funds return to victim countries. Despite the unified effort of The United Nation Convention Against Corruption (UNCAC); which consider to be the first and only global legally binding international anti-corruption instrument covered public and private sectors and include but not limited to Criminalization and law enforcement (Chapter III, Articles 15–44), International cooperation (Chapter IV, Articles 43–49), and Asset recovery (Chapter V, Articles 51–59). Applying the UNCAC is very hard processes since corruption activates involved several jurisdiction, persons, and organizations.

In addition, Stolen Asset Recovery Initiative (StAR); which is a partnership between the World Bank Group (WB) and the United Nations Office on Drugs and Crime (UNODC), The International Criminal Police Organization (Interpol), and agencies for cooperation established by G8 and G20, put some efforts for CBO/ asset recovery. However, international community still fail or become dramatically delayed because of numerous barriers and obstacles of legal, political, technical, organizational nature, and as almost everybody agrees, “Justice delayed is justice denied.” The problem here is that developing country will not be able to develop.

This dissertation, however, undertook a comprehensive analysis of those barriers and obstacles to produce recommendations on better CBO enforcement for achieving greater

efficiency of international cooperation on asset detection, freezing, and recovery, as well as prosecution of corrupted public officials or private persons. This study also, contains analysis of major strategic tools for improvement of cooperation on CBO/ asset recovery, delineates key barriers and obstacles to efficiency of those efforts, and proposes recommendations for strengthening and optimization of the international CBO/ asset recovery systems and mechanisms.

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First and foremost, I want to thank **Allah** -Subhanahu Wa Ta'ala- for giving me the strength, believe, and ability to begin this research and to persist in completing it thoroughly. Without his blessings and mercifulness, this work would be impossible.

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Finally, to my **Mother**, for the unconditional love, unflagging patience, and unflinching support throughout my life and encouragement to become a better person, this work is simply impossible without her, without watching over me and praying for me continually. She is my guardian angel that keeps me strong.

This work is for you mom!

Ibrahim Fahd Alaskar

Abbreviations and acronyms

AML – Anti-Money Laundering

AMLA – Anti-Money Laundering Act

ARA – Asset Recovery Agency (United Kingdom)

CICAD – Inter-American Drug Abuse Control Commission

DNE – National Anti-Narcotics Agency Special Administration Unit,

EC – European Community

ECHR European Convention for the Protection of Human Rights and
Fundamental Freedoms

EU – European Union

FATF – Financial Action Task Force on Money Laundering

FSRB – FATF Style Regional Bodies

FIU – Financial intelligence unit

G8 – Group of Eight countries (Canada, France, Germany, Italy, Japan,
Russian Federation, United Kingdom, United States)

G20 – Group of twenty countries (Argentina, Australia, Brazil, Canada, China, France,
Germany, India, Indonesia, Italy, Japan, Mexico, the Russian Federation, Saudi Arabia, South
Africa, South Korea, Turkey, the United Kingdom, the United States, and the European Union).

GDP – Gross domestic product

IMAC – Federal Act on International Mutual Assistance in Criminal
Matters (Switzerland)

MLA – Mutual Legal Assistance

MLAT – Mutual Legal Assistance Treaty

NCB – Non-conviction based

NGO – Nongovernmental organization

OAS – Organization of American States

ODA – Official development assistance

OECD – Organization for Economic Co-operation and Development

PEP – Politically exposed person

SAR – Suspicious Activity Reports

StAR World Bank/UNODC – Stolen Asset Recovery Initiative

STR – Suspicious Transaction Report

UN – United Nations

UNCAC – United Nations Convention against Corruption

UNODC – United Nations Office on Drugs and Crime

UNTOC – United Nations Convention against Transnational Organized Crime.

CARIN - Camden Assets Recovery Inter-Agency Network

ARIN-AP - The Asset Recovery Interagency Network of Asia and the Pacific

ARINSA - Asset Recovery Interagency Network

Interpol - International Criminal Police Organization

Europol - The European Union Agency for Law Enforcement Cooperation

Ameripol - The Police Community of the Americas

Aseanpol - ASEAN National Police Chiefs

Eurojust - The European Union's Judicial Cooperation Unit

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Chapter One: Introduction

Background:

Corruption greatly affects countries around the globe, with the most powerful and devastating influence on developing and transitioning countries. Corrupt activities slow down economic growth, diverting resources can be used for public services and infrastructure.¹

Such a situation contributes to the drain on the economies of developing countries, already struggling with corruption. Naturally, the victim country is entitled to and needs to recover its loss. The question is how-effective is the international framework system to this entitlement or situation?

Moreover, corruption undermines the rule of law and erodes public confidence in the government, which negatively affects all sectors. The major challenge facing these countries, in combating corruption and fraudulent financial activity associated with it, is CBO/ asset recovery. The general definition of CBO/ Asset recovery is the process of “seizure and recovery of proceeds of corruption,” obtained through various illegal activities, for example, money-laundering, misappropriation of funds or property.²

¹ Janvier D. Nkurunziza, “Illicit Financial Flows: A Constraint on Poverty Reduction in Africa.” ASSOCIATION OF CONCERNED AFRICA SCHOLARS 87 (2012): 15-21; *see also*, U.N. Office of Drugs & Crime, Anti-Corruption Tool Kit, 183 (2002), available at <http://www.unodc.org/pdf/crime/toolkit/f5.pdf> (“Corruption is not a ‘victimless’ crime, but the only victim in many cases is the general public interest, which is not aware of the crime or in a position to report or complain about it. For this reason, any anti-corruption strategy should include elements intended to bring to light the presence of corruption.”)

² UNCAC in a nutshell. “A quick guide to the United Nations Convention against Corruption for embassy and donor agency staff.” U4. (Apr 2013); *see also*, Article III of UNCAC lists the series of corruption offenses that countries are meant to criminalize in their domestic laws, U4 Anti-Corruption Resource Centre, UNCAC in a Nutshell (Sep 2010), available at <http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>

Everyone needs to understand that under the United Nations Convention Against Corruption (UNCAC), CBO/ asset recovery is not just recovering the general proceeds of crime but also rather recovering proceeds of corruption.³

CBO/ asset recovery is an extremely complex process that involves diverse resources. As noted by Boister and Currie, an effective CBO/ asset recovery system is impossible to build without the adequate capacity of jurisdictions and sufficient human, financial, and other resources.⁴

The process of collecting information can be conducted in accordance with the law and respecting the human rights of a person under investigation, which requires rigid legal rules and procedures. Generally, the process of CBO/ asset recovery consists of three major steps, (1) investigating assets under question; (2) introducing preventive measures to immobilize the assets obtained through corrupt activities; and (3) confiscating, returning, and disposing these assets to the legal owner.⁵

Usually, the process of investigation includes intelligence activities, is conducted both at national and international levels, as the data obtained through intelligence help to identify the origin and ownership of assets in or under question. In order to facilitate the CBO/ asset

³ See Article III of UNCAC list, *supra* note 2; see also, *Stolen Assets & Development*, World Bank, http://www1.worldbank.org/finance/star_site/stolen-assets.html (Mar. 7, 2018).

⁴ Neil Boister & Robert J. Currie, *Routledge Handbook of Transnational Criminal Law* (London: Routledge, 2014), at 141.

⁵ Anne T. Gallagher & Fiona David, *The International Law of Migrant Smuggling* (Cambridge: Cambridge University Press, 2014), 541, see also, Matthew Stephenson, UNCAC, *Asset Recovery and the Perils of Careless Legal Analysis*, Global Anticorruption Blog (May 8, 2014), <http://globalanticorruptionblog.com/2014/05/08/uncac-asset-recovery-and-the-perils-of-careless-legal-analysis/>.

recovery, investigators from different jurisdictions sometimes cooperate and share information, which allows mitigating discrepancies between legal systems and jurisdictions.⁶

Overall, the process of assets recovery is extremely hard, complicated, and challenging because quite often, countries have inadequate resources to support their investigations. Additionally, corrupt individuals have complex schemes to conceal the origin and ownership of illegally obtained or laundered assets. Further complicating this problem is the limited access to financial information due to the data protection regulations and banking law, as well as, the perpetrators ability to use corporate structures to conceal their assets.⁷

The international community has taken important steps to introduce CBO/ asset recovery standards as a part of the global anti-corruption measures, because corruption has no national boundaries and affects both developed and developing countries. The international community must coordinate cross-border anti-corruption approaches and build a strong system of preventive measures, law enforcement, and internal controls to gradually reduce the pervasive impact of corruption.⁸

The recent introduction of global initiatives, regulations, and instruments demonstrates that corruption cannot be tolerated, and public officials or private persons engaged in illegal activities should be punished. The important step stood out in 2003 as the United Nations

⁶ See Anne T. Gallagher & Fiona David, *supra* note 5; see also, Dev Kar & Joseph Spajers, Global Financial Integrity, *Illicit Financial Flows from Developing Countries: 2003-2012*, at vii, 18 (2014), available at <http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf>.

⁷ See Matthew Stephenson, *supra* note 5; see also, The World Bank Group, “Module 5 Asset Recovery Process and Avenues for Recovering Assets (Adopted from the Handbook for Practitioners on Asset Recovery under StAR Initiative),” (July 18, 2017), <http://pubdocs.worldbank.org/en/824561427730120107/AML-Module-5.pdf>.

⁸ William P. Olsen, *The Anti-Corruption Handbook: How to Protect Your Business in the Global Marketplace* (Hoboken, NJ: John Wiley & Sons, 2010), ch. 3; see also, UNODC's, *Action against Corruption and Economic Crime*, (Jan 13, 2018) <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuseide>.

Convention against Corruption (UNCAC) was established as the major point of reference for anti-corruption measures.⁹ The purpose of UNCAC explained in Article 1:

[...] to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery; to promote integrity, accountability and proper management of public affairs and public property.

(United Nations Convention against Corruption (UNCAC) (2003), Ch. 1, Art. 1)

More importantly, this document, which identifies asset recovery as a “fundamental principle of the Convention”, provides a set of regulations for the countries to introduce effective domestic laws. Moreover, to develop procedures of CBO/ asset recovery, and enhance the capacity of relevant authorities to trace, seize, and confiscate the proceeds of corrupt activities.¹⁰

Notably, UNCAC pays increased attention to the prevention of public officials or private person’s wrongdoings, considering deterrence measures as the key to successful fight against corruption.¹¹

In 2003, United Nations Convention against Transnational Organized Crime (UNCATOC) came into force, requiring state parties to criminalize the proceeds of crime and create a sound legal basis for the confiscation of illegally obtained assets.¹² That same year, to

⁹ OECD, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Asset Recovery and Mutual Legal Assistance in Asia and the Pacific (Paris: OECD Publishing, 2010), preface; see also, Mark J. Farrales, What is Corruption? A History of Corruption Studies and the Great Definitions Debate (June 2005), available at <http://ssrn.com/abstract=1739962>.

¹⁰ UNCAC, Ch. 5, Art. 51.

¹¹ Richard D. Hartley, *Corporate Crime: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2008), 110; see also, Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *Asset Recovery Handbook: A Guide for Practitioners* (Washington, D.C.: World Bank Publications 2011), 103.

¹² UNCATOC, Art. 6 & Art. 12.

complement the provisions of UNCAC, African states signed the African Union Convention on Preventing and Combating Corruption and Related Offences.¹³

Furthermore, the introduction of several international CBO/ assets recovery initiatives enables international cooperation aimed to fight corruption. For example, in July 2007, the United Nations Office on Drugs and Crime (UNODC) and the World Bank (WB), to address the problem of corruption and asset recovery, jointly launched the Stolen Asset Recovery Initiative (StAR). The main aim of StAR is to “encourage and promote the ratification, domestication, and implementation” of UNCAC and strengthen partnerships among countries and agencies engaged in anti-corruption activities.¹⁴

StAR works with financial centers and developing countries to prevent and detect laundering of proceeds of corruption and ensure more timely return of stolen assets. Notably, this initiative’s focus is on cross-border order/ asset recovery and it helps facilitate countries’ efforts to work with foreign jurisdictions.¹⁵

In general, the base of StAR is the best anti-corruption practices and sound technical analysis to help the countries address controversial and complex cases of corrupt activities. In addition to StAR, such organizations as International Center for Asset Recovery (ICAR), Organization for Security and Co-operation in Europe (OSCE), Financial Action Task Force (FATF), International Association for Asset Recovery (IAAR), and others provide assistance to countries fighting corruption.

¹³ African Union Convention on Preventing and Combating Corruption and Related Offences (2003).

¹⁴ Marco Arnone & Leonardo S. Borlini, *Corruption: Economic Analysis and International Law* (Cheltenham: Edward Elgar Publishing, 2014), 508; *see also*, Robert Neild, *Public Corruption; The Dark Side of Social Evolution* (Anthem Press 2002).

¹⁵ *Id.*

However despite the enhanced international cooperation promoted by UNCAC, StAR, and other initiatives and agencies, the problem of stolen assets remains at the forefront of the public and political discussion. Therefore, international cooperation is not enough to fight corrupt activities.¹⁶

It is important to note, that globalization, on the other hand, presents risks and opportunities to induce corruption. One of the opportunities it presents to corrupted public officials or private persons is the ability to hide their illicit wealth abroad out of reach of domestic investigators.¹⁷ On the other hand, one of the risks it presents to corrupted public officials or private persons is UNCAC. Under UNCAC, asset recovery is defined as recovering proceeds of corruption, rather than just recovering the general proceeds of crime, which means even if the victim country recovered the corrupted public officials or private persons illicit wealth, they still face a trial for their corrupted activities.¹⁸

Therefore, international cross-border order/ asset recovery remains a major challenge. The aim of this dissertation is to assist, assess, and analyze the international framework for it, especially UNCAC. This dissertation will include but not limited to various international bodies such as the United Nations, European Union, and the African Union, and the Arab Union, having clear provisions aimed at making international order cross-border/ asset recovery affective.

¹⁶ Tracing Stolen Assets: *A Practitioner's Handbook* (Basel- Switzerland, Institute on Governance, International Centre for Asset Recovery) (2009).

¹⁷ Fofack, H. (2012). *Stolen Asset Recovery: The need for a global effort*. (Edited by William Minter and Timothy Scarnecchia Special Bulletin Editors: Léonce Ndikumana and James Boyce), 29; see also, Stephenson et al., *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C.: WB Publications, 2011), 25.

¹⁸ *International Co-operation in the Revocery of Criminal Assets*, (Last visited Feb 22, 2017) www.unafei.or.jp/english/pdf/RS_No83/No83_07VE_Weld2.pdf

Legal Framework for CBO/ Asset Recovery:

International Conventions and Treaties:¹⁹

- United Nations Convention against Corruption.
- United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- United Nations Convention against Transnational Organized Crime
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation on the Proceeds of Crime 1990 and revised Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (2005).
- Southeast Asian Mutual Legal Assistance in Criminal Matters Treaty
- Inter-American Convention against Corruption.
- Council of the European Union Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence.
- Commonwealth of Independent States Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters.
- Council of the European Union Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.
- Southern African Development Community (SADC) Protocol against Corruption 2001
- African Union Convention on Preventing and Combating Corruption and Related Offences 2003.
- Bilateral mutual legal assistance treaties

¹⁹ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

Problem Statement:

Although, much has been done during the past two decades to fight corruption on the national and international levels, evidence and studies suggests that recovering assets hidden in other countries by dishonest and corrupt public officials or private persons remains a major challenge for both developed and developing countries. Evidence suggests that Illicit Financial Flows (IFF) from developing countries are increasing at approximately 9.4% per year, depriving these countries of vital financial support.²⁰

According to data provided by the World Bank's Stolen Asset Recovery Initiative, the cross-border flow of proceeds from corruption, criminal activities, and tax evasion is approximately \$1 to \$1.6 trillion a year. Which mean nearly half of this sum originating from developing economies.²¹

Data provided by the Global Financial Integrity shows that illicit financial flows out of Latin America constitute approximately 3% of the region's GDP.²² Russia, China, Malaysia, Mexico, India, and Sub-Saharan Africa are the biggest exporters of illicit capital.²³ Partially because of inefficient anti-corruption measures and an increasing number of officials that take

²⁰ Dev Kar & Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2003-2012* (Washington, D.C.: Global Financial Integrity, 2014), 8; *see also*, Emile van der Does deWillebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (2011), available at <https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

²¹ John Christensen, "Africa's Bane: Tax Havens, Capital Flight and the Corruption Interface (WP)", 2009, available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_en/contenido?WCM_GLOBAL_CO NTEXT=/elcano/elcano_in/zonas_in/DT1-2009

²² Frank Vogl, "Latin America's Real Corruption Crisis", *The Globalist*, March 27, 2015, <http://www.theglobalist.com/latin-americas-corruption-crisis/>

²³ Gascoigne, Clark. "Crime, Corruption, Tax Evasion Drained a Record US\$991.2bn in Illicit Financial Flows from Developing Economies in 2012." *Global Financial Integrity*, Dec 15, 2014, (Accessed February 5, 2017), <http://www.gfintegrity.org/press-release/new-study-crime-corruption-tax-evasion-drained-a-record-us991-2-billion-in-illicit-financial-flows-from-developing-economies-in-2012/>

advantage of their positions to steal assets or businessmen who has a great power over the government rules.²⁴

Developing countries are the most to suffer from corruption. Shocking statistics demonstrate that the scale of IFF in developing countries, among which money laundered by corrupt officials centrally takes place, has steadily increased since 2004. In 2004, \$465.3 billion were lost to IFF, in 2013, this number increased to nearly \$1.1 trillion.²⁵ These huge sums of money could help many developing states fight extreme poverty, hunger, and unemployment. Additionally, these assets could have a positive effect these assets could have on the private and public sector, business, and state building.²⁶

However, while they remain in possession of corrupt officials, illicit financial flows have a subversive impact on governments and society, undermining governance, facilitating transnational organized crime, fostering corruption, and decreasing tax revenues.²⁷ The most immediate impact of IFFs is a steady decreasing economy in domestic expenditure and investment, in public and private sectors, which adversely affects education, healthcare, judicial system, employment rates, and infrastructure, and the county's reputation.²⁸ Meanwhile,

²⁴ See Gascoigne, Clark, *supra* note 23.

²⁵ Global Financial Integrity, “*Illicit Financial Flows*”, 2016, available at <http://www.gfintegrity.org/issue/illicit-financial-flows/>

²⁶ The National staff, “*Hidden billions of fallen Arab Spring dictators remain elusive*”, (Jun 12, 2013), Available at <https://www.thenational.ae/business/hidden-billions-of-fallen-arab-spring-dictators-remain-elusive-1.656683>

²⁷ See Global Financial Integrity, *supra* note 25.

²⁸ OECD, “*Illicit Financial Flows from Developing Countries: Measuring OECD Responses*”, 2014, available at https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf

criminals, who often belong to economic and political elites, continue to embezzle public resources. Notably, deepening inequality and social deprivation in their home countries.²⁹

As noted hiding the proceeds of corruption is one of the major reasons for huge financial outflows that affect both developed and developing countries. Corrupt public officials or private persons hide billions of dollars in tax havens and cross-border banks, and most of these assets remain inaccessible to their legal owners.³⁰

The problem is that despite multiple anti-corruption international regulations and initiatives, the process of CBO/ asset recovery remains extremely complicated, expensive, and time-consuming. The assets misappropriated usually are transferred through several jurisdictions, including offshore banks, before arriving at their destination.³¹ Typically, several people, or organizations are involved in the transfer of assets to multiple jurisdictions; so anti-corruption agencies should identify each perpetrator and prove that the assets they are hiding were illegal obtained.³²

²⁹ S. Ibi Ajayi and Léonce Ndikumana, *Capital Flight from Africa: Causes, Effects, and Policy Issues* (Oxford: Oxford University Press, 2015), 2.

³⁰ See The National staff, “Hidden billions of fallen Arab...”, *supra* note 26; see also, E.g., Stephanie Nebehay, Swiss Hold \$ 1 Billion in Blocked Arab Spring Assets, Reuters (Oct. 16, 2012, 5:41 AM), <http://www.reuters.com/article/2012/10/16/us-swiss-mideast-funds-idUSBRE89F0J620121016> (Switzerland has blocked nearly one billion Swiss francs (\$ 1.07 billion) in stolen assets linked to dictators in four countries at the center of the Arab spring - Egypt, Libya, Syria and Tunisia - the Swiss foreign ministry said on Tuesday. Swiss authorities are cooperating with judicial authorities in Tunisia and Egypt to speed restoration of the funds, but it is expected to take years, said Valentin Zellweger, head of the international law department at the Swiss foreign ministry).

³¹ Bernd H. Klose, *Asset Tracing & Recovery: The FraudNet World Compendium* (Berlin: Erich Schmidt Verlag GmbH & Co KG, 2009), 173.

³² Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray *Stolen asset recovery: a good practices guide for non-conviction based asset forfeiture*. (Washington, D.C.: World Bank Publications, 2009), http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Stolen_Asset_Recovery.pdf.

Locating and misappropriated assets requires specialized professionals, time, and resources, which developing countries are unable or unwilling to provide.

Furthermore, the process of asset confiscation is still poorly regulated nationally and internationally, with areas such as the presumption of innocence, self-incrimination, retrospective, and double jeopardy, etc. not adequately addressed.³³

In general, the main problem in recovering corruptly acquired assets arises due to the limited capacity of the victim countries' criminal justice systems. Also, law enforcement, prosecutorial, and judicial authorities to prevent asset looting and facilitate recovery of the looted assets in a manner that is within the international accepted legal standards.³⁴

Moreover, studies show that recovery of stolen assets increases in difficulty by the fact that developing states lack the capacity to negotiate complex legal issues. As well as developed countries lacking the will, where most of the corrupt leaders hide their wealth, to assist in the repatriation process.³⁵

Lack of cooperation and political will to enforce recoveries are the major challenges that prevent effective and efficient asset recovery. Article 46 (1) of UNCAC emphasizes the need for the countries to “*afford one another the widest measure of mutual legal assistance in*

³³ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11; see also, Alexander Cooley & J.c. Sharman, Blurring, *the line between licit and illicit: transnational corruption networks in Central Asia and beyond*, 34 Central Asian Survey, 11–28 (2015), <http://dx.doi.org/10.1080/02634937.2015.1010799>

³⁴ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

³⁵ See Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray, *supra* note 32, at 7; see also, Abdelmalek Alaoui, *Three Years Later: The Arab Spring and the Hunt for Former Dictators' Assets*, *Forbes* (Jan. 9, 2014, 8:00 AM), <http://www.forbes.com/sites/kerryadolan/2014/01/09/three-years-later-the-arab-spring-and-the-hunt-for-former-dictators-assets/>

*investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*³⁶

Moreover, as result, the international community faces difficulties applying UNCAC due to the IFF strengthens uncertainty and risk in the national economy, which discourages investment and potential contributions improving the quality of life. By privatizing and transferring public assets abroad, corrupt political officials weaken the efficiency of social and economic anti-poverty measures. While politically exposed persons enjoying easy access to foreign health care and education services, they leave ordinary citizens of developing states out of reach to essential public services.³⁷

Also, another tough criticism is that the numerous factors make the procedure itself more difficult and can take a great deal of time before achieving justice. As a result, D. Scher claims that justice delayed is justice denied; meaning that there is a pressing need to review the current provisions in the international conventions concerning recovery of across borders.³⁸

Similarly, as noted by the Commonwealth Secretariat, the process of asset recovery itself has a bilateral issue. The legal arrangements and political relations between the countries involved play a crucial role in successful confiscation and return of assets.³⁹

³⁶ UNCAC, Art. 46 (1).

³⁷ See Janvier D. Nkurunziza, *supra* note 1; see also, Transparency International, Global Corruption Report 2007: *Corruption In Judicial Systems* (Diana Rodrigues & Linda Ehrichs eds, Cambridge University Press 2007), available at https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf.

³⁸ Scher, D., *Asset recovery: repatriating Africa's looted billions*, (African Security Studies 2014), 14 (4), 17-26; see also, Suleiman al-Khalidi, *Arab Spring Nations Face Delayed Economic Recovery*: IMF, Reuters (May 25, 2013, 8:17 PM), <http://www.reuters.com/article/2013/05/26/us-imf-middleeast-economy-idUSBRE94P00720130526>.

³⁹ Commonwealth Secretariat, *Commonwealth Heads of Government Meeting 2007* (London: Commonwealth Secretariat, 2007), 41.

In reality the signatory countries rarely honor the fundamental principles of transparency and cooperation.⁴⁰ For example, a case in point is the story of a stolen asset in Switzerland relating to the previous Zaire President Mobutu Sese Seko, who was allegedly involved in corrupt activities. Companies located in Switzerland suspected to be involved in President Mobutu case. The Office of the Attorney General of Switzerland (OAG) requested Kenya Anti-corruption Commission for mutual legal assistance, to gather evidence of the predicate Mobutu offense committed outside Switzerland. The procurers of stolen assets started in 2004 and still ongoing.⁴¹ Assets could easily have been returned to their legal owners if the parties managed to build effective cooperation.

In addition to the lack of political will and unstable judiciaries, multiple issues prevent countries from effectively cooperating with each other on CBO/ asset recovery cases. Currently, the existence of different legal frameworks for asset recovery complicates the enforcement of court orders against assets held abroad. This highlights the need to create a single legal framework for effective CBO/ asset recovery.⁴²

⁴⁰ M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 Va. J. Int'l L. 81, 118-19 (2001).

⁴¹ Office of the Attorney General of Switzerland, “*Anglo Leasing affair: Office of the Attorney General of Switzerland Requests Kenya for Mutual Legal Assistance*”, 2014, http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Anglo_Leasing_Switzerland_OAG_MLA_Request_to_Kenya_Jun_20_2014.pdf

⁴² See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11; see also, E.g. Eric Holder, Att’y Gen., U.S. Dep’t of Justice, *Address at the Ukraine Forum on Asset Recovery* (Oct. 23, 2014), available at <http://www.humanrights.gov/dyn/attorney-general-holder-at-the-ukraine-forum-on-asset-recovery/> (Last week - at President Obama’s direction, and in order to build on the work that’s already ongoing - Vice President Biden announced that the United States is committing an additional \$ 1 million in technical assistance to aid the Ukrainian investigation for equipment and other developing needs. Among other things, these funds will place a Justice Department attorney on the ground in Kyiv to work exclusively with Ukraine and its partners on asset recovery and mutual legal assistance issues . . . this move will be critical to augmenting vital information-gathering and communications capabilities in order to enhance asset recovery in both the short and long term.).

Challenges, such as, the inability or reluctance of states to provide financial evidence on cases and inability of existing laws. To ensure effective asset recovery through timely freezing and confiscation of assets results in billions of dollars remaining on the bank accounts of corrupt officials and political actors.⁴³

General Process for CBO/ Asset Recovery:



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⁴³ Int'l Centre for Asset Recovery, *Guide to the Role of Civil Society Organizations in Asset Recovery* (2013) 15, available at http://star.worldbank.org/star/sites/star/files/afar_guide_to_the_role_of_csos_in_asset_recovery_english.pdf.

⁴⁴ The World Bank Group, "Module 5 Asset ...", *supra* note 7, at 4.

Stolen Asset: any sorts of asset, money laundering, and misappropriation of funds or property, stolen by public officials or private persons.

Collecting Information, Intelligence, and Evidence: This usually happen by law enforcements agencies after a request from a prosecutor or a judge. However, in some courtiers private agent may be allowed to gather information.⁴⁵

Securing the Asset: In order to have a successful CBO/ Asset Recovery procedure, the asset under investigation must be secured to avoid disappearance, dissipation, or transfer to another jurisdiction. Moreover, securing the asset granted from a judge to prosecutors, investigating magistrates, or anti-corruption agencies.⁴⁶

Court Process: court proceedings may review the collecting information and involve hearing from suspicious persons and law agencies. Also the judge may review the International conventions and treaties.⁴⁷

Enforcement Order: when the court reaches a judgment about the restraint and confiscation of assets, the court order must be enforce.⁴⁸

Return of Assets: based on the United Nation Convention Against Corruption (UNCAC) any asset that found to be embezzlement of public funds or laundering money, or when the requesting party proves the ownership of the asset. The requested party is bound to return the confiscated asset.⁴⁹

⁴⁵ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 41.

⁴⁶ *Id*

⁴⁷ The World Bank Group, “*Module 5 Asset ...*”, *supra* note 7, at 5.

⁴⁸ *Id*

⁴⁹ UNCAC, Ch. 5, Art. 57.

Purpose of the Study:

As shown in the problem statement, issues many countries currently face on CBO/ asset recovery and anti-corruption measures are complex and diverse, preventing successful and timely recovery of proceeds of corruption to their legal holders or owners.⁵⁰

The objective of this study is to investigate these challenges and suggest improvements that in need to enhance the international anti-corruption framework, and also to facilitate the process of CBO/ asset recovery. In addition, to provide a guideline, best practices, and options for victim countries in seeking CBO/ asset recovery.

More specifically, the following objectives will be introduce in this document:

- Examining the current system of enforcing cross-border court orders/ Asset recovery
- Determining ways in which victim countries can enforce order cross-border/ recovery of stolen assets to reduce international corruption and increase international transparency and integrity
- Analyzing the power of UNCAC in facilitating order cross-border/ asset recovery, along with other initiatives and conventions
- Recommending improvements in international cooperation on order cross-border/ asset recovery for prevention of corruption and lifting asset recovery barriers and obstacles
- Recommending improvements in domestic legislation to prevent corrupt activities and financial crimes

Research Questions:

1. What impact does corruption have on developing and developed countries?
2. What is the current system of enforcing cross-border court orders/ Asset recovery among countries?
3. What barriers and obstacles do victim countries currently face on cross-border order/ asset recovery?

⁵⁰ The World Bank Group, “*Module 5 Asset ...*”, *supra* note 7.

4. What is the prevention processes to ease the international recovery of stolen assets?

Conceptual Framework:

The key aspects included into this study are those of CBO/ asset recovery and international cooperation, so the concept of primary concern in this dissertation is that of cross-border orders as a tool of recovering the stolen asset, as the victim country usually has to first sue the thief. In most cases, corrupted officials hide stolen assets beyond the borders of their country, therefore, recovery of stolen property and funds involves cross-border cooperation and financial claim procedures to recover damage or embezzlement and restore justice. Analysis of this concept may be approached from a lot of perspectives.

First, everyone should keep in mind that different countries have different procedures for cross-border order processing and cooperation with victim countries on asset recovery. Hence, the process of cross-border order is approachable from a socio-economic and socio-legal perspective.⁵¹

Second, UNCAC is an international authority (and the only lawfully binding universal anti-corruption policy) that has established legal doctrines facilitating asset recovery and hindering corruption. In line with that, CBO can be analyzed from the doctrinal perspective.⁵² Finally, the issue of improving cross-border enforcement for simplification of CBO/ asset recovery is approachable in an interdisciplinary way, since it involves a multi-dimensional complex of laws, legal authorities, people, and property.

⁵¹ Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007), 34; *see also*, See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

⁵² *Id.*

Consequently, a socio-legal approach to this analysis may also be included into the framework of analysis.⁵³

Definition of Terms:

Asset – essentially, an asset is anything that possesses value or exchange rate. In relation to recovery of proceeds of corruption, assets are defined as: “any economic advantage from criminal offences, includes property of any description, whether material or non-material, mobile or stuck, solid or fleeting, legal document or instrument evidencing title to, or interest in such property.”⁵⁴

Asset Recovery – the legal process by which countries cooperate to obtain or regain ownership of proceeds of corruption.⁵⁵ Interestingly, UNCAC does not define this term expressively, which highlights the complexity and obscurity of the process. Moreover, FATF define Asset recovery as “the return or repatriation of the illicit proceeds, where those proceeds are located in foreign countries”.⁵⁶

Corruption – according to the definition provided by Transparency International, “corruption is the abuse of entrusted power for private gain.”⁵⁷ WB defined corruption as “the

⁵³ Michael O'Rourke, Stephen Crowley, Sanford D. Eigenbrode and J. D. Wulfhorst, *Enhancing Communication and Collaboration in Interdisciplinary Research* (Thousand Oaks: SAGE, 2014).

⁵⁴ Roberts Kennedy, “Optimizing Asset Recovery through Deregulating Anti-Money Laundry Regime,” *International Journal of Humanities and Social Science* 4, no. 11.1 (2014): 141-148; see also, Stephen Michael Sheppard, *Bouvier Law Dictionary Asset*.

⁵⁵ Radha Ivory, *Corruption, Asset Recovery, and the Protection of Property in Public International Law* (Cambridge: Cambridge University Press, 2014), at 27.

⁵⁶ Financial Action Task Force (FATF), *Best Practices on Confiscation* (Recommendation 4 and 38) and *A Framework for Ongoing Work on Asset Recovery*. (2012), at 1.

⁵⁷ Transparency International, “*What is Corruption?*”, (accessed 29 June 2016), <http://www.transparency.org/what-is-corruption/>

extent to which public power is exercised for private gain, including petty and grand forms of corruption, as well as “capture” of the state by elites and private interests.”⁵⁸

Embezzlement – “the fraudulent transfer of property by an individual or legal entity in lawful possession of assets belonging to another individual or legal entity.”⁵⁹ As explained by (Brun, Gray, Scott, and Stephenson) this type of offence usually refers to corrupt public officials or private persons who misuse their power and influence to misappropriate funds or property.⁶⁰

Illicit Financial Flows (IFF) – as defined by (Kar and Spanjers), IFF is “illegal movements of money or capital from one country to another.”⁶¹ Reuter emphasized that IFF is an ill-defined term and noted that “illicit” in this case does not necessarily mean “illegal.”

According to the scholar, financial flows are illicit when “(1) the acts involved are themselves illegal (corruption or tax evasion) in a regime that has some democratic legitimacy, or (2) the funds are the indirect fruits of illegal acts.”⁶²

International Order Cross-Border – efforts undertaken by countries to enforce judgment against assets held in different jurisdictions. It also called *Asset Recovery* in some countries.

Money Laundering – “the process by which proceeds from a criminal activity are disguised to conceal their illicit origins.”⁶³

Proceeds of Corruption – any property derived directly or indirectly from corrupt activities, such as bribery of foreign public officials or private persons; bribery of public officials

⁵⁸ Sharon Eicher, *Corruption in International Business: The Challenge of Cultural and Legal Diversity* (New York: CRC Press, 2016), 3.

⁵⁹ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 188.

⁶⁰ *Id*

⁶¹ Kar & Spanjers, *Illicit Financial Flows from Developing Countries: 2003-2012*, 48.

⁶² Peter Reuter, *Draining development?: Controlling Flows of Illicit Funds from Developing Countries* (Washington, D.C.: World Bank Publications, 2012), Ch. 1.

⁶³ Stuart Yikona, *Pirate Trails: Tracking the Illicit Financial Flows from Pirate Activities off the Horn of Africa* (Washington, D.C.: World Bank Publications, 2013), 96.

or private persons; abuse of functions; embezzlement, trading in influence; misappropriation or another diversion of assets by a public official or private person; illicit enrichment; bribery in the private sector; and embezzlement of assets in the private sector.⁶⁴

Stolen Assets – proceeds of systematic corruption conducted by officials over an extended period, which involve looting, money laundering, embezzlement, etc.⁶⁵

Tax Haven – a location characterized by no or low taxes, absence of transparency and efficient exchange of information, and no requirement of substantial activity.⁶⁶ Corrupt public officials or private persons to evade taxes in their home countries often use tax havens.⁶⁷

United Nations Convention Against Corruption (UNCAC) – International anti-corruption treaty negotiated and adopted by the UN state members, and by General Assembly in October 2003, also had have supported by the UN Office on Drugs and Crime (UNODC).

It has a cross-border order of corruption with provisions on international law and is committed to cooperation on the recovery of the proceeds of embezzlements. States who have ratified the treaty are also obligated to cooperate in order to prevent corruption through but not limited to technical assistance, and that makes UNCAC the first and only obligated treaty for public and private sectors regarding to anti-corruptions matters.⁶⁸

Mutual Legal Assistance (MLA) – a complex and time-consuming process by which countries can seek international assistance in intelligence, information gathering, in addition,

⁶⁴ UNODC & WB, *Towards a Global Architecture for Asset Recovery*, (Publisher: StAR Aug 1, 2010), at 3, Available at: <https://star.worldbank.org/star/publication/towards-global-architecture-asset-recovery> (last visited Mar 16, 2018).

⁶⁵ *Id*

⁶⁶ William Raabe, Gerald E. Whittenburg and Debra Sanders, *Federal Tax Research* (Mason, OH: Cengage Learning, 2008), 355.

⁶⁷ Jane G. Gravelle, *Tax Havens: International Tax Avoidance and Evasion* (Congressional Research Service, 2015), 3.

⁶⁸ See UNCAC in a nutshell, *supra* note 2.

enforcement of orders and judgments related to asset tracing and recovery.⁶⁹ Typical submission of an MLA request is in writing and must obligate to protocols, procedures, and conditions provided in domestic legislation and multilateral or bilateral agreements along with a court order.⁷⁰

Bilateral Mutual Legal Assistance Treaty (MLAT) – is another channel of cooperation in the asset recovery process. As defined by (Oduor et al), an MLAT is “a bilateral treaty that creates clear and binding obligations between two jurisdictions for cooperation on mutual legal assistance and sets out efficient and comprehensive procedures to be applied.”⁷¹

MLATs typically serve as an additional legal tool for cross-border order cooperation, complementing international conventions such as UNCAC as well as domestic laws. In CBO / asset recovery cases, MLATs provide assistance in complex financial investigations, entitle states to request, and share information about alleged criminals’ bank records or transfers.⁷²

It is very important to note that many countries use MLATs as the primary channel for cooperation in CBO/ asset recovery cases. The United States of America, for example, has created an impressive framework of bilateral MLATs and has used these agreements to regulate mutual legal assistance with foreign jurisdictions.⁷³

⁶⁹ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 127.

⁷⁰ Adam Graycar & Russell G. Smith, *Handbook of Global Research and Practice in Corruption* (Cheltenham: Edward Elgar Publishing, 2011), 364.

⁷¹ Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (Washington, D.C.: WB Publications, 2013), 161.

⁷² UNODC. "Manual on Mutual Legal Assistance and Extradition." (United Nation, NY, Sep, 2012) Available at: https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

⁷³ Marie Chêne, “Mutual Legal Assistance Treaties and Money Laundering,” Transparency International, 2008.

Promise of Reciprocity “Letter Rogatory” – A letter rogatory is a request in formal procedure from a court in one jurisdiction to particular judicial authorities in another jurisdiction requesting to assist the administration of justice in relation to the proceeds of corruption. More specifically, the Promise of Reciprocity communication channel may be used to collect evidence, request compulsory testimony, etc.⁷⁴

Central Authorities – An entity assigned by the government to receive a mutual legal assistance from another jurisdictions. However, the central authorities may deal with the mutual legal assistance or transfer it to another government entity.⁷⁵

Confiscation – A court order for dispossession the assets. The public officials, private persons, or entities lose rights to control their possession or any sort of funds.⁷⁶

Non-Conviction Based Confiscation – Measures allow another jurisdiction to recover stolen asset without requiring convention or treaty, because the domestic law criminalize such action already. (NCB) confiscation also known as in-rem confiscation or property-based confiscation.⁷⁷

Double Jeopardy – Any person, natural or legal, official or private, should not be liable to numerous punishments for the same offence, nor second trial for the same offence.⁷⁸

⁷⁴ Martin S. Kenney, “*The Bankrupt Empires – The Creditors Strike Back*,” A Conference of the Insolvency, Restructuring and Creditors’ Rights Section of the International Bar Association, Salzburg, Austria, 1–3 May, 2005.

⁷⁵ See Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *supra* note 71, at 159 - 162.

⁷⁶ *Id*

⁷⁷ See Financial Action Task Force (FATF), “*Best Practices on Confiscation...*”, *supra* note 56, at 6.

⁷⁸ See Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *supra* note 71, at 159 - 162.

Focal Point – a public official who has legal authority and communicating specialties to receive a mutual legal assistance from another jurisdictions and help demands countries with the legal procedures for the same matter.⁷⁹

Significance of the Study:

The significance of the problem of CBO/ asset recovery is difficult to underestimate; taking into account the fact that corruption is increasing to the top of the political agenda in many countries in the world.⁸⁰ The recovery of the proceeds of corrupt matters could have a positive impact on the country's economy, private and public sectors, business, and the rule of law, but only when these assets are repatriated quickly and used deliberately for the development processes.⁸¹

The facilitation of the process of CBO/ asset recovery is necessary because when billions of dollars are frozen on bank accounts abroad, they cannot bring any benefit to the country's economy and public sector⁸². Furthermore, creating a unified system that would deter and punish corrupt individuals for laundering assets can potentially reduce criminal activity both in the affected countries and in the world, discouraging criminals from committing frauds.⁸³ It is important to ensure that public officials or private persons who engage in acts of corruption are

⁷⁹ *Id*

⁸⁰ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." supra note 9.

⁸¹ Gerald E. Caiden, *Corruption and Democracy, in Where Corruption Lives*, (Gerald E. Caiden, O.P. Dwivedi & Joseph Jabbra eds., 2001), at 227.

⁸² Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (1999), at 179-80.

⁸³ Bjørn Lomborg, *Global Crises, Global Solutions* (Cambridge: Cambridge University Press, 2004), at 338.

unable to move laundered assets through the formal financial system and hide them in another jurisdiction.⁸⁴

Clearly, the process of asset recovery requires more attention by the international and national bodies to demonstrate that corrupt individuals may not only be deprived of their illicit gains but also prosecuted for corruption.⁸⁵ Evidence shows that CBO/ asset recovery raises complex legal and political issues across jurisdictions, and resolving these issues requires close and transparent partnership between the countries involved.⁸⁶

The significance of this dissertation is that it will show the global community the adverse and devastating consequences of corruption impacting the underprivileged citizens of the victim countries. Furthermore, this study will contribute to the current knowledge on CBO/ asset recovery by exploring and analyzing multiple barriers and obstacles that countries face when engaged in cross-border recovery of proceeds of corruption.

Based on these findings, I will provide recommendations as to how engaged countries can facilitate international cooperation on CBO/ asset recovery. In order, to prevent corruption and lifting of CBO/ asset recovery barriers and obstacles. In this way, this study may become crucial to the reduction of the procedural complexity and length of time it takes countries to recover their assets. In the long term, improved cross-border cooperation and increased transparency could significantly reduce financial outflow from developing states, fight pervasive

⁸⁴ See Radha Ivory, *supra* note 55, at 23; *see also*, generally, *UNODC Compendium of Int'l Legal Instruments on Corruption* (2005), <http://www.unodc.org/documents/corruption/corruption-compendium-en.pdf>.

⁸⁵ *Id*

⁸⁶ Hassane Cisse, Sam Muller, Chantal Thomas and Wang Chenguang, *The World Bank Legal Review: Legal Innovation and Empowerment for Development* (Washington, D.C.: World Bank Publications, 2012), 264; *see also*, ARTICLE: CHANGE OR THE ILLUSION OF CHANGE: THE WAR AGAINST OFFICIAL CORRUPTION IN AFRICA, 38 *Geo. Wash. Int'l L. Rev.*

corruption that strips them of the vital resources, and help build strong and economically successful states.

Limitations of the Study:

The basis for analysis and inferences is a set of documented data, legal documents, international provisions, and recordings of cases on international recovery available through libraries, academic databases, and from official sites of related agencies. In addition, materials such as previously conducted research studies, peer-reviewed journal articles, textbooks, and online databases will be analyzed. In order to make sure that the used materials provide credible information, question credibility and expertise of the author, as well as the motive behind publication of the material.

Primary survey data must be one country only. However, this study's focus is on the international enhancement of cross-border orders 'fulfillment and processing, and the goal is to provide the victim country with a guideline to CBO/ asset recovery options and procedures. Consequently, addressing the present limitation by means of rigorous material selection and sorting, resulting in the use of most reputable official sources only.

Another limitation of this study is its cross-sectional focus; performing longitudinal analysis of the way in which enforcement of cross-border orders on asset recovery evolved through years would provided a more comprehensive image of this system. Moreover, such an approach may give additional ideas on improvement of asset recovery practices, with lessons of good and bad practices of the past analyzed. This limitation is addressed by means of socio-legal and socio-economic approaches to analyzed materials and ideas to perform an informed, legally and academically valid opinion on the CBO/ asset recovery improvement based on the recent practices and policies, taking into consideration the strong political influence in this matter.

Organization of the Remainder of the Study:

The organization of this dissertation is into seven chapters. Chapter 2 contains a detailed background literature review on various issues surrounding CBO/ asset recovery at the international scale. It discusses corruption and its various types, consequences of corruption such as stolen assets and property, and lays out details on the international system of asset recovery.

Moreover, this will include but not be limited to a lot of processes such as the tracing of the assets, freezing the assets on the receiving country, confiscation the assets, and repatriation of proceeds stored in foreign jurisdictions. Chapter two also provides information on agencies and legislation on CBO/ asset recovery, basics of international cooperation on asset recovery, and challenges in enforcement of cross-border orders “multi-jurisdictional” for asset recovery.

Chapter 3 is the methodological chapter of this study. It provides all relevant information about the selected research approach, research methodology, and research design. It also provides information on the data sources, data collection and analysis procedures, as well as methodological limitations and ethical considerations connected with this dissertation.

Chapter 4 analyzes the impact of corruption and asset theft on the victim countries. Here, one can find several illustrative cases from both developing and developed countries regarding their struggle against international embezzlement and consequences of asset fraud and theft they made.

Chapter 5 is the second substantive chapter dealing specifically with the issue of international cooperation as one of effective, proactive steps towards improvement of cross-border order enforcement. In this chapter, such issues as refusal from extradition and reluctance to cooperate are discussed as major barriers and obstacles to CBO/ asset recovery, and exchange of information and formal/ informal assistance channels are cited as ways of enhancing

international cooperation. Also, the victim countries approaches, which can be taken to recover assets including but not limited to; 1) Criminal confiscation, which mean directed toward a particular person “corrupted person”, 2) Civil proceedings like action in the civil courts of the receiving country “foreign jurisdiction” where the assets are located, and 3) Non-Conviction Based Asset Forfeiture (NCBF).

Furthermore, chapter 5 focuses on the value of international cooperation and information exchange and victim countries options, in the strengthening of struggle with international embezzlement. Also, focuses on the path towards enhancing the real-life role and power of UNCAC in CBO/ asset recovery, International cooperation, and criminalization and law enforcement.

Chapter 6 is the third content chapter dedicated to analysis of solutions and recommendations on cross-border order enhancement. Some cited solutions include overcoming general, operational, and organizational barriers and obstacles to cross-border order processing and enforcement, optimization of various judicial proceedings related to CBO/ asset recovery, optimization of asset management, and improvement of non-conviction-based forfeiture as an instrument for CBO/ asset recovery.

The dissertation ends with Chapter 7 presenting the summary of key findings and recommendations on enhanced cross-border order processing and improvement of asset recovery. It also contains the general conclusion on the studied subject and new knowledge the dissertation revealed, and provides recommendations for practice improvement and further research within this field of academic interest. Additionally, it provides a solution *out of the box*.

Chapter 2: Literature Review

This chapter is dedicated to reviewing the literature on the scale of corruption in the world and measures taken to address the problem of CBO / asset recovery. This review begins by focusing on the problem of corruption in general. The discussion follows the types of corrupt activities, definitions of forms of corrupt offences, consequences of corruption for both public and private sectors, economies, political life, and the rule of law. This discussion then turns to the countries most affected by this phenomena or issue and advances key principles to fight corruption and good governance.

After addressing the problem of corruption in general, this chapter turns to analyzing several publications that describe the international system of CBO/ asset recovery. This section pays specific attention to the steps and processes involved in the CBO/ asset recovery that includes a non-exhaustive discussion of steps and processes. For example, tracing and freezing the assets in the receiving country, confiscation the assets and repatriation of precedes stored in foreign jurisdictions.

The next section focuses on agencies and legislation responsible for national and international CBO/ asset recovery. After focusing on agencies and legislation, an analysis of international cooperation on CBO/ asset recovery, with examples taken from several successful cases described in the literature. Finally, this chapter will review publications exploring difficulties, barriers, and obstacles in enforcing cross-border orders. This chapter will end with a brief conclusion summarizing the main findings.

Scale of Corruption and Its Consequences on Affected Countries:

Throughout the past decade, there has been an expanding academic and political interest in the phenomenon or issue of corruption, especially in relation to developing countries. Multiple

statistical data, microeconomic studies, and surveys of perceptions allow the creation of a rough picture of corruption in the modern world today.

As noted by Olken and Pande, anecdotal and statistical evidence suggests that corruption is abundant in the developing world. This evidence is in the decreasing of business activity, rising of the marginal tax rate of firms, increases in the marginal costs of public funds, undermining the public sector, and limiting the government's ability to address economic and political challenges.⁸⁷ According to Global Financial Integrity estimates IFF, including bribery, theft, corruption, and tax evasion, cost developing countries more than \$1 trillion every year. This amount is equivalent to the combined economies of Belgium, Switzerland, and South Africa.⁸⁸

Corruption can be so pervasive that public officials or private persons do not attempt to hide it from the public view. As result, for example, recently published documents in Kenya show Wheelbarrows purchased for \$1,000 and Ballpoint Pens selling for \$85 each while the fiscal deficit in the country has increased by almost 9% of GDP⁸⁹ and that shows how the scale of corruption can interfere the government public life.⁹⁰

One of the most comprehensive studies on the scale of corruption, "Illicit Financial Flows from Developing Countries: 2003-2012" was conducted by economists Dev Kar and Joseph Spanjers. In this report, researchers underlined that illicit outflows are steadily increasing by

⁸⁷ Benjamin A. Olken and Rohini Pande, "Corruption in Developing Countries," *Annual Review of Economics* 4 (2012): 479-509; see also, Gerald E. Caiden, *supra* note 81.

⁸⁸ Dev Kar and Sarah Freitas, *Illicit Financial Flows from Developing Countries over the Decade Ending 2009* (Global Financial Integrity, 2011), at 3; see also, generally, Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy* (2005).

⁸⁹ "The Scale of Corruption in Africa," *The Economist*, (Feb. 3, 2015), <http://www.economist.com/news/middle-east-and-africa/21679473-gloomy-news-transparency-international-scale-corruption-africa>

⁹⁰ See *Stolen Assets & Development*, *supra* note 3.

9.4% each year, which is double the number of global GDP growth over the same period.

According to these authors, in a period from 2003 to 2012, the developing countries lost nearly US \$6.6 trillion in illicit outflows.⁹¹ In comparison, the official development assistance (ODA) of the developing world in the same period was only \$809 billion.⁹² As identified in the report, Sub-Saharan Africa experienced the most massive illicit financial outflows, followed by Eastern Europe, Asia, Middle East and North Africa (MENA), and the Western Hemisphere. The scale of financial outflows from these countries is greater than the combined sum of all ODA and foreign direct investment (FDI) allocated in that arena.⁹³ This means assets that should bring benefits to the most underprivileged populations are actually enriching the economies of the most developed countries.⁹⁴

This study became the most important source in this dissertation on corruption phenomena or issue. It proves that corruption affects developing countries the most. It remains the only currently available, credible, and large-scale research on corruption, which uses financial data to assess the problem. Therefore, this study is the primary source for this discussion. Meanwhile, there are many studies by researchers and scholars using perception-based measures of corruption, conducted by Transparency International, the World Bank (WB), various Non-Governmental Organizations (NGOs), and independent scholars. On the one hand, perception-based studies are subject to bias, which limits objectivity and credibility and does not

⁹¹ See Kar & Spanjers, *supra* note 61, at vii; see also, generally, U.N. Office on Drugs & Crime, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes* 127 (2011), available at http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

⁹² See The Scale of Corruption in Africa, *supra* note 90.

⁹³ See Kar & Spanjers, *supra* note 61, at vii.

⁹⁴ *Id*

allow for accurate measuring of the scale of corruption.⁹⁵ On the other hand, such studies are easier to conduct because true financial data is often difficult to obtain, whereas people's views provide a good picture of the problem. Annually, Transparency International publishes updated information on Annual Corruption Perception Index (CPI), which rates countries by their learned levels of corruption.⁹⁶

The presentation of the results lists all the perceived levels in countries all over the world. The list ranges from "highly clean" countries with almost no corruption to "highly corrupt" countries. In 2010, for example, Transparency International conducted a survey of 91,500 people from 86 countries. The results showed that over a one-year period, one in four people paid a bribe to various institutions and services.⁹⁷

In 2015, Transparency International in partnership with Afrobarometer conducted another study, focusing on Sub-Saharan Africa one of the most corrupted regions in the world. Researchers interviewed 43,143 respondents from 28 countries in Sub-Saharan Africa from 2014 to 2015 to explore their perceptions of corruption.⁹⁸ The results of this study were that 75 million

⁹⁵ See Olken & Pande, *supra* note 88, at 4; see also, generally, Robert E. Kennedy & Rafael M. Di Tella, *Corruption in International Business (A)*, (HARV. BUS. SCHOOL Case 9-701-128) at 1 (2001).

⁹⁶ See, e.g., Transparency Int'l, *Corruption Perceptions Index XLSX dataset (2017)*, available at https://files.transparency.org/content/download/2172/13704/file/CPI2017_FullDataSet.xlsx; see also, e.g., In 2007, Transparency International's Report every year on Corruption Perception Index result that the 10 lowest scores countries were: Somalia, Myanmar, Iraq, Haiti, Uzbekistan, Tonga, Sudan, Chad, Afghanistan, and Laos. See *Corruption Perception Index Report, TI* available at http://www.transparency.org/policy_research/surveys_indices/cpi/2007

⁹⁷ Transparency International, *Global Corruption Barometer 2010*, Available at: https://www.transparency.de/fileadmin/pdfs/Wissen/Korruptionsindices/GCB_2010.pdf; see also, *Corruption Perceptions Index 2010 Results*, Transparency Int'l, http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (last visited Dec. 26, 2016).

⁹⁸ Transparency International, *People and Corruption: Africa Survey 2015* (Berlin, 2015).

people have given a bribe in the identified period.⁹⁹ These bribes were mostly to get access to basic public services that could be provided free of charge, for example, paying a bribe to get a driver license. Generally, data suggests that approximately three quarters of the 178 countries in the CPI score as highly corrupted, in the public sector or private sector. This scoring emphasizes the scale of widespread corruption among public officials or private persons in developing states.¹⁰⁰

⁹⁹ *Id*; see also, generally, REPORT OF THE COMMISSION FOR AFRICA, reprinted in Getting Systems Right: Governance and Capacity-Building, 3 INT'L J. CIV. SOC'Y L. 20, 38 (2005).

¹⁰⁰ Transparency International UK, "Corruption Statistics," (Jun 29, 2016), Available at: <http://www.transparency.org.uk/corruption/corruption-statistics/>; see also, See Transparency International, "People and Corruption ...", *supra* note 99.

Types of Corruption:

Corruption includes many illegal practices that adversely influence the economy and public or private life of the affected countries. According to UNCAC, corruption includes:¹⁰¹

1. All types of bribery
2. Embezzlement
3. Illicit enrichment
4. Abuse of influence
5. Money laundering
6. All types aimed to conceal the proceeds of corruption

Corruption can have many forms. It is any unethical act by a person in a position of authority, WB, OECD, and Transparency International (TI), defines corruption as:

¹⁰¹ Bahgat Korany, Arab Human Development in the Twenty-First Century: The Primacy of Empowerment (New York: I.B.Tauris, 2014), at 106; see also, M. Shahid Alam, Anatomy of Corruption: An Approach to the Political Economy of Underdevelopment, 48 AM. J. ECON. & SOC. 441, 442-43 (1989); see also, generally, 33 Ariz. J. Int'l & Comp. Law 661.

Organizations	Corruption Definitions
WB	“the abuse of public office for private gain” ¹⁰²
OECD	“the abuse of a public or private office for personal gain. The active or passive misuse of the powers of Public officials (appointed or elected) for private financial or other benefits” ¹⁰³
TI	“misuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority” ¹⁰⁴

Marshal distinguished three major types of corruption in developed states: grand corruption (political elite), bureaucratic corruption (bureaucrats), and legislative corruption (legislators).¹⁰⁵ In developing countries, corruption is either high or low-level. High level is well-organized corruption on a large scale, when public officials, private persons, and political actors launder millions of dollars. Low-level corruption involves various civil servants who take bribes for public services.¹⁰⁶

¹⁰² V. Bhargava, “*Curing the Cancer of Corruption*”, p.1, [2006], Available at: <http://siteresources.worldbank.org/EXTABOUTUS/Resources/Ch18.pdf>

¹⁰³ OECD Glossaries, “*Corruption*”, *A Glossary of International Standards in Criminal Law*, (OECD Publishing 2008).

¹⁰⁴ E.V., Transparency International. - *The Global Anti-Corruption Coalition*, Available at: <http://www.transparency.org/whatwedo?gclid=CI34t8yS4LICFaTJtAodRS0A2g>

¹⁰⁵ Ahmad M. Mashal, “*Corruption and Resource Allocation Distortion for “ESCWA” Countries*,” *International Journal of Economics and Management Sciences* 1, no. 4 (2011): 71-83.

¹⁰⁶ *Id*

According to Marshal, these two types usually co-exist in developing countries, reinforcing each other and contributing to the public distrust in the governments.¹⁰⁷ This understanding is consistent with that of Mudacumura and Morçöl, who added that although citizens of affected countries are well aware of these corrupt practices, they are either unable or unwilling to fight them.¹⁰⁸

Korany provided a more detailed understanding of corrupt activities.¹⁰⁹ The most widespread category includes small corruption, which are practices associated with basic transactions between citizens and public employees. This activity usually brings benefits of limited value but affects many citizens and public services.¹¹⁰ Furthermore, small corruption occurs on a higher level and involves influential government officials who abuse and use their power to gain illegal benefits. Korany defines these two categories as financial or administrative corruption, as they usually involve embezzlement or bribery.¹¹¹

Korany distinguishes political corruption or “state capture,” which is the abuse of power on the highest level used to strengthen one’s political influence power, launder money, or help associates climb the career ladder.¹¹² This type of corruption is difficult to estimate and practically impossible to combat without the fundamental changes in the political system and society. It is also the most damaging category of corrupt activities because it undermines the rule

¹⁰⁷ See Ahmad M. Mashal, *supra* note 106.

¹⁰⁸ Gedeon M. Mudacumura & Gökтуğ Morçöl, *Challenges to Democratic Governance in Developing Countries* (New York: Springer Science & Business Media, 2014), 172.

¹⁰⁹ See Bahgat Korany, *supra* note 102.

¹¹⁰ *Id*

¹¹¹ *Id*

¹¹² *Id*

of law and impoverishes the society.¹¹³ For example, Arab Spring proves and indicates that “state capture” can bring social unrest and political instability.

Moreover, the various forms of corrupt offences, according to UNCAC, defined and recommended measures, by lots of organizations and conventions as:

Corrupt Offences	Definitions
Bribery ¹¹⁴	<p>TI – “an offer or receipt of any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the conduct of the enterprise’s business”¹¹⁵</p> <p>OECD – “to offer, promise or give a briber to freeing public officials in international business, regardless of where the crime takes place”¹¹⁶</p> <p>UNCAC – “(a) the promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting; (b) the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she in breach of his or her duties, act or refrain from acting”¹¹⁷</p> <p>Inter-American Convention Against Corruption (IACAC) – “subject to its Constitution and the fundamental principles of its</p>

¹¹³ See Gedeon M. Mudacumura & Göktuğ Morçöl, *supra* note 109.

¹¹⁴ See, e.g., U.N. Convention Against Corruption, G.A. Res. 58/4 (XV), U.N. Doc. A/RES/58/4 (Oct. 31, 2003). The treaty makes reference to public officials seeking undue advantage by virtue of accepting a bribe:

“Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally...”

¹¹⁵ Transparency International, Report, “*Business Principles for Countering Bribery*”, December 17, 2013.

¹¹⁶ OECD Anti-Bribery Convention, Art. 1 (1).

¹¹⁷ UNCAC, Ch. 3, Art. 21.

	<p>legal system, each State Party shall prohibit and punish the offering or granting, directly or indirectly, by its nationals, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another State, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions”¹¹⁸</p>
Embezzlement	<p>UNCAC – “each state Party shall adopt such legislative and other measures when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position” ¹¹⁹</p>
Illicit enrichment ¹²⁰	<p>UNCAC – “a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income”¹²¹</p> <p>IACAC – “subject to its Constitution and the fundamental principles of its legal system, each State Party that has not yet done so shall take the necessary measures to establish under its laws as an offense a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions”.¹²²</p> <p>African Union Convention on Preventing and Combating Corruption (AUCPCC) – “means the significant increase in the</p>

¹¹⁸ IACAC, Transnational Bribery, Art. 7.

¹¹⁹ UNCAC, Ch. 3, Art. 17; *see also*, an interesting discussion on the behavior behind embezzlement, see David O. Friedrichs, *Trusted Criminals: White Collar Crime in Contemporary Society* 203-05 (3d ed. 2007).

¹²⁰ *See* Mbaku, *Enhancing Africa's Fight*, *supra* note 2, at 55; *see also*, UN Convention Against Corruption, *supra* note 294, at 154-57.

¹²¹ UNCAC, Ch. 3, Art. 20.

¹²² IACAC, Illicit Enrichment, Art. 8.

	assets of a public official or any other person which he or she cannot reasonably explain in relation to his or her income” ¹²³
Abuse of influence	UNCAC – “the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity” ¹²⁴
Money laundering ¹²⁵	<p>OECD – “the attempt to conceal or disguise the ownership or source of the proceeds of criminal activity and to integrate them into the legitimate financial systems in such a way that they cannot be distinguished from assets acquired by legitimate means”¹²⁶</p> <p>FATF – “the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source”¹²⁷</p> <p>UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances – “The conversion or transfer of property, knowing that such property is derived from any [drug trafficking] offense or offenses or from an act of participation in such offense or offenses, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offense offenses to evade the legal consequences of his actions”¹²⁸</p>

¹²³ AUCPCC, Definitions, Art.1.

¹²⁴ UNCAC, Ch. 3, Art. 19.

¹²⁵ For an interesting explanation see M. M. Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Edward Elgar: London, 2005) 19

¹²⁶ OECD. *Glossary of Statistical Terms*. (Paris: Organization for Economic Co-operation and Development, 2008).

¹²⁷ Financial Action Task Force (FATF), *Money Laundering*. (Apr 27, 2017). Available at: <http://www.fatf-gafi.org/faq/moneylaundering/>

¹²⁸ Schott, Paul Allan. *Reference guide to anti-money laundering and combating the financing of terrorism: supplement on special recommendation IX*. Washington, D.C.WB, 2006.

Consequences of Corruption:

- 1) **How/Why Corruption happens:** Corruption happens when individuals abuse the rights given to their public offices for private benefits. It happens at the intersection between social forces and individual citizens. The motivation for individuals to behave unethically arises when the opportunity to misuse public resources presents itself. Corruption is a widespread activity, which adversely affects people, society, economy, political stability, foreign direct investment (FDI) flows, and sustainable development goals. According to Transparency International, consequences of corruption happen, when the people vested with power misuse it for their own personal gain.¹²⁹
- 2) **Consequence of corruption economically:** Corruption has many adverse social and economic effects because it prevents development. It reduces private investment, diminishes tax revenues, and puts economic growth in danger. For this reason, social inequalities widen, and the citizens' trust in its government reduces. Public policies and government procedures become ineffective because the funds allocated to serve the public ends up for private hands. Corruption also, discourages investment and development because of the resulting high cost of living and conducting business.¹³⁰
- 3) **Consequences of Corruption to People:** People suffer from corruption because it is leads to the lack of quality in services, lack of proper justice, increased chances of

¹²⁹ Transparency International, *What is Corruption?* <http://www.transparency.org/what-is-corruption/>; see also, generally, Cheryl W. Gray & William W. Jarosz, *Law and the Regulation of Foreign Direct Investment: The Experience from Central and Eastern Europe*, 32 Colum. J. Transnat'l L. 1, 28 (1995); see also, generally, Brady Dennis & Tom Hamburger, *5 Proposed Amendments to the Foreign Corrupt Practices Act*, *Wash. Post.* (Apr 25, 2012), https://www.washingtonpost.com/business/economy/5-proposed-amendments-to-the-foreign-corrupt-practicesact/2012/04/25/gIQAXbuVhT_story.html

¹³⁰ See Brady Dennis & Tom Hamburger, *supra* note 130; see also, ARTICLE: WHY THE PRIVATE SECTOR IS LIKELY TO LEAD THE NEXT STAGE IN THE GLOBAL FIGHT AGAINST CORRUPTION, 30 FORDHAM INT'L L.J. 45

unemployment, poor health, high incidence of accidents, etc. It affects the poor people and undermines regional development. The poor citizens are unable to access public resources since they cannot afford to pay bribes.¹³¹ Gokcekus and Bengyak argue that corruption costs people the most in healthcare and education.¹³² As explained by the authors, people in countries affected by corruption are forced to pay bribes for access to basic health services. As a result, corruption worsens health and mortality rates in many developing countries. Gokcekus and Bengyak emphasize that in Sub-Saharan Africa, where people cannot afford to pay for the health services are the most afflicted victims.¹³³ Nadpara's work in agreement with this argument emphasizes that corruption in healthcare negatively affects life expectation and morality rates, especially in poorer areas, developing countries and discourages the use of public health care services.¹³⁴

Furthermore, as noted by Gokcekus and Bengyak, education is another problem severely affected by corruption. Gokcekus and Bengyak stated that in the countries with high corruption levels, the poor and politically disadvantaged citizens have limited access to quality education without paying bribes.¹³⁵ Similarly, Dridi provided convincing empirical evidence that corruption significantly decreases access to schooling and

¹³¹ See generally, Neil Renwick, Millennium Development Goal 1: *Poverty, Hunger and Decent Work in Southeast Asia*, 32 *Third World Q.* 65, 66-67 (2011)

¹³² Omer Gokcekus & Kevin Bengyak, *Peculiar Dynamics of Corruption: Religion, Gender, EU Membership, and Others* (Singapore: World Scientific, 2014), 112.

¹³³ *Id*

¹³⁴ Neil Nadpara, "An Empirical Examination of the Effect of Corruption on Health Outcomes," *The College of New Jersey*, 2015, <https://business.tcnj.edu/files/2015/07/Nadpara-Thesis-2015-revised.pdf>

¹³⁵ See Omer Gokcekus & Kevin Bengyak, *supra* note 133; see also, James W. Williams & Margaret E. Beare, *The Business of Bribery: Globalization, Economic Liberalization, and the 'Problem' of Corruption*, in *Critical Reflections on Transnational Organized Crime, Money Laundry, and Corruption* 88, 117 n.3 (2003).

decreases secondary school enrollment rates,¹³⁶ while Seniwoliba and Boahene found that corruption affects higher education in different forms and scales.¹³⁷

Corruption negatively affects society by exciting disregard for officials and a lack of respect for and trusts in, the government and public services. These negative perceptions of power and public servants are especially dangerous in developing states, as they may lead to the social unrest and political instability.¹³⁸

Experiential evidence also suggests that distrust in the government may also influence everyday relationships between citizens, who become more skeptical and suspicious of others, which, in turn, undermine the social trust between citizens.¹³⁹ In addition, corruption creates misleading stereotypes of people's behavior and discourages citizens from seeking justice. The most noticeable effect of corruption has seen in the economic and financial field. It is a well-known fact that corrupt activities adversely affect resource productivity, foreign investment, economic development, GDP, etc. Corruption drains resources from the economy by diverting money through alternative channels, which inevitably hampers economic growth.¹⁴⁰

¹³⁶ Mohamed Dridi, "Corruption and Education: Empirical Evidence," International Journal of Economics and Financial Issues 4, no. 3 (2014), 476-493.

¹³⁷ J. A. Seniwoliba and B. E. Boahene, "Manifestation of Corruption in Higher Education: The Role of the University Administrator," Research Journal of Educational Studies and Review 1, no. 3 (2105): 78-88.

¹³⁸ Marc Cools, Marleen Easton, Paul Ponsaers, Lieven Pauwels, and Brice De Ruyver, *EU Criminal Justice, Financial & Economic Crime: New Perspectives* (Antwerp: Maklu, 2011), 211; see also, Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

¹³⁹ Bo Rothstein & Daniel Eek, "Political Corruption and Social Trust: An Experimental Approach," *Rationality and Society* 21, no. 1 (2009): 81-112; see also, See generally Claes Sandgren, *Combating Corruption: The Misunderstood Role of Law*, Stockholm University Vol. 39, no 3, (2005), at 717-731.

¹⁴⁰ Clare Fletcher and Daniela Herrmann, *The Internationalisation of Corruption: Scale, Impact and Countermeasures* (New York: Routledge, 2016), 44; see also, Susan Rose-Ackerman & Henry R. Luce, *International handbook on the economics of corruption*, (Law and Political Science), Yale University, (2006).

Avnimelech, Zelekha, and Sarabi conducted an experiential study, which revealed that corruption has a significant negative influence on entrepreneurship by discouraging creative human capital and preventing businesses from free and uncontrolled development.¹⁴¹ Corruption also reduces capital productivity and economic performance, especially in developing countries.¹⁴² In another study, Mustapha found that corruption has a strong statistically significant negative impact on the GDP per capita.¹⁴³ Ahmad and Arjumand argue that one of the explanations for this connection is the fact that countries affected by corruption shows to have increased levels of emigration, which drains the human capital vital for the economic stability.¹⁴⁴

Multiple studies also explain that corruption negatively affects foreign direct investment (FDI) flows. Al-Sadig explained that perception of corruption in general is as an extra tax on profits or additional cost of doing business. As a result, corruption decreases the expected profit of investment projects and prevents potential investors from providing money to a country's private sector.¹⁴⁵ Developing regions like Africa and Middle East are the most vulnerable to decreased FDI flows, as corruption in these parts of the world usually accompanies government

¹⁴¹ Gil Avnimelech, Yaron Zelekha and Eyal Sarabi, "The Effect of Corruption on Entrepreneurship," *DRUID Society*, 2011, http://druid8.sit.aau.dk/acc_papers/1944qlhkqrqpsnsq5gmkf4yvuy4m2.pdf

¹⁴² See generally, David Osterfeld, *Prosperity Versus Planning: How Government Stifles Economic Growth* (1992)

¹⁴³ Nazar Mustapha, "The Impact of Corruption on GDP per capita," *Journal of Eastern European and Central Asian Research* 1, no. 2 (2014): 1-5.

¹⁴⁴ Naved Ahmad and Salman Arjumand, "Impact of Corruption on GDP Per Capita through International Migration: An Empirical Investigation," *Quality & Quantity* 50, no. 4 (2016): 1633-1643.

¹⁴⁵ Ali Al-Sadig, "The Effects of Corruption on FDI Inflows," *Cato Journal* 29, no. 2 (2009): 267-294; see also, e.g., Cheryl W. Gray & William W. Jarosz, *supra* note 130, ("Charges of bribery and corruption can easily erode popular support for economic reform in general, and foreign investment in particular.")

ineffectiveness, lack of infrastructure, unsustainable economy, and weak regulatory frameworks.¹⁴⁶

The consequences of corruption are diverse and affect all spheres of political, social, and economic life. Kofi Annan, the former Secretary-General of the United Nations, accurately summarized adverse effects of corruption:

“... Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish...”¹⁴⁷

Also, António Guterres, the current Secretary-General of the United Nations, accurately summarized adverse effects of corruption in the following statement:

“... No country is immune, and every country bears a responsibility to end it. Corruption strangles people, communities, and nations. It weakens education and health, undermines electoral processes, and reinforces injustices by perverting criminal justice systems and the rule of law. By diverting domestic and foreign funds, corruption wrecks economic and social development and increases poverty. It harms everyone, but the poor and vulnerable suffer most. The theme of this year’s observance is “Corruption: An impediment to the Sustainable Development Goals...”¹⁴⁸

More importantly, evidence suggests that these “corrosive effects” are most pervasive in developing countries, which suffer from inadequate laws and enforcement, corrupt politicians and public officials or private persons, ongoing conflicts, and undermined public system. In such an environment, where money can easily be stolen or laundered, and where no adequate system of money recovery/ CBO exists. It is much easier for corrupt officials or private persons and

¹⁴⁶ Rahim Quazi, Vijay Vemuri & Mostafa Soliman, “*Impact of Corruption on Foreign Direct Investment in Africa*,” *International Business Research* 7, no. 4 (2014): 1-10.

¹⁴⁷ See Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *supra* note 71, at 7.

¹⁴⁸ “*Secretary-General’s message on International Anti-Corruption Day Secretary-General.*” *United Nations.* (Accessed Apr 28, 2017).

<https://www.un.org/sg/en/content/sg/statement/2016-12-09/secretary-generals-message-international-anti-corruption-day-scroll>

criminals to steal assets and hide them safely abroad, where they can bring no benefit to the affected economies of the developing world.¹⁴⁹

Key principles to fight corruption and good governance:

Fighting corruption and good governance includes many principles that help the economy, public, and private life. According to Corruption Watch, fighting corruption and good governance principles include:¹⁵⁰

¹⁴⁹ See, e.g., Ali M. Ali, U.S. \$ 450 Million Abacha Loot 'Can't Be Traced' (May 21, 2009), <http://allafrica.com/stories/200905210132.html> ("UNODC declared in Abuja yesterday that about \$450 million out of the over \$3 billion alleged to have been stolen by the late Head of State, Gen Sani Abacha could not be traced"); see also, e.g., Press Release, U.S. Dep't of Justice, U.S. Restrains More than \$ 3 Million in Corruption Proceeds Related to Former Nigerian Governor (Jul 23, 2012), <http://www.justice.gov/opa/pr/2012/July/12-crt-906.html>. ("Through an application to register and enforce two orders from United Kingdom courts, the Department of Justice has secured a restraining order against more than \$3 million in corruption proceeds located in the United States related to James Onanefe Ibori, the former governor of Nigeria's oil-rich Delta State, announced Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division and U.S. Immigration and Customs Enforcement (ICE) Director John Morton."); see also, e.g., Press Release, U.S. Dep't of Justice, U.S. Forfeits \$ 2.1 Million Worth of Property Purchased with Alleged Bribes Paid to the Family of the Former President of Taiwan (Nov 14, 2012), <http://www.justice.gov/opa/pr/2012/November/12-crm-1359.html>. ("The Department of Justice has forfeited a Manhattan condominium and a Virginia residence – with a combined value of approximately \$ 2.1 million – purchased with the proceeds of alleged bribes paid to the family of the former President of Taiwan, Shui-Bian Chen, as part of the department's Kleptocracy Asset Recovery Initiative. Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division announced the forfeiture today with U.S. Immigration and Customs Enforcement (ICE) Director John Morton."); see also, e.g., David Holmes, *Ex-MAN Trucks Chief Admits Guilt in Bribery Probe*, REUTERS (Sept. 19, 2012, 7:55 AM), <http://www.reuters.com/article/2012/09/19/us-germany-man-bribery/idUSBRE88I0MS20120919>. ("A German regional court sentenced the former head of MAN SE's Truck & Bus division to a 10-month suspended jail sentence on Wednesday for aiding and abetting bribery in connection with the sale of commercial vehicles in Slovenia.")

¹⁵⁰ "We are all affected." *Corruption Watch*. (Accessed May 26, 2017), <http://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/we-are-all-affected/>; see also, SYMPOSIUM FIGHTING INTERNATIONAL CORRUPTION & BRIBERY IN THE 21ST CENTURY: A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery, 33 Cornell Int'l L.J. 657



Honesty and Transparency – good faith, integrity, and no conflicts of interest are important tools to fight corruption. On the other hand, availability of information, ease of access, and whistleblower procedures are transparency tools.¹⁵¹

Responsiveness – the person who is in charge should carry out their responsibility with integrity, probity, and honesty.¹⁵²

Independent Management– management concerns with the everyday operation, for applying the governance program, systems, approaches, procedures, and strategies. While

¹⁵¹ *Id*

¹⁵² *See* Corruption Watch, *supra* note 152.

management independent must have separation of powers, no family members or suspected conflicts of interests.¹⁵³

Rule of Law – stable legal frameworks, predictable procedures, and an independent judicial system help companies and individuals to participate and be involved in the economy without fear of barriers, obstacles, and seizures.¹⁵⁴

Fairness and Just – equal treatment, rule of law, ethicality, and balance of power are the main tools for fairness and just. In such involvement, anti-corruption measures and good governance will rapidly evolve.¹⁵⁵

Accountability – at the large-scale level financial accountability, transparent policy, audit system that meets international standers, and management responsibilities are accountability effectiveness tools.¹⁵⁶

International System of CBO/ Asset Recovery:

The general process of international CBO/ asset recovery consists of four main steps:

- (1) Tracing – an accounting procedure that follows the crime assets from different properties. It includes investigation procedures, and identifying assets, to trace the relationship between the criminal activity, suspicion persons, and the stolen asset.

¹⁵³ Independent Evaluation Group of the WB under the auspices of the OECD/DAC Network on Development Evaluation. “*Sourcebook for Evaluating Global and Regional Partnership Programs Sourcebook for Evaluating.*” [Http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/sourcebook.pdf](http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/sourcebook.pdf) Accessed (Jun 30, 2017), Pages 71.

¹⁵⁴ IFAD. “*Good Governance*” Executive Board – Sixty-Seventh Session, September 9, 1999, (1-3), http://www.ipa.government.bg/sites/default/files/pregled-dobro_upravlenie.pdf

¹⁵⁵ Búrca, G. De, and Joanne Scott. “*Law and new governance in the EU and the US*”. Oxford: Hart, 2006.

¹⁵⁶ See IFAD, *supra* note 156, at 3.

Tracing examples include corruption asset, fraud, drug trafficking, and money laundering.¹⁵⁷

- (2) Freezing – a restraining order to hold assets, directly or indirectly, for individuals or groups from dissipating the assets. In addition, this procedure is important to ensure that the stolen assets are secure until the court judgment is achieved.¹⁵⁸
- (3) Confiscation – a legal procedure by a public authority for dispossession of the stolen asset based on court order to prepare the stolen assets to be return.¹⁵⁹
- (4) Repatriation of assets – Final procedure of CBO/ Asset Recovery, to return the stolen asset to the origin place of citizenship.¹⁶⁰

UNCAC explain these processes in Article 31: (UNCAC, Ch. 3, Art. 31.)

UNCAC Art.	Freezing, seizure and confiscation
Art. 31 (1)	<p>“Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <p>(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;</p> <p>(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.”</p>

¹⁵⁷ See Tracing Stolen Assets, *supra* note 16.

¹⁵⁸ Evan, Andrew. "A Bank's Guide to Freezing Orders" *Fieldfisher*, (Mar 14, 2017) Available at: <http://www.fieldfisher.com/publications/2017/03/a-banks-guide-to-freezing-orders#sthash.n5byOn2T.dpbs>

¹⁵⁹ WB Group "Asset Recovery under German Law" Pointers for Practitioners, Available at: <https://star.worldbank.org/star/sites/star/files/asset-recovery-in-german-law-english.pdf>

¹⁶⁰ OECD & WB, "Tracking Anti Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action", Paris: OECD; Washington, DC: WB 2011.

Art. 31 (2)	"Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation."
Art. 31 (3)	"Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article."
Art. 31 (4)	"If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds."
Art. 31 (5)	"If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds."
Art. 31 (6)	"Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime."
Art. 31 (7)	"For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy."
Art. 31 (8)	"States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings."

Art. 31 (9)	"The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties."
Art. 31 (10)	"Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party."

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These steps are the same irrespective of the objectives and procedures and are followed in criminal, civil, and non-conviction based (NCB) forfeiture, in both national and foreign jurisdictions.¹⁶²

The first step involves the collection of evidence, investigation, and tracing of the stolen assets. This step is extremely difficult because not only must the stolen or laundered assets be located but also a relationship must be established between the assets, criminal activity, and a criminal.¹⁶³

Fraudsters often use multiple jurisdictions, corporate entities, temporary owners, and accounts to cover up the traces. Therefore, this step requires close and transparent cooperation of different national and international agencies and institutions making this situation difficult. Agencies and institutions include financial intelligence units, audit authorities, tax authorities,

¹⁶¹ UNCAC, Ch. 3, Art. 31.

¹⁶² See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 5; see also, The World Bank Group, "Module 5 Asset ...", *supra* note 7.

¹⁶³ Richard E. Cascarino, *Corporate Fraud and Internal Control: A Framework for Prevention* (Hoboken, NJ: John Wiley & Sons, 2012), n.p; see also, generally, ARTICLE: THE ANTI-CORRUPTION PRINCIPLE, 94 Cornell L. Rev. 341

anti-corruption agencies, police (investigators), prosecutors (or Attorney General), and UNCAC Central Authority, StAR, etc.¹⁶⁴

During the next stage of securing assets, proceeds of corruption subject to confiscation are secured to prevent movement and dissipation. In order to restrain assets freezing (seizure) or restraint procedures are used. The first procedure involves taking physical possession of the stolen assets, while the second one only secures the asset without taking possession. However, in some civil law jurisdictions, law enforcement agencies, prosecutors, or investigating magistrates have the power to order the restraint or seizure of assets, whereas other jurisdictions require judicial authorization to secure the stolen assets.¹⁶⁵

Recently, banks have begun cooperating with national financial intelligence units to help detect and secure suspicious transactions. Sometimes, banks do not inform their clients about the investigation to provide authorities more time to collect evidence and track the illegal movements of assets. However, banks are not required to reveal client's information sometimes because confidentiality between the bank and clients should not disclose information to third party.¹⁶⁶

The next stage is confiscation or forfeiture of the stolen assets. This involves a judicial or administrative procedure, which are transfers of funds or assets to their owners. Some

¹⁶⁴ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9; see also, UNODC & World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (The International Bank for Reconstruction and Development/The World Bank 2007), at 5, Available at: <http://www.unodc.org/documents/corruption/StAR-Sept07-full.pdf>

¹⁶⁵ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 6; see also, Financial Action Task Force (FATF), "Best Practices on Confiscation...", *supra* note 56, at 1.

¹⁶⁶ *International Law Office, "Bank Confidentiality: Duty and Exceptions."* (Sep13, 2007), <http://www.internationallawoffice.com/Newsletters/Offshore-Services/Jersey/Mourant-du-Feu-Jeune/Bank-Confidentiality-Duty-and-Exceptions>; see also, SYMPOSIUM FIGHTING INTERNATIONAL ..., *Supra* note 152.

jurisdictions use *property-based systems*, which allow the forfeiture of assets only when a direct link between the asset and the criminal offense is established during the court proceedings. Moreover, other jurisdictions use *value-based systems*, which allow forfeiting the value of asset equivalent of the amount of the profits received from the, money laundering, etc. Notably, the success of this stage depends on the complex and time-consuming process of order enforcement.¹⁶⁷

This procedure is especially challenging in cases of cross-border confiscation, as the affected country has to send an MLA request to the jurisdiction where the assets are located and wait for this jurisdiction to enforce the order domestically. This procedure may take years to implement because asset recovery and law enforcement mechanisms differ depending on the jurisdiction.¹⁶⁸

The final stage of the CBO/ asset recovery process is repatriation occurs when the confiscation order is successfully enforced and assets are returned to the original jurisdiction. Solicitor General, UNCAC Central Authority, and Ministry of Finance are usually involved in repatriation and management of returned assets.¹⁶⁹

In cross-border asset recovery these steps should necessarily involve transparent and efficient international cooperation and interaction of agencies from different jurisdictions. Cooperation within the international system is essential for the investigation and collection of evidence, the timely implementation of provisional measures, and confiscation of the laundered

¹⁶⁷ See International Law Office, *supra* note 168; see also, The World Bank, Stolen Asset Recovery, *supra* note 64.

¹⁶⁸ See M. M. Gallant, *supra* note 126; see also, generally, Dáil Éireann, Private Members' Business-Organised Crime (*Restraint and Disposal of Illicit Assets*), Bill, Second Stage, (July 2, 1996).

¹⁶⁹ See The World Bank, Stolen Asset Recovery, *supra* note 64; see also, Interview with Jack D. Smith, President, Repatriation Group International (June 9, 2009).

money and proceeds of corruption. This directly or indirectly proves that separation of laws and politics are very difficult. International cooperation may take the form of the mutual legal assistance (MLA), informal assistance, requests, and extradition.¹⁷⁰

Ideally, investigating and prosecuting authorities should interact to trace the stolen assets, prevent their movement or disposal, and preserve their value and safety until they can be recovered to their legal owners.¹⁷¹ In order to make the process of CBO/ asset recovery more effective, countries need to make coordination arrangements that would provide a framework for information sharing and communication between affected jurisdictions. This cannot be imagined if the two countries have a political dispute.¹⁷²

There are considerable differences in the asset recovery process among jurisdictions because each country has its own procedures. Thus, there may be variations in the way agencies engage in the process. In some countries, the police undertake the first step of tracing or investigating. In others, the prosecutors or anti-corruption agencies, undertake the first step of tracing or judges may have the direct responsibility for investigations and strategic direction of CBO/ asset recovery cases.¹⁷³

¹⁷⁰ See The World Bank, *Stolen Asset Recovery*, *supra* note 64; *see also*, Eyal Benvenisti & Moshe Hirsch, *The Impact of International Law on International Cooperation* (Cambridge Univ. Press 2004).

¹⁷¹ House of Commons, *Sixty-Third Report of Session 2010-12* (London: The Stationery Office, 2012), 3; *see also*, The Criminal Law Convention on Corruption of the Council of Europe (CLCC), which adopted on 27 January 1999. Mentioned provisions that call on Parties to adopt legislation in order to "*trace, freeze, and seize instrumentalities and proceeds of corruption*,"

¹⁷² See Why StAR? Why Now? *Supra* note 166; *see also*, Fritz Heimann & Gillian Dell, *Recommendations for Review Mechanism for UN Convention Against Corruption*, (Aug 15, 2007), available at

www.coalitionforintegrity.org/archive/what/.../TIREcsUNCACReview.22.8.07.pdf

¹⁷³ See *Tracing Stolen Assets*, *supra* note 16; *see also*, See Claes Sandgren, *supra* note 140.

Besides that information, countries have different approaches to asset forfeiture and confiscation. (Zagaris) provided an example of the United States of America (USA), which boasts having an aggressive asset forfeiture procedure. In the U.S., in civil proceedings, for instance, the burden of proof transfers to the defendant, to prove with evidence that the property or money should not be forfeited. However, in criminal cases, a criminal conviction is required to forfeit assets in this jurisdiction.¹⁷⁴

In the E.U., countries have quite similar regulations and approaches to CBO/ asset recovery but their success depends largely on a member country's desire to combat corruption. Although the E.U. Council Directive on Asset Recovery Offices obliges all member states to establish CBO/ asset recovery offices, some manage to succeed (e.g. Irish Criminal Asset Bureau), while others like English Assets Recovery Agency achieve very little.¹⁷⁵

In this matter, one may conclude that although CBO/ asset recovery steps are similar across all jurisdictions, the success of these procedures depends on a variety of factors, such as national regulations and legislation, system of cross-border cooperation, and commitment to fighting corruption and money laundering.

Agencies and Legislation on CBO/ Asset Recovery:

The major institutions at the international level that address and focus the issues of CBO/ asset recovery are the United Nations Office on Drugs and Crime (UNDOC) and the WB.

¹⁷⁴ Bruce Zagaris, *International White Collar Crime: Cases and Materials* (Cambridge: Cambridge University Press, 2015), at 96; *see also*, The World Bank, Stolen Asset Recovery, *supra* note 64.

¹⁷⁵ Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford: Oxford University Press, 2012), at 247; *see also*, generally, *The Criminal Law Convention on Corruption of the Council of Europe* (CLCC 01/07/2002), Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>

UNDOC is responsible for providing technical assistance to anti-corruption authorities as well as legal assistance on CBO/ asset recovery.¹⁷⁶

It also helps raise the technical capacity of the countries to enable them implement the UNCAC.¹⁷⁷ The WB role in CBO/ asset recovery is limited to the development of correcting measures and sanctions concerning activities involving fraud and corruption. The WB organization also conducts research and helps raise awareness concerning massive challenges corruption affect developing and emerging economies.¹⁷⁸ The WB also lends support to major anti-corruption conferences and actively participates in the adoption of international conventions and initiatives. G20 Anti-Corruption Working group (G20ACWG) is another organization that provide for state members best practices and technical capacity.¹⁷⁹

In 2007, UNDOC and the WB collaborated to establish the Stolen Asset Recovery Initiative (StAR), with the main aim of assisting in the ratification and implementation of UNCAC. StAR is currently responsible for capacity building and training, as well as for the facilitation of cooperation between countries.¹⁸⁰ It also publishes regular reports and cases, which provide countries with knowledge and policy tools to enhance international anti-corruption and

¹⁷⁶ See UNODC & World Bank, *Stolen Asset Recovery*, *supra* note 166; *see also*, generally, UNODC & UNACA: *Resource Guide on Good Practices in the Protection of Reporting Persons* (UNITED NATIONS New York, 2015) Available at: https://www.unodc.org/documents/corruption/.../15-04741_Person_Guide_eBook.pdf

¹⁷⁷ Wolfgang Amann et al., *Anti-Corruption: Implementing Curriculum Change in Management Education* (Greenleaf Publishing, 2015), at 19.

¹⁷⁸ Cisse et al., *The WB Legal Review*, 253.

¹⁷⁹ The G20ACWG 2010, focus on CBO/ asset recovery in its Anti-Corruption Action Plan. Government of Canada, Foreign Affairs and International Trade, The G20 Seoul Summit Leader's Declaration (Nov. 22, 2010), Available at: http://www.canadainternational.gc.ca/g20/summitsommet/2010/g20_seoul_declaration.aspx?lang=eng&menu_id=41&menu=L&view=d.

¹⁸⁰ Jan Wouters, Alberto Ninio, Teresa Doherty & Hassane Cisse, *The WB Legal Review Volume 6 Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (Washington, DC: WB Publications, 2015), at 263.

CBO/ asset recovery efforts. StAR helps UNDOC and the WB in their efforts to promote cooperation between developed and developing countries to recover the proceeds of corruption.¹⁸¹

In addition, to the organizations and institutions working at the highest international level, such as the WB or UNDOC, Interpol also plays an important role in the CBO/ asset recovery process by providing financial and criminal intelligence. Interestingly, Interpol, in partnership, with the StAR initiative, has created a database that can help law enforcement bodies' coordinate their efforts in preventing and detecting cases of money laundering or corruption.¹⁸²

One should also mention such effective organizations as the International Criminal Court (ICC), The International Association for Asset Recovery (IAAR), and International Center for Asset Recovery (ICAR), Transparency International (TI), and Global Financial Integrity (GFI).¹⁸³

Those organizations, also, help raise awareness about the problem of corruption, CBO/ asset recovery in particular, and provide resources to address these issues. Moreover, interaction and communication of G8 and G20 members and involvement of the most influential civil

¹⁸¹ International Monetary Fund, *Summary Proceeding: Of the Sixty-first Annual Meeting of the Board of Governors*, Oct 22, 2007, (Washington, D.C.: International Monetary Fund, 2008), at 16.

¹⁸² See *Why StAR? Why Now?* *Supra* note 166; see also, generally, Article: International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention, 18 Berkeley J. Int'l L. 53.

¹⁸³ See generally, ARTICLE: The Role of Non-Governmental Organizations (NGOs) in Combating Corruption: Theory and Practice, 44 Suffolk U. L. Rev. 615; see also, NOTE: THE FIGHT AGAINST CORRUPTION BY INTERNATIONAL ORGANIZATIONS, 39 Geo. Wash. Int'l L. Rev. 165.

society groups and NGOs help plan coordinated actions to enhance CBO/ asset recovery legislation and procedures.¹⁸⁴

Regional networks such as Asset Recovery Interagency Network Asia Pacific (ARIN-AP) and Camden Assets Recovery Interagency Network (CARIN) also contribute to facilitating CBO/ asset recovery by encouraging judicial cooperation and information sharing.¹⁸⁵

At the international level however, UNCAC is the first and most important legally binding instrument designed to enhance the process of CBO/ asset recovery; for public sectors and private sectors. This convention's provisions, which came into force in 2005, are considered the milestone payment in anti-corruption and asset recovery efforts, as they provide the most comprehensive international legal framework in this matter.¹⁸⁶

Compared to other conventions, UNCAC has more detailed and extensive provisions and an impressive global reach, as it currently includes more than 160 countries. The convention was welcomed by governments all over the world, especially in developing countries who suffer from corruption and money laundering the most.¹⁸⁷

In essence, UNCAC requires the state parties to implement certain anti-corruption measures concerning prevention, asset recovery, criminalization, and international cooperation. The Convention provides a comprehensive legal framework of CBO/ asset recovery procedures, which includes criminal forfeiture; civil forfeiture; private party to criminal procedure; and non-

¹⁸⁴ See Clare Fletcher and Daniela Herrmann, *supra* note 141; *see also*, See Jan Wouters, Alberto Ninio, Teresa Doherty, & Hassane Cisse, *supra* note 182.

¹⁸⁵ See Jan Wouters, Alberto Ninio, Teresa Doherty, & Hassane Cisse, *supra* note 182; *see also*, NOTE: Fifteen Minutes of Shame: The Growing Notoriety of Grand Corruption, 31 *Hastings Int'l & Comp. L. Rev.* 807

¹⁸⁶ See NOTE: Fifteen Minutes of Shame: The Growing..., *supra* note 187; *see also*, *Implementation Review Group of the U.N. Convention against Corruption, Resumed Third Session* (Vienna, 14-16 November 2012), UNODC, <http://www.unodc.org/unodc/en/treaties/CAC/IRG-session3-resumed.html> (Feb 19, 2018).

¹⁸⁷ See 33 *Ariz. J.*, *supra* note 102; *see also*, UNCAC, (Oct 31, 2003), 2349 U.N.T.S. 41.

conviction based forfeiture. These procedures, however, may have different characteristics in different jurisdictions. Therefore, UNCAC encourages states to introduce legislation that could provide for the broadest potential range of legal mechanisms to enhance the process of CBO/ asset recovery.¹⁸⁸

Legislation on CBO/ asset recovery is complemented by anti-corruption and anti-money laundering regulations. For example, the Financial Action Task Force (FATF) helps ensure that relevant procedures are in place to minimize the risk of money laundering. FATF initiative is based on two major aspects, such as (1) prevention of corruption and (2) law enforcement (intelligence, investigation, and evidence gathering).¹⁸⁹

Furthermore, E.U. and U.K. legislation also place anti-money laundering (AML) obligations on businesses to combat misuse of the financial system.¹⁹⁰ This is especially important for the U.K., which has been described by the U.S. Department of State as “*A major money laundering country,*” whose financial institutions help criminals from all over the world to hide the proceeds of their crime.¹⁹¹

In Africa, the South African Development Protocol against Corruption (SADS) and African Union Convention on Preventing and Combating Corruption (AUCPCC) provide for prevention and criminalization of corruption and encourage regional and cross-border

¹⁸⁸ See UNODC & WB, *supra* note 64; see also, Bo Rothstein & Daniel Eek, *supra* note 140, at 177-78, e.g., “[p]roperty confiscated by a State Party pursuant to Article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.”

¹⁸⁹ J. Edgardo Campos and Sanjay Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level* (Washington, D. C.: WB Publications, 2007), at 397; see also, Financial Action Task Force (FATF), “*Best Practices on Confiscation...*”, *supra* note 56.

¹⁹⁰ Home Office, *HM Government: Serious Organised Crime Strategy* (London: The Stationery Office, 2013), at 36.

¹⁹¹ Alex Davies, *Workplace Law Handbook 2011: Employment Law and Human Resources* (Cambridge, UK: Workplace Law Group, 2011), at 338.

cooperation and mutual legal assistance. In addition, in Latin American countries they consider Inter-American Convention against Corruption (IACAC) important when it comes to combating corruption, enhancing integrity, cross-border cooperation, and mutual legal assistance.¹⁹²

IACAC has played a major role in fighting corruption in Latin America and it came into force on March 6, 1997. On October 31, 2003. It provides guidelines to the government and their agencies on how to deal with corruption. In Argentina, for example, the Investigation Department handles any corruption allegations in the National Public Administration while the Transparency Policies Department comes up with new policies that promote transparency hence deterring corruption. IACAC has 27 articles that cover various aspects of corruption including definitions, purposes, preventive measures, scope, jurisdiction and many others that guide member countries on how to detect, classify, and punish corrupt people in the country.¹⁹³

¹⁹² SADS Agreement (2001), AUCPCC Convention (2003); *see also*, 43 I.L.M. 5 TREATIES AND OTHER AGREEMENTS AFRICAN UNION (AU): CONVENTION ON PREVENTING AND COMBATING CORRUPTION, The AU Convention has principles that had been developed to protect the integrity and to combat corruption in the African Union. These principles include: "1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance. 2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments. 3. Transparency and accountability in the management of public affairs. 4. Promotion of social justice to ensure balanced socioeconomic development. 5. Condemnation and rejection of acts of corruption, related offenses, and impunity."; *see also*, *Organization of American States, Inter-American Convention Against Corruption*, B-58 (Mar 29, 1996), <https://www.oas.org/juridico/english/treaties/b-58.html>.

¹⁹³ Giorleny D. Altamirano, "The Impact of the Inter-American Convention Against Corruption." *The University of Miami Inter-American Law Review* 38, no. 3 (2007): at 487-547; *see also*, E.g., *The Organization of American States, Inter-American Convention Against Corruption*, Article II Purposes, "The purposes of this Convention are: 1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and 2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance." <https://www.oas.org/juridico/english/treaties/b-58.html>.

IACAC marks out corruption acts and has articles for establishing effective measures to fight corruption. It works on all areas of corruption including bribery, asset confiscation, legal assistance, extradition, and any other case it finds linked to corruption.¹⁹⁴

The third article underscores the benefits of having preventive measures and motivates state based parties to take the right actions when it comes to implementing them.¹⁹⁵ IACAC pushes for transparency and integrity especially in government hiring, contracting, and spending. Most of Latin-American institutions still suffer corruption because of poor enforcement of the rules that fight corruption. Thanks to the IACAC give guidelines on the right enforcement laws to curb corruption in the whole of Latin America.¹⁹⁶

In Mexico, for example, IACAC seeks to develop mechanisms to avoid, identify, punish, as well as destroy corruption. It also gives provisions and directions that help, facilitate and standardize collaboration between parties to come up with measures that destroy corruption in public functions. In 2004, Mexico chose the office bearer of the central authority, Minister Ernesto, under whose administration Mexico implemented the provisions of IACAC.¹⁹⁷

Adapted in 1996, IACAC seeks to promote and empower systems that combat corruption in Latin American. It also help implement UNCAC streamlines the progress of anti-corruption initiatives and standardizes cooperation among Latin American economic sectors as a way for

¹⁹⁴ Mark Ungar, "*The rot within: Security and corruption in Latin America.*" Social Research: An International Quarterly 80, no. 4 (2013): 1187-1212; *see also*, 33 Ariz. J, *supra* note 102.

¹⁹⁵ *See* Mark Ungar, *supra* note 196.

¹⁹⁶ ARTICLE: COMBATING CORRUPTION UNDER INTERNATIONAL LAW, 10 Duke J. Comp. & Int'l L. 345

¹⁹⁷ *See* Generally, Juan Montes, *Mexico's Anticorruption Efforts Stall*, *The Wall Street Journal* (Jul 19, 2017).

effecting measures that fighting corruption in public service.¹⁹⁸ These measures include monitoring, criminalization, cooperation, and asset recovery. Cooperation ensures a strong link between legal assistance and state parties, as well as identification and technical cooperation. IACAC has help harmonize anti-corruption initiatives in the entire Latin America.¹⁹⁹

International Cooperation on Cross-Border Asset Recovery:

In the past several decades, the international community has taken necessary actions to build an effective institutional infrastructure that can help and promote cross-border order/ asset recovery cooperation. Specifically, UNCAC includes articles on bilateral cooperation and mutual legal assistance (MLA) in cases of CBO/ asset recovery.²⁰⁰ As previously mentioned, this dissertation remains the primary convention that defines the international efforts on preventing corruption and facilitating CBO/ asset recovery. Additionally, StAR serves as a plan for sharing best practices in the tracing and combating corruption and money laundering, asset freezing and confiscation, and procedures for international cooperation, such as MLA.²⁰¹

The International Center for Asset Recovery (ICAR) also facilitates cross-border order cooperation by working with governments to help their capacity in asset tracing, freezing, and confiscation. Finally, one can mention CARIN, which includes 54 countries and jurisdictions and

¹⁹⁸ Weiler A. Katarina, "United Nations Convention against Corruption (UNCAC)—After Ten Years of Being in Force." Max Planck Yearbook of United Nations Law Online 19, no. 1 (2016): at 216-240.

¹⁹⁹ See g.e, *Organization of American States, Inter-American Convention Against Corruption*, Mar. 29, 1996, 35 I.L.M. 724, S. Treaty Doc. No. 105-39 (providing OAS members with resources to combat local corruption).

²⁰⁰ See Ibi Ajayi & Léonce Ndikumana, *supra* note 29, at 406.

²⁰¹ The expression "Mutual Legal Assistance Treaty" and its acronym, MLAT(s), are recognized terms which are used by courts to refer to a category of treaties -bilateral between two countries- E.g., the United States, and the kingdom of Saudi Arabia has agreed to cooperate with each other in the use of each other's legal processes to investigate and prosecute criminal matters; *see also*, Validity, Construction, and Application of Mutual Legal Assistance Treaties (MLATs), 79 A.L.R. Fed. 2d 375.

9 international organizations that cooperate in the field of asset identification and confiscation. CARIN, in turn, builds partnership with Europol's Criminal Asset Bureau, which is responsible for CBO/ asset recovery in the E.U. jurisdiction.²⁰²

In addition, based on the UNCAC provisions, national legislation, and StAR support, many agencies and networks have been created in different countries to fight illicit financial outflows. Thus, for example, Financial Intelligence Units (FIUs) established in many countries share intelligence information with each other through the Egmont Group, which is an international network assisting in asset recovery. FIUs can freeze or stop transaction at request of a counterpart FIUs, which helps detect and punish criminals. Therefore, as explained by Pieth, FIUs serve as an interface between law enforcement authorities and financial institutions; their role in CBO/ asset recovery cannot be overemphasized.²⁰³

However, the FIUs system of cross-border order cooperation can be effective in cases of international asset recovery. It faces limitations and challenges from different statutes and functions and inadequate national legislation that defines FIUs' cooperative ability and freezing power. International and regional treaties or agreements such as UNCAC (Art. 46), the Inter-American Convention against Corruption, (IACAC), or the Southeast Asian Mutual Legal

²⁰² Europol, "Investigators Meet in Guernsey to Discuss International Cooperation on Asset Recovery," 2015, https://www.europol.europa.eu/latest_news/investigators-meet-guernsey-discuss-international-cooperation-asset-recovery; see also, ARTICLE: Sharing Criminal Records: The United States, the European Union and Interpol Compared, 30 Loy. L.A. Int'l & Comp. L. Rev. 125.

²⁰³ Mark Pieth, *Recovering Stolen Assets* (Bern: Peter Lang, 2008), at 192; see also, FATF, *40 Recommendations, at Recommendation 10*, (published October 2004), <http://www.fatfgafi.org/publications/fatfrecommendations/documents/the40recommendationspublishedoctober2004.html>

Assistance in Criminal Matters Treaty (SAMLACM); provide a framework for applying mutual legal assistance requests.²⁰⁴

UNCAC, for instance, forces the signatory states to help each other by using the MLA system, which enables a country to seek support of the jurisdictions where the assets are allegedly located. The country requesting assistance should provide necessary support in investigation, freezing, and confiscating assets.²⁰⁵

Notably, as suggested by Brun et al., before making a formal MLA request, it is recommended that a country use informal assistances channels to collect evidence and make sure that potential obstacles and barriers can be eliminated and cleared.²⁰⁶ Unfortunately, the practical use of MLA in CBO/ asset recovery is subject to limitations and challenges that cannot be underestimate. For example, financial center jurisdictions that most often serve as safe havens for criminals provide insufficient or very slow response to MLA requests. This action makes the MLA very difficult for investigating agencies to track assets.²⁰⁷

Furthermore, some jurisdictions, especially developed countries, may be reluctant to initiate investigation and cooperate. However, other countries lack necessary technical capacity or trained personnel to help trace, freeze, and confiscate assets. As noted by Stephenson et al., jurisdictions often find reasons for denying requests by prioritizing domestic cases over MLA

²⁰⁴ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 139; *see also*, Validity, Construction, and Application of Mutual Legal Assistance Treaties, *supra* note 203.

²⁰⁵ See Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *supra* note 71, at 63; *see also*, Webb, Philippa, *The United Nations Convention Against Corruption: Global Achievement or Missed Opportunity?* JOURNAL OF INTERNATIONAL ECONOMIC LAW, 2005, (Vol. 8, No. 1), at 191-229

²⁰⁶ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 138.

²⁰⁷ See Stephenson et al., *supra* note 17; *see also*, ARTICLE: ASSESSING THE RELEVANCY AND EFFICACY OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION: A COMPARATIVE ANALYSIS, 2 Notre Dame J. Int'l & Comp. L. 101

CBO/ asset recovery cases. Additionally, jurisdictions could claim that the requesting authorities have little discretion or independence. Therefore, if there is no political will then the MLA can be very difficult.²⁰⁸

Cases of CBO/ asset recovery from different countries show that this process may be extremely time-consuming, complicated, requiring both mutual assistance, and compromises from both parties. As noted in the reports issued by the Transparency International *Global Corruption Report 2007*, success of CBO/ asset recovery cases depends greatly on perceptions of the independence of the requesting country's judiciary.²⁰⁹

This dissertation argues that the success of CBO/ asset recovery depends more on political will. Two cases exemplify this idea. The first case is the former President of Philippines Ferdinand Marcos, who laundered millions of U.S. dollars and hid it in Switzerland. The case started in 1986, when the Federal Council ordered the freezing of Marcos' bank accounts in Switzerland.²¹⁰ In 1990, Switzerland announced that it would return all laundered assets to the Philippines, but only after a court ruling in the requesting country. The Swiss federal tribunal also demanded that the judicial proceedings in the Philippines should comply with the principles of the fair trial outlined in the U.N. Covenant on Civil and Political Rights. The Philippines

²⁰⁸ See Stephenson et al., *supra* note 17; see also, UNODC, *Model treaty on mutual assistance in criminal matters* Vienna: United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention 1998, www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf

²⁰⁹ See Transparency International, "*Global Corruption Report...*" *supra* note 37, at 65; see also, NOTE: Nigeria's Crisis of Corruption - Can the U.N. Global Programme Hope to Resolve this Dilemma? 36 Vand. J. Transnat'l L. 997

²¹⁰ StAR, "*Ferdinand and Imelda Marcos (Switzerland)*," 2016, <http://star.worldbank.org/corruption-cases/node/18497>.

informed Switzerland about all repayment proceedings and guaranteed that part of U.S. \$683 million would compensate for victims of human rights violations under the Marcos regime.²¹¹

The second case, Vladimiro Montesinos/ Victor Alberto Venero Garrido demonstrates that when a country actively participates in seizure and forfeiture of assets and agrees to use the recovered assets for developmental purposes, the process of asset recovery may be reduced to only several years.²¹² In this case, the chief of intelligence and advisor of former Peruvian President Alberto Fujimori, Vladimiro Montesinos laundered millions of dollars and transferred them to the U.S. After the U.S. Attorney's Office conducted an investigation, the Department of Justice approved transferring more than \$30 million to the Peruvian government. The Peruvian government agreed to use the returned assets to enhance the country's anti-corruption efforts.²¹³

The investigation in the U.S. complemented similar asset recovery in Peru, where authorities recovered approximately \$60 million that belonged to Vladimiro Montesinos and his associates.²¹⁴ The idea of requiring the victim country to use the recovered assets for developmental purposes has no legal base. However, requesting countries can use this request as ground for not returning stolen assets.²¹⁵

²¹¹ See StAR, *supra* note 212; see also, 'Lex Duvalier' Enables Switzerland to Confiscate and Repatriate Illicit Dictator Assets, MERCOPRESS (Feb. 2, 2011), <http://en.mercopress.com/201/02/02/lex-duvalier-enables-switzerland-to-confiscate-and-repatriate-illicit-dictator-assets>.

²¹² See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 16.

²¹³ StAR, "Vladimiro Montesinos / Victor Alberto Venero Garrido," 2016, <http://star.worldbank.org/corruption-cases/node/18596>.

²¹⁴ *Id*

²¹⁵ Another example of The U.S. collaborated with Peruvian and Venezuelan authorities to debilitating transnational organized crime, See Bruce Zagaris, Symposium: U.S. International Cooperation Against Transnational Organized Crime: XVI International Congress of Penal Law: Report Submitted by the American National Section, AIDP: Topic IV: International Criminal Law, 44 Wayne L. Rev. 1401, 1417 (1998).

Conversely, the case of Jean-Claude Duvalier, the former President of Haiti shows that the lack of agreement between the parties and the absence of interest in the role of the requesting country may result in long-term freezing of the assets. In this case, Switzerland refused to return the assets because of the lack of good governance in Haiti and a fear that assets use may be irrational.²¹⁶ As seen, the success of cross-border order/ asset recovery depends on multiple factors, and the existence of international conventions, agencies, and networks does not ensure that countries affected by illegal financial outflows will be able to return their assets timely and effortlessly.²¹⁷

Challenges in Enforcing CBO:

CBO/ Asset recovery is a challenging process because money can flow anywhere and criminals can clean it through various financial activities to cover the proceeds of corruption. Additionally, the process of CBO/ asset recovery is very expensive, as a country needs to pay for investigation and intelligence, constantly enhance technical capacity, and hire experienced and competent professionals.²¹⁸

Governments also face challenges in adapting institutional arrangements or updating their legal frameworks to detect and prosecute criminals making illicit financial outflows. In developing countries, obstacles and barriers to effective CBO/ assets recovery are more serious and unstable. The lack of political will; in-ability of governments to ensure that technical

²¹⁶ See Transparency International, “*Global Corruption Report ...*”, *supra* note 37, at 65.

²¹⁷ In 2017, Transparency International's yearly Corruption Perception Index Report evaluated that Haiti ranked (157 out of 180 countries) which consider being low ranked, See Corruption Perception Index Report, TRANSPARENCY INT'L https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (last visited Mar. 2, 2018).

²¹⁸ See generally Indira Carr & Miriam Goldby, *Recovering the Proceeds of Corruption: UNCAC and Anti-Money Laundering Standards*, 2011 J. Bus. L. 170; *see also*, UNODC & World Bank, *Stolen Asset Recovery*, *supra* note 166.

expertise; weakness of the financial system to prevent transfer of assets; and the incorrect management of repatriated assets make it practically impossible for countries to fight corruption and illicit financial outflows.²¹⁹

However, the major problem faced by both developed and developing countries are the process of CBO/ asset recovery requiring complex procedures of international cooperation to track and recover assets located in financial safe havens.²²⁰ Therefore, the problem is not limited to developing countries but it is also a problem for developed countries. CBO/ asset recovery is challenging in many ways. First, jurisdictions involved in CBO/ asset recovery may face legal problems because of the incompatibility of domestic laws. This influences the available options and prevents countries from timely recovery of funds.²²¹

Quite often, it becomes a serious challenge for countries to match or united requests for seizure and confiscation of assets.²²² This problem also applies to international law, as the enforcement of the confiscation order requires both countries be parties of the Convention, sign mutual legal assistance treaties (MLATs), and agree on the recognition of confiscation orders and foreign judgments.²²³

Additionally, differences in legal processes, legal traditions, terminology, and languages often complicate communication and cooperation between jurisdictions. Making MLA requests

²¹⁹ Topo Santoso et al., *A Guide to Investigation and Indictment Using an Integrated Approach to Law Enforcement* (Bogor Barat, Indonesia: CIFOR, 2011), at 79; see also, Jesper Johnson & Nils Taxell, *Cost of corruption in developing countries: how effectively is aid being spent?* (European Parliament 2015).

²²⁰ See Independent Evaluation Group of the WB, *supra* note 155.

²²¹ See ARTICLE: CHANGE OR THE ILLUSION OF CHANGE..., *supra* note 87; see also, SYMPOSIUM FIGHTING INTERNATIONAL ..., *Supra* note 152.

²²² See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9, at 41.

²²³ Visoot Tuvayanond, "Problems in Trans-Boundary Recovery and Return of Assets or Proceeds of Corruption from the Perspective of Thailand," 2010, <https://www.nacc.go.th/images/journal/visoot.pdf>; see also, generally, ARTICLE: Sharing Criminal Records..., *supra* note 204.

in cross-border order cases is also problematic. Especially, when the requesting state lacks technical capacity to conduct an investigation or when the countries where assets are located are unwilling to cooperate.²²⁴

Other problems that countries face in CBO/ asset recovery relate to budgetary restrictions and resources. As explained by Knoetzi and Marsch, the continuous process of investigation, international cooperation, and CBO/ recovery of assets require substantial financial resources, like large volumes of documents need to be translated and competent employees need to be hired to work on the case, often for many years.²²⁵ The main difficulty in some respects may not be the available resources and legal aspects but the political situation in the involved countries.²²⁶ Countries severely affected by corruption, which cannot ensure the fair trial and agree on the after use of recovered assets rarely, get their assets back.²²⁷

Stapenhurst, Johnston, and Pelizzo added that in many cases, the main challenge to successful recovery and repatriation of stolen assets is the excessive immunity or non-liability of corrupt officials, political actors, and civil servants. These individuals are difficult to prosecute for money laundering or corruption at home, countries fail to seek help of other countries as they

²²⁴ See Stephenson et al., *supra* note 17; see also, generally, United Nations: General Assembly Resolution on a Model Treaty on Extradition, G.A. Res. 45/116, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc A/45/49 (1991).

²²⁵ Bettina Knoetzi & Philip Marsch, “Challenges of Asset Tracing/Recovery,” Law Business Research, (Oct 2012), <http://whoswholegal.com/news/features/article/30067/challenges-asset-tracingrecovery>.

²²⁶ See Mark Pieth, *supra* note 205, at 24.

²²⁷ See generally, SYMPOSIUM: Is There a Right to Be Free from Corruption?, 49 U.C. Davis L. Rev. 703

cannot present them with enough evidence, and they cannot present them with enough evidence because part of the evidences are cross-border.²²⁸

Conclusion:

Evidence provided in the literature review explained that due to international efforts including UNCAC, StAR, FATF, CARIN, etc., the possibility of cross-border order/ asset recovery has improved greatly. The international community has finally recognized the importance of asset tracking and recovery, both for the prevention of corruption and for empowering and supporting the victim countries for pursuing their stolen funds and assets in different jurisdictions.

Examples of successful cases on CBO/ asset recovery show that intra-jurisdictional cooperation has been enhanced in the past several decades. Countries learned to use international, multilateral, and bilateral agreements and treaties to recover millions of dollars laundered or stolen by criminals and corrupt officials. This is extremely important for developing countries, which have had a long suffered from pervasive corruption and economic instability because nowadays. Now developing countries have a chance to recover at least some of the stolen funds and use them for developmental purposes.

However, obstacles and barriers of CBO/ asset recovery associated with the lack of political will, incompatibility of the legal systems, lack of resources and technical capacity, and the delay of the asset return led to think that justice delayed is justice denied, etc. Still many countries prevent from recovering their assets from other jurisdictions, which highlights the need to enhance international cooperation in this field.

²²⁸ Rick Stapenhurst, Niall Johnston, & Riccardo Pelizzo, *The Role of Parliament in Curbing Corruption* (Washington, D.C.: WB Publications, 2006), at 230; *see also*, ARTICLE:COMBATING CORRUPTION UNDER INTERNATIONAL LAW, 10 Duke J. Comp. & Int'l L. 345

Furthermore, as explained in the literature review, research on the issue of cross-border order/ asset recovery remains rare. While there are many publications exploring the topic, none of them has investigated it in detail, which proves that a research gap exists that can be filled by conducting the proposed research study.

Many handbooks and articles can be located published by experts and international organizations, such as, for example, the WB, but the number of empirical and case studies are still limited. Moreover, some of the findings made in relation to CBO / asset recovery, international anti-corruption measures are outdated, and their accuracy is remain questionable. As a result, there is a need for carrying out a new study that will investigate cross-border order recovery of assets for victim countries plaintiffs/claimants and state government based on the most recent findings and initiatives.

Chapter 3: Methodology

Research Design:

In light of the remaining inability of the global community to develop and adopted effective strategy and tactics for enforcing court order cross border and recovery of international assets, this study aims at conducting a socio-legal and political investigation of this matter. Through a multi-dimensional research approach, these examinations intends to discover different challenges faced by the international anti-corruption framework and suggest improvements for enforcing the process of asset recovery. As a result, the executed study uses socio-legal research methods. This methodological choice enables the discovery of the impact of corruption on developed and developing countries, the investigation of the globally practiced system of cross-border court orders' enforcement, and the determination of barriers and obstacles to enforcement of local court orders against asset held abroad.²²⁹

The selected research design relied on non-positivist research paradigms and qualitative methodology. Non-positivist or interpretive research philosophy is grounded on the premise of a close interlink between the world and people, whose mind construes the reality by interpreting observed phenomena.²³⁰ Living in common community conditions, people possess similar perceptions of reality, though not identical. As a result, people communicate with one another to share their experiences and to exchange their worldviews. Therefore, non-positivism seeks to

²²⁹ See generally, ARTICLE: Bioethical Malpractice: Risk and Responsibility in Human Research, 7 J. Health Care L. & Pol'y 175; *see also*, generally, Article: We're All Socio-Legal Now?' Legal Education, Scholarship and the Global Knowledge Economy' -- Reflections on the UK Experience, 26 Sydney L. Rev. 503.

²³⁰ Kevin Mole and Monder Ram, *Perspectives on Entrepreneurship: A Critical Approach* (London: Palgrave Macmillan, 2011), at 42.

explore the reality of a given phenomenon through studying different interpretations, perceptions, ideas, and attitudes in respect of it.²³¹

The interpretive research approach aims at examining and interpreting particular matters to produce a meaning for something sharing it with others. Non-positivism underpins qualitative research methodology that enables understanding of the studied phenomenon in its unique nature, context, and interactions.²³² Furthermore, if placed within the examined context, qualitative methodology is a necessary element of the research process and the main instrument of data collection and analysis.²³³ Since this study investigates and analyzes the lack of an effective current international CBO/ asset recovery framework, positivist paradigm suited the research purpose. In its matter, qualitative methodology will provide a lot of qualitative research techniques and methods to fulfill the research objectives.²³⁴

In using non-positivism and qualitative methodology, the present study takes a form of socio-legal research. As an inter-disciplinary work, socio-legal research is a critical legal study that investigates law with regard of the context of its existence. Thus, socio-legal research requires consideration for the sociological, economic, historical, geographical, and more importantly political, or another content of the given law. While being an umbrella term for a range of research activities socio-legal research is “an approach to study of law and legal

²³¹ Andrew Pollard, *Readings for Reflective Teaching* (Bloomsbury: A&C Black, 2002), at 38; *see also*, SYMPOSIUM: DURKHEIMIAN EPIPHANIES: THE IMPORTANCE OF ENGAGED SOCIAL SCIENCE IN LEGAL STUDIES, 18 Fla. St. U.L. Rev. 91

²³² Richard Boateng, *Research Made Easy* (China: Pearl Richards Foundation, 2014), at 133.

²³³ Renata Tesch, *Qualitative Research: Analysis Types and Software* (New York: Routledge, 2013), at 44.

²³⁴ ARTICLE: THE ACADEMIC EQUIVALENCE OF SCIENCE AND LAW: NORMATIVE LEGAL SCHOLARSHIP IN THE QUANTITATIVE DOMAIN OF SOCIAL SCIENCE, 23 T.M. Cooley L. Rev. 157

processes [that] covers the theoretical and empirical analysis of law as a social phenomenon".²³⁵

Hence, the executed research was not a study of law, but of its function in various socio-political contexts.²³⁶

Research Method:

The selected research approach will underlie the dissertation with a variety of research techniques and methods in the pursuit of the formulated research objectives. This research is seeking an in-depth and multifold examination of international anti-corruption frameworks, barriers, and obstacles to effective CBO/ asset recovery.²³⁷

The socio-legal research method combines both research approaches. Therefore, this study incorporates qualitative method research and reform-oriented legal research. This dissertation will utilize a multi-method approach in this academic matter coming from a scholarly premise. This combination of several research methods in a single study is highly beneficial, Specifically, the multi-method research design offers a multi-dimensional perceptive on the investigated phenomenon, simplifying adaptation of development stages of the research process, improving data validity and credibility.²³⁸ Moreover, when combining several research methods to fulfill the common research objective, the investigation is likely to produce a new angle, expanding the existing knowledge base with new insights.²³⁹

²³⁵ Dawn Watkins & Mandy Burton, *Research Methods in Law* (New York: Routledge, 2013), at 35.

²³⁶ See generally, *International Journal of Law in Context*, 12, 1 pp. 81-97 (2016)

²³⁷ ARTICLE: Why the Study of International Law Needs Experiments, 52 *Colum. J. Transnat'l L.* 173

²³⁸ Mark S. Glynn, *Business-to-Business Brand Management: Theory, Research and Executive Case Study Exercises* (Somerville: Emerald Group Publishing, 2009), at 41; see also, generally, ARTICLE: Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal Incompetence, 91 *Geo. L.J.* 67.

²³⁹ Kecia Hayes, Shirley R. Steinberg and Kenneth Tobin, *Key Works in Critical Pedagogy* (Berlin: Springer Science & Business Media, 2011), at 184.

Scholars distinguish legal research into three types, such as doctrinal, non-doctrinal or empirical, as well as an international multi-method legal research. Doctrinal research seeks to develop skills in determining legally authoritative sources. To do so, indexes and citation indices when searching for legal information, locating cases and statutes, and using specific software tools for data recovery.²⁴⁰

These sources enable doctrinal legal research to explain the given law relying on statutes and court decisions only. In contrast to narrow-focused doctrinal legal research, the empirical method is much more flexible, outward-looking, and intellectual approach for legal studies. Non-doctrinal legal research examines the law within its political and social contexts. In this matter, the non-doctrinal research method uses various techniques and practices from social science disciplines to align the studied law within its relevant socio-political context.²⁴¹

Contrary to doctrinal research that relies on the case law, empirical legal research focuses on gaining an understanding of the law and its applicability to diverse real-life situations. This socio-legal framework deploys a variety of qualitative and quantitative research methods

²⁴⁰ Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007), at 3; *see also*, generally, ARTICLE: Authority Without Borders: The World Wide Web and the Delegalization* of Law, * The term "delegalization" was coined by Frederick Schauer and Virginia Wise in their article, Nonlegal Information and the Delegalization of Law, 29 J. Legal Stud. 495 (2000)., 41 Seton Hall L. Rev. 909.

²⁴¹ Caroline Hunter, *Integrating Socio-Legal Studies into the Law Curriculum* (London: Palgrave Macmillan, 2012) at 43; *see also*, For an interesting discussion about the international relations and international law, and how to distinguish the differences between them in all aspects including researches, *see generally*, Engaging the Writing of Martti Koskenniemi: *Interdisciplinary Approaches to International Law: Is International Relations Corrosive of International Law?* A Reply to Martti Koskenniemi, 27 Temp. Int'l & Comp. L.J. 339

inherent to applied social and humanitarian science.²⁴² A broad empirical approach to studying law allows discovering and explaining legal working within the social process.²⁴³

The third legal research type studies international statutes, regulations, conventions, and policies. This legal research form arises from the increasing need for legal experts to refer it to analogous documents and statutes in different jurisdictions.²⁴⁴ This research type requires utilization of critical thinking skills to go beyond traditional law categories by reviewing international law with domestic law, both private and public. In response to the modern global interdependence, international legal review research aims at gaining an insight of the operation of international law, its legal structures and systems, and the impact produced on public policy formulation.²⁴⁵

As indicated above, this dissertation aimed at conducting an in-depth inquiry of international CBO/ asset recovery, from its first step when the domestic court issues a judgment to the last step when that court orders enforced to recover the stolen asset, by analysing efficiency and power of UNCAC as a global framework for asset recovery (UNCAC chapter V)

²⁴² See Wing Hong Chui, *supra* note 242, at 7.

²⁴³ SYMPOSIUM: Critical Cultural Translation: A Socio-Legal Framework for Regulatory Orders, 21 *Ind. J. Global Leg. Stud.* 79; *see also*, For an interesting paper surveys recent aims in the development of the sociology of law in Denmark, see *International Journal of Law in Context*, 10, 3 pp. 397-415 (2014).

²⁴⁴ Valentina Vadi, *Analogies in International Investment Law and Arbitration* (Cambridge: Cambridge University Press, 2015), at 254.

²⁴⁵ *Id.*; *see also*, ARTICLE: Compliance Through Collegiality: Peer Review in International Law, 37 *Loy. L.A. Int'l & Comp. L. Rev.* 275.

and criminalization and law enforcement (UNCAC chapter III) and its provisions in domestic jurisdictions.²⁴⁶

Hence, it was impossible and unreasonable to select a single type of legal research to support this study. Doctrinal legal research enables the investigator to review and evaluate efficiency of UNCAC statutes and court judgements. In detail, this research attempts to manage analysis of the UNCAC treaty provisions along with other initiatives introduced and adopted by the European Union, Africa Union, Arab Union, and other relevant international bodies within doctrinal legal research matter.²⁴⁷

By utilizing empirical legal research strategies, this work examines the international framework for recovering assets kept in as private wealth abroad for its application power in various social, geographical, economic, or political matters. Thus, it is a study of the impact of a particular socio-cultural context on criminalization and law enforcement of asset recovery provisions under UNCAC (which provided in chapter III and V).²⁴⁸

Finally, international case-law research is an asset for the executed research, since it allows analysis of the global system of enforcing cross-border court orders within national jurisdictions. In other words, the executed research employed various forms of legal research at different inquiry stages. Socio-legal research form the common ground for all distance of legal research facilitating investigation of this matter. Socio-legal research is at the core of social

²⁴⁶ UN Convention Against Corruption, New York, 14 December 2005, United Nations Treaty Series, vol. 2349, p. 41; Doc. A/58/422. Available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en; see also, Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

²⁴⁷ See generally, CRITIQUE AND COMMENT: DEVELOPING LEGAL RESEARCH SKILLS: EXPANDING THE PARADIGM, 32 Melbourne U. L.R. 1065; *see also*, 61 Okla. L. Rev. 503.

²⁴⁸ See Wolfgang Amann et al, *supra* note 179; *see also*, ARTICLE: Bioethical Malpractice..., *supra* note 231.

scientific methodology. Thus, all methods of social science are useful, which allows for distinguishing a study method from other prospective by defining it as a specific type of impact societies.²⁴⁹

Additionally, it helps to identify cross-societal difficulties and differences. In reference to the present socio-legal research complemented different forms of legal research in the pursuit of asset recovery, international cooperation, and criminalization and law enforcement provisions under the UNCAC treaty (Chapters III, IV, V).²⁵⁰

Data Collection and Analysis:

Non-positivist paradigms and the qualitative nature of the present socio-legal research prescribed procedures for data collection and analysis processes. In qualitative research, data collection and analysis procedures are complex and require a holistic approach. Therefore, qualitative researchers must work with the acquired data to organize it, synthesize, separate it into informational blocks, identify patterns, and determine new aspects.²⁵¹

The selected (socio-legal) research design implies the use of social method and legal research methods so as to collect data from various resources. Examples of such data include but are not limited to official websites, legal acts and statutes, published documents, and scholarly books to form a large-scale data set.²⁵²

²⁴⁹ ARTICLE: Searching Through Systems: Research Guide for UN Criminal Tribunals, 40 Int'l J. Legal Info. 516; *see also*, Article: We're All Socio-Legal Now..., *supra* note 231.

²⁵⁰ *See* UN Convention Against Corruption, *supra* note 248; *see also*, ARTICLE: From International Law to Law and Globalization, 43 Colum. J. Transnat'l L. 485.

²⁵¹ Karin Klenke, *Qualitative Research in the Study of Leadership* (Somerville: Emerald Group Publishing, 2008), at 136; *see also*, generally, Special Issue: The Future of The Law School: ARTICLE: Qualitative Research on Legal Education: Studying Outstanding Law Teachers, 51 Alberta L. Rev. 925.

²⁵² OJLS 2001.21(1); *see also*, generally, ARTICLE: WHERE ARE WE NOW AND WHERE SHOULD WE HEAD FOR? A REFLECTION ON THE PLACE OF EAST ASIA ON THE MAP OF SOCIO-LEGAL STUDIES, 22 Pac. Rim L. & Pol'y J. 113

In the pursuit of achieving the proposed research purpose to determine the UNCAC's power in recovering assets, International cooperation, and criminalization and law enforcement provisions, through enforcing court orders for cross border. Processes of data collection and analysis were twisted and repetitive because of its repeated effect on one another. Inductive interpretation of various informational sources outlined three stages of data collection and analysis.²⁵³

At first, this chapter attempts to determine the existing body of knowledge pertaining to the issue of international asset recovery and the criminalization of corruption and the use law enforcement, relying on the formulated research purpose, objectives, and questions. Additionally, this chapter tries to use the both primary and secondary sources of data to gain understanding and insight of the matter. For example, statutes, legal acts, and other official documents constituted the primary data scope. While scholarly publications, peer-reviewed articles, and analytical reports – are the secondary data scope.²⁵⁴

This work uses of various online engines, such as Google Scholar, ProQuest, LexisNexis, and Westlaw to get access to online repositories of institutional libraries, governmental bodies, national archives, and international organizations. In addition, it reviews bibliographies of materials at hand to ensure fitness of the selected primary sources, author's competence and findings' credibility, and a general guidance for data collection and analysis.²⁵⁵

²⁵³ Sally Thorne, Sheryl Reimer Kirkham and Katherine O'Flynn-Magee, "The Analytic Challenge in Interpretive Description." *International Journal of Qualitative Methods* 3(1) (2004): at 11; *see also*, See UN Convention Against Corruption, *supra* note 248.

²⁵⁴ ARTICLE: LEGAL RESEARCH TRAINING: PREPARING STUDENTS FOR A RAPIDLY CHANGING RESEARCH ENVIRONMENT, 13 *Legal Writing* 241; *see also*, ARTICLE: Authority Without Borders..., *supra* note 242.

²⁵⁵ GENERAL ARTICLE: Better Search Engines for Law, 92 *Law Libr. J.* 399; *see also*, generally, ARTICLE: ACCESS BARRIERS TO BIG DATA, 59 *Ariz. L. Rev.* 339.

Next, this chapter investigates the subject through sampling and coding of all gathered documents and materials. Indeed, in this case, categorizing the overall data set in accordance with the formulated research questions to provide each inquiry with a set of material. Following data classification is the beginning of the process of data processing through reading, interpreting, and summarizing data into manageable units; this help to get access to the information easier. Also each document was subject to initial reflection and interpretation to create the ground for further identification of emergent themes in various data source to determine commonalities and differences.²⁵⁶

This work will then analyze the generalizations defined for each research question for further reviewing and evaluation. This procedure enabled creation of the meaning in response to each inquiry posed. In line with the selected socio-legal research design, the process of data analyses sought to discover new dimensions and aspects of CBO/ asset recovery. In order to produce the matter, synthesizing findings of data interpretation, and to managed to construe a new perspective of the power of the international asset recovery and on criminalization and law enforcement framework to make recommendations for improvement.²⁵⁷

Given the evidence above, all the data is triangulated regarding UNCAC, cross-border court order enforcement, international cooperation, and the desired end result of international integrity in combating corruption. The socio-legal research is based on qualitative methodology and the interpreted evidence related to the international asset recovery framework by relying on credible scholarly literature, official documents, statutes and acts, and analytical reports made

²⁵⁶ See generally, ARTICLE: PARADOXES IN LEGAL THOUGHT., 85 Colum. L. Rev. 1263; *see also*, generally, ESSAY: EMPIRICAL LEGAL SCHOLARSHIP AS SCIENTIFIC DIALOGUE, 83 N.C.L. Rev. 167.

²⁵⁷ See generally, ARTICLE: BEYOND THE COMMON RULE: ETHICAL STRUCTURES FOR DATA RESEARCH IN NON-ACADEMIC SETTINGS, 13 Colo. Tech. L.J. 333; *see also*, UNODC & World Bank, Stolen Asset Recovery, *supra* note 166.

under government order. The chosen research methods provide the process of data collection and analysis with flexibility to produce the broad perspective in international asset recovery and with recommend reliable solutions.²⁵⁸

Trustworthiness of Findings:

Qualitative research methodology supporting the present research process requires consideration of the chosen research design and its ability to produce trustworthy findings. As the umbrella term, trustworthiness encompasses criteria for credibility, transferability, and dependability. In qualitative research, credibility refers to plausibility of research results achieved through accurate data collection and analysis and reference to prior research findings in the field.²⁵⁹

Transferability regarding applicability of research results to similar environments and matters requires qualitative research to complement each point with descriptions of the context. Dependability means the appropriateness of the selected research design and procedure to bridge the gap that the posed research targeting. In the follow up of trustworthiness, the grounded research findings and conclusions of data performed through extended collection of data from multiple resources, including academic literature, peer-review articles, official documents, statutes, and acts, and analytical reports.²⁶⁰

Furthermore, this work collects a large volume of primary and secondary data sources to conduct an in-depth investigation of international stolen assets. In addition, the work uses a peer-

²⁵⁸ See ARTICLE: Why the Study of International Law Needs Experiments..., supra note 239; see also, See ARTICLE: Bioethical Malpractice..., supra note 231.

²⁵⁹ Pirkko Markula & Michael Silk, *Qualitative Research for Physical Culture* (Basingstoke: Palgrave Macmillan, 2011), at 205; see also, William A. Pitney and Jenny Parker, *Qualitative Research in Physical Activity and the Health Professions* (Champaign: Human Kinetics, 2009), at 63.

²⁶⁰ Donald Ary & others, eds, *Introduction to Research in Education* (Boston: Cengage Learning, 2013), at 534-535.

debriefing technique to bolster the research design for accuracy and suitability of the chosen research methodology, procedures, and methods for compliance with research goals.²⁶¹

Given the evidence above, the use of socio-legal research as a tool of this dissertation met criteria for trustworthiness. Nonetheless, it is essential to take into account limitations attendant upon the selected research design and methodology. The key critique of qualitative research methodology concerns the subjectivity of findings conducted. To eliminate research bias, this work conducts a thorough investigation of international asset recovery through books, analyst reports, legal documents, statutes, and acts to interpret the studied matter as objectively as possible. Another limitation of this dissertation is its reliance on secondary data only.²⁶²

However, critics claim that secondary data may be subject to primary research manipulations and subjective interpretation with a reduced capability to check findings provided. This limitation was not an issue for this research investigation that composed the dataset from statutes, legal regulations, official documents, conventions, and a like, which are of a high-degree reliability and credibility.²⁶³

Ethical Considerations:

Since this dissertation relied entirely on secondary data, it did not have to follow guidelines for inquiries engaging human participants. However, this study takes into

²⁶¹ E. Stringer, *Action Research in Education* (Upper Saddle River: Pearson, 2004), at 59; *see also*, generally, ARTICLE: BEYOND "BINGO!": EDUCATING LEGAL RESEARCHERS AS PROBLEM SOLVERS, 26 Wm. Mitchell L. Rev. 179.

²⁶² *See* SYMPOSIUM: Critical Cultural Translation..., *supra* note 245; *see also*, generally, J Law Biosci (July 2016) 3 (2): 257-280.

²⁶³ David Bowie & Francis Buttle, *Hospitality Marketing* (London: Taylor & Francis, 2013), at 51.

consideration and account academic ethics in terms of accurate data retrieval and interpretation avoiding manipulations to suit the research purpose.²⁶⁴

In that matter, this work indicates the ownership and origin of any informational piece employed. In addition, it provides the context to the cited statutes and legal documents to prevent misunderstanding or misinterpretation of data. Along with accurate procedures for data collection and processing, the research explains the respect to the used material.

²⁶⁴ See ARTICLE: Bioethical Malpractice..., *supra* note 231.

Chapter 4: Impact Of Corruption And CBO/ Asset Recovery On The Victim Countries

This chapter focuses on the benefits produced by application of CBO/ asset recovery. First, this chapter outlines the general impact of this legal framework prescribed by the theoretical concept and the actual effectiveness of its application by citing several case studies. Next, it explores the effects of CBO/ asset recovery on developed countries obliged by this global agenda to support developing countries in tracing, identifying, freezing, and repatriating stolen assets. Then, this chapter overviews outcomes to developing countries caused by corruption and pressure they experienced under CBO/ asset recovery aimed to improving well-being of all people and support economic growth, along with an example of the Kingdom of Saudi Arabia initiative in this matter. Finally, this chapter discusses difficulties associated with the implementation of the CBO/ asset recovery process of mutual legal assistance as the most effective path with a questionnaire on criteria for standing in any legal system.

The Role of CBO/ Asset Recovery in Combating Corruption:

The theft and transfer of public value abroad by private individuals damages the national economy significantly. In theory, CBO/ asset recovery is a preventive and repressive measure to discourage public officials or private persons, their associates, and close relatives from engaging for acts of asset-related corruption.²⁶⁵ In practice, the key role of CBO/ asset recovery legislation is to detect stolen public assets and to allow the victim country to regain the value of those assets. In this matter, CBO/ asset recovery is subject to unanimous appreciation for its capability to deter assets conversion into private wealth and illicit financial flows.²⁶⁶

²⁶⁷ See Radha Ivory, *supra* note 55, at 23.

²⁶⁸ See Ibi Ajayi & Léonce Ndikumana, *supra* note 29, at 9; *see also*, ARTICLE: INSTITUTIONAL CORRUPTION: A FIDUCIARY THEORY, 23 Cornell J. L. & Pub. Pol'y 553

In reference to the UNCAC convention as the core source of criminalization and law enforcement, international cooperation, and international asset recovery legislation, the effects of CBO/ asset recovery are consistent with its goals. Thus, CBO/ asset recovery facilitates “preventing the movement of corruption-related (or illicit) wealth through regulated financial institutions by or for PEPs [politically exposed persons]; and ensuring that illicit wealth is secured and transferred to the state with adjudicative jurisdiction over the offence, especially if it is also the state that entrusted the PEP with his/her “prominent public functions.”²⁶⁷

These outcomes associated with CBO/ asset recovery are a critical point of international law as a roadmap for national jurisdictions. However, individual country experiences with implementing CBO/ asset recovery provisions differ considerably. In the pursuit of illustrating cases of victim states’ effort to regain their lost assets, it is essential to refer to criminal proceeding engaging Switzerland.²⁶⁸

Heavily criticized for being a safe harbour for the illicit wealth of corrupt officials for the two last decades of the 20th century, Switzerland has taken much effort to reform its jurisprudence to incorporate CBO/ asset recovery provisions.²⁶⁹ As a result, Switzerland contributed to the return of over \$1 million to Nigeria, Peru, and the Philippines through cooperating with these countries in detecting illicit financial movements performed by corrupt political elites and their associates. Switzerland assisted the Philippines in regaining assets in the

²⁶⁹ See Radha Ivory, *supra* note 55, at 28; see also, generally, FIN Money Laundering, *Asset Forfeiture and Compliance* FIN-IV (2018).

²⁶⁸ ARTICLE: Combating Corruption Through International Law in Africa: A Comparative Analysis, 40 *Cornell Int'l L.J.* 691; see also, generally, ARTICLE: Reforming Surveillance Law: The Swiss Model, 28 *Berkeley Tech. L.J.* 1259.

²⁷¹ See Transparency International, “*Global Corruption Report ...*”, *supra* note 37, at 65.

case against Ferdinand and Imelda Marcos who occupied senior positions in the state's politics for over 20 years beginning in 1965.²⁷⁰

After a military uprising resulted in Ferdinand Marcos' removal from presidency in February 1980, Marcos became subject to investigation by the Swiss Federal Council. Anticipating a future request of a new Philippines government, Switzerland froze hundreds of millions of U.S. dollars held by Marcos and his family members in Swiss banks. This procedure allowed Switzerland to prevent Marcos-initiated dissipation of funds and to provide the requested assistance to the Philippines by preserving evidence to Marcos' acts of corruption as well as confiscating and repatriating the value of stolen assets.²⁷¹

In 1988, after the death of Nigerian General Sani Abacha, Switzerland responded positively to the request of a new Nigerian government concerning Abacha's assets held on Swiss bank accounts. After a military coup in 1993, Abacha became the Head of State followed by his rapid enrichment making his family the wealthiest in Nigeria. Together with the U.S., Liechtenstein, and Luxemburg, Switzerland assisted Nigeria to regain over \$2.2 million transferred by Abacha out of the Central Bank of Nigeria.²⁷²

The absence of any treaty on mutual legal assistance between Switzerland and Nigeria did not prevent these governments from successful cooperation to recover Nigerian assets in

²⁷² See Radha Ivory, *supra* note 55, at 39.

²⁷¹ ARTICLE: Secrets and Lies? Swiss Banks and International Human Rights, 31 Vand. J. Transnat'l L. 325

²⁷⁴ Colin Alfred Arthur Nicholls and others, eds. *Corruption and Misuse of Public Office* (Oxford: Oxford University Press, 2011), at 277; *see also*, generally, ARTICLE: Colonial Rapacity and Political Corruption: Roots of African Underdevelopment and Misery, 3 JICL 4

Swiss bank accounts.²⁷³ This case of Nigerian-Swiss cooperation illustrates the importance of international integrity within the global CBO/ asset recovery field.²⁷⁴

Another example, of successful CBO/ asset recovery concerns the cooperation between Switzerland and Peru in deterring and regaining public assets stolen by the former head of Peruvian intelligence service Montesinos. After the 2000 collapse of the Fujimori government, a new government of Peru focused on examining the years-long performance of Montesinos for the abuse of assumption of authority, corruption, conspiracy, illegal enrichment, misappropriation, bribery, and arms smuggling.²⁷⁵ Supported by Switzerland and the new state's criminal procedures, the Peruvian government managed to return approximately \$180 million in Montesinos' assets held abroad. A Swiss magistrate regarded \$50 million as illegal commissions on government contracts and returned it without a confiscation order. Together with Cayman counterparts, Swiss bank account holders relinquished \$72.5 million voluntarily in compliance with Peruvian prosecutor agreements. Finally, the U.S. and Peruvian courts forfeited \$55 million as proceeds of money laundering and embezzlement.²⁷⁶

These cases illustrate the effectiveness of international asset recovery/ CBO legislation under the conditions of countries cooperating with mutual legal assistance. They encourage a belief in the power of global asset recovery framework in assisting victim states to return or regain the value of stolen public assets. However, the process is complex and dependent on various factors.²⁷⁷

²⁷⁵ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9.

²⁷⁴ See *Tracing Stolen Assets*, *supra* note 16.

²⁷⁷ See Mark Pieth, *supra* note 205, at 124.

²⁷⁸ See Radha Ivory, *supra* note 55, at 42.

²⁷⁹ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9, at 54; *see also*, Validity, Construction, and Application of Mutual Legal Assistance Treaties, *supra* note 203.

The following examples illustrate that political instability, the absence of national asset recovery law, and delayed process of mutual legal assistance do not allow Switzerland to hand over assets preserved in its bank accounts to their countries of origin. The failure of Switzerland's response to assistance requests illustrates the inconsistency and lack of integrity in international asset recovery/ CBO.²⁷⁸

In May 1997, the Democratic Republic of Congo (DRC) issued a request for legal assistance to the Swiss Federal Council in relation to former Head of State, Mobutu Seso Seko. The DRC government accused former Congolese leader and his family of stealing public assets valued at \$5 million and transferring them to foreign bank accounts.²⁷⁹

In light of the DRC's failure to perform its part of mutual legal assistance request, the Swiss federal Council froze accounts of Mobutu Seso Seko for three years. The procedure took place three times until the Congolese government submitted a criminal complaint to Switzerland in 2009.²⁸⁰ At the time of filing the complaint, the statutes of limitations for money laundering offenses had already expired, forcing the Council's lifting of the freeze.²⁸¹

Another case study of the CBO/ asset recovery implementation concerns the Swiss involvement in the Haitian prosecution of Jean-Claude Duvalier.²⁸² In February 1986, the Haitian President Jean-Claude "Baby Doc" Duvalier was removed from power. In the aftermath, Haiti submitted a request to Switzerland for the purpose of detecting, freezing, and repatriating assets

²⁸⁰ See Radha Ivory, *supra* note 55, at 42; *see also*, COLLOQUIUM: WHAT DOES IT MEAN TO PRACTICE LAW "IN THE INTERESTS OF JUSTICE" IN THE TWENTY-FIRST CENTURY?: ETHICAL LAWYERING AND THE POSSIBILITY OF INTEGRITY, 70 Fordham L. Rev. 1629

²⁸¹ OECD, Conflict and Fragility Resource Flows to Fragile and Conflict-Affected States (Paris: OECD Publishing, 2010), at 137.

²⁸² See Radha Ivory, *supra* note 55, at 43.

²⁸¹ See ARTICLE: CHANGE OR THE ILLUSION OF CHANGE..., *supra* note 87.

²⁸⁴ See Clare Fletcher and Daniela Herrmann, *supra* note 141, at 173.

held in Swiss banks by the ex-President and his family.²⁸³ In response, the Swiss Federal Council determined several suspicious accounts, including one owned by Duvalier's mother in Liechtenstein.²⁸⁴

In the absence of Haitian pursuit of the request for mutual legal assistance, Switzerland froze those Duvalier-related accounts in 2007. The procedure gave time for the Haitian government to review and reform its national legislation to enable the MLA process with Switzerland. In 2009, Switzerland attempts to return the Duvalier family funds to Haiti. Switzerland regarding the family a criminal organization found those funds to be illicit.²⁸⁵

The Swiss Federal Supreme Court invalidated that judgment of the Office of the Attorney General of Switzerland on the ground of the expired period for prosecuting membership in a criminal organization and a lack of factual evidence to the links of those funds to political assassinations. In past several years, the Haitian government has taken numerous efforts in criminal proceedings against Duvalier, his associates, and family members.²⁸⁶ However, these proceedings have no effect on the confiscation procedure concerning Duvalier's assets held in Switzerland occurred.²⁸⁷

Given the evidence cited above, one may assert that the implementation of CBO/ asset recovery provisions is beneficial for victim countries in the pursuit of regaining or returning their assets. The success of CBO/ asset recovery depends ultimately, however, on the cooperation between victim states and the receiver of the stolen public asset. However, the exercise of mutual

²⁸⁵ See Radha Ivory, *supra* note 55, at 43.

²⁸⁴ See ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273.

²⁸⁷ See Clare Fletcher and Daniela Herrmann, *supra* note 141, at 173.

²⁸⁸ *Id*

²⁸⁷ For more interesting reading about the Haiti system, see SYMPOSIUM COMMENTARY: Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation, 39 *Hastings Int'l & Comp. L. Rev.* 183

legal assistance is impossible if the victim state's legal system lacks corresponding statutes and procedures for CBO/ asset recovery.²⁸⁸

The lack of statutes and procedures necessary to asset recovery indicates the immaturity of the state's legislature specific to developing such statutes and the difficulty of dealing with and transitional economies. Hence, a precise investigation of CBO/ asset recovery influence in developed and developing countries seems relevant for the current research focus.

Asset Recovery in Developed Countries:

In essence, global CBO/ asset recovery initiatives have the aim of strengthening cooperation between developed and developing countries to assist developing countries in tracing and recovering their stolen assets.²⁸⁹ In this vein, a mutual legal assistance agreement between collaborating countries enables engaging the developing victim country in asset restoration under the international UNCAC framework.²⁹⁰

As a result, developing countries will take a serious account of the UNCAC treaty obligations to cooperate in relation to CBO/ asset recovery in contrast to developed states that place a premium on discretion when providing their response to a victim country's request for mutual legal assistance.²⁹¹ In other words, while developing countries benefit from CBO/ asset recovery in terms of additional funds' receipt, developed countries use this agenda for improving their anti-corruption and CBO/ asset recovery legislation, and thus prove to the international community their concern for human rights and the need to support developing countries.²⁹²

²⁸⁸ See ARTICLE: ASSESSING THE RELEVANCY..., *supra* note 209.

²⁹¹ See Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray, *supra* note 32, at 10.

²⁹⁰ See Bruce Zagaris, *supra* note 176.

²⁹³ See Neil Boister, *supra* note 177.

²⁹² See generally, ARTICLE: DEFINING THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CORRUPTION, 31 U. Pa. J. Int'l L. 125

The international framework for CBO/ asset recovery implies different obligations on developed and developing countries. On the one hand, typically associated with victims, developing countries need to adjust their jurisdictions to enable the process of mutual legal assistance. On the other hand, developed countries are accountable for helping victim countries to identify, seize, and repatriate stolen assets from developing countries.²⁹³

From 2006-2009, the U.S., the U.K., Switzerland, and Australia repatriated about \$227 million to foreign jurisdictions victim countries. Additionally, according to court decisions, two other developed countries – Luxembourg and France – froze stolen assets valued at over \$1.2 billion.²⁹⁴

Although, the global CBO/ asset-recovery agenda views developed countries as primarily recipient countries, their national economies appreciate restoration of stolen public funds. While producing a devastating effect in developing countries, corruption and illicit financial flows in developed countries negatively affect allocation of funds in healthcare, education, and other public services the government is responsible to provide. In this way, corruption is a serious obstacles and barriers to the country's sustainable development and continuing prosperity.²⁹⁵

Therefore, CBO/ asset recovery in developed countries is pivotal to ensure equal and adequate distribution of the national budget. However, the 2011 OECD investigation discovered that out of 30 countries tied to CBO/ asset recovery framework, only four demonstrate

²⁹⁵ Gretta Fenner Zinkernagel, Pedro Gomes Pereira and Francesco De Simone, *"The Role of Donors in the Recovery of Stolen Assets."* Anti-Corruption Resource Center 4, no. 8 (2014): at 1.

²⁹⁶ OECD, *Tracking Anti-Corruption and Asset Recovery Commitments: A Progress and Recommendations for Action* (Paris: OECD Publishing, 2011), at 5.

²⁹⁷ R. B. Jain, *Corruption-Free Sustainable Development: Challenges and Strategies for Good Governance* (New Delhi: Mittal Publications, 2004), 57; see also, Radha Ivory, *supra* note 55, at 28.

commitment in tracing, seizing, freezing, and returning stolen public assets held privately to the jurisdiction of origin.²⁹⁶

The commitment to continuing efforts of developed countries to enhance their CBO/ asset recovery legislation, allows these countries to succeed in preventing, discouraging, and detecting corruption of their own nationals at a much of greater rate than the developing countries. However, it is impossible to claim that donor countries deal with corruption only through tracing, freezing, and confiscating funds of corrupt foreign political officers.²⁹⁷

For example, developed countries in Europe, Northern America, and East Asia have taken much legislative and regulatory effort to reduce its corruption rates significantly. These efforts recognize the negative impact of corruption on the costs and quality of life. These developed countries continually demonstrate intolerance for corruption as the key obstacle and barrier to sustainable development, economic stability, and growing advantage of civility.²⁹⁸

The leaders in achieving the results in CBO/ asset recovery include the U.S., the U.K., Switzerland, and Australia demonstrate sustained political leadership and comprehensive anti-corruption mechanisms. These countries display commitment, encouragement, and success in adopting laws, overcoming implementation obstacles and barriers, and executing institutional changes and restructuring for prevent the stealing of public assets in their countries and to return

²⁹⁸ See OECD, *supra* note 296; *see also*, generally, NOTE: Transnational Bribery of Foreign Officials: A New Threat to the Future of Democracy, 31 Vand. J. Transnat'l L. 1273

²⁹⁹ Mark Robinson, *Corruption and Development* (New York: Routledge, 2012); *see also*, generally, NOTE: Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects, 14 Yale H.R. & Dev. L.J. 231

³⁰⁰ Todd Lipscomb, *Re-Made in the USA: How We Can Restore Jobs, Retool Manufacturing, and Compete with the World* (Hoboken: John Wiley & Sons, 2011), at 142; *see also*, generally, Article: Buying Our Way Out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats, 12 Yale H.R. & Dev. L.J. 160

stolen assets of developing countries. Therefore, it is necessary to explore the experiences of these four countries in combating corruption through CBO/ asset recovery.²⁹⁹

In their commitment to trace and return corruption proceeds, the U.S. started a Kleptocracy Asset Recovery Initiative in 2010 to identify and recover illicit financial movements executed by corrupt foreign officials through the U.S. financial and banking systems. The new initiative follows the standards of a successful policy for corruption detection and CBO/ asset recovery. Specifically, the 2010 initiative aims at establishing clear objectives, enforcing dedicated action, overcoming obstacles and barriers, allocating sufficient resources, developing skills law MLA, and using available legal tools in a competent, consistent, and committed manner.³⁰⁰

As a result, the U.S. managed to confiscate and repatriate over \$20 million to Peru in regard to illicit transfers of public assets by ex-head of the Peruvian intelligence, Montesano's. In addition, the U.S. provided a positive response to the Italian government request estimating the loss of more than \$117 million in acts of corruption. Furthermore, the U.S. competence and efficiency in forfeiting and restoring stolen assets is beneficial in the case of Nicaragua. The U.S. participated in returning of over of \$2.7 million to Nicaragua after investigating criminal conduct of ex-Tax and Customs Minister of Nicaragua, Byron Jerez.³⁰¹

³⁰¹ See Mark Robinson, *supra* note 299; *see also*, for interesting reading about the Anti-Corruption effort of the World Bank, which adopted by a lot of developed countries, ARTICLE: The Effectiveness of the World Bank's Anti-Corruption Efforts: Current Legal and Structural Obstacles and Uncertainties, 32 Denv. J. Int'l L. & Pol'y 315

³⁰² See Gretta Fenner Zinkernagel, *supra* note 295; *see also*, See generally, NOTE: "To Return the Funds at All": Global Anticorruption, Forfeiture, and Legal Frameworks for Asset Return, 47 U. Mem. L. Rev. 291.

³⁰³ US Government, *U. S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation* (Washington: Department of State, Department of Justice, Department of Homeland Security, 2012), at 10.

Since 2000, Switzerland has shown a strong commitment to CBO/ asset recovery by introducing innovative legislation and procedures to facilitate tracking, freezing, and repatriating stolen public funds of a foreign country. The latest Swiss accomplishment in the field is the federal restitution of Illicit Assets Act (RIAA).³⁰² The Act governs forfeiture and return of illicit assets of corrupted exposed persons, their associates, and family members in case of the impossibility of implementing the process of mutual legal assistance because of the judicial system's failure of the victim country submitting a request for assistance.³⁰³

In response to the cases of CBO/ asset recovery concerning Duvalier or Mobutu Sese Seko, the new Act enables Switzerland to freeze and confiscate assets held in Swiss bank accounts by the assumption of their potentially illicit origin without an obligatory criminal conviction of the owner in his or her country of origin. Such an assumption can be grounded in either apparent hard nature of the person's enrichment or the general level of corruption in the country of origin.³⁰⁴

In case of one's failure to prove legality of the assets' acquisition, the Act allows a judge to confiscate the funds. The Act and the overall Swiss commitment to CBO/ asset recovery pursues two goals – to improve the international image of Switzerland as a strong combatant of criminals' impunity, thus, strengthening the rule of law, and for the increase in living conditions of the victim country by returning stolen assets to bolster the national budget.³⁰⁵

Hence, the major impact of CBO/ international asset recovery in developed countries concerns continuing efforts in improving jurisdiction to prevent transfer of private and public assets abroad and tracing and returning stolen assets of foreign countries held within their

³⁰⁴ See OECD, “ADB/OECD Anti-Corruption Initiative for Asia...” *supra* note 9, at 37.

³⁰⁵ See Bruce Zagaris, *supra* note 176, at 160.

³⁰⁴ See ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273.

³⁰⁷ See OECD, “ADB/OECD Anti-Corruption Initiative for Asia...” *supra* note 9, at 37.

national borders. Apart from continuing effort of developed countries to improve their CBO/ asset-recovery-related jurisdiction, they cooperate in terms of developing specialists to conduct investigation, asset tracing and management, confiscation, and repatriation within the international cooperation framework.³⁰⁶

In this case, numerous practitioners' workshops take place in Europe, the U.S., South America, and Asia to welcome professionals from the U.S., the U.K., Switzerland, Italy, Argentina, Japan, Singapore, and other countries succeeding in delivering mutual legal assistance in criminal matters to developing states.³⁰⁷

In line with the role imposed on the developed world, countries with developed economies and legal systems are obliged to initiate communication with developing countries to support and help in designing and adopting procedures for the process of submitting and pursuing a request for mutual legal assistance. Thus, developed countries are able to provide the technology and necessary equipment to developing counterparts to improve inter-state communication, specifically in relation to the investigation prosecution to recover illicit assets. The costs of such communication between a victim country and the recipient are generally the responsibility of the recipient country.³⁰⁸

Therefore, developed jurisdictions have to assist developing country in establishing procedures, policies, and processes required for the process of mutual legal assistance to recover assets privatized by corrupt officials or private persons. However, this will raise an important

³⁰⁸ See Stephenson et al., *supra* note 17, at 1-3.

³⁰⁹ See Gretta Fenner Zinkernagel, *supra* note 295; see also, for example, ARTICLE: THE MEXICO-U.S. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATY: ANOTHER STEP TOWARD THE HARMONIZATION OF INTERNATIONAL LAW ENFORCEMENT, 14 Ariz. J. Int'l & Comp. Law 1

³¹⁰ See Mark Pieth, *supra* note 205, at 344; see also, generally, ARTICLE: Chasing Bits across Borders, 2001 U Chi Legal F 35; see also, Stephenson et al., *supra* note 17, at 21-23.

question, which is, why the corrupted officers or private persons precisely choose to hide illicit assets in developed countries in the first place? Further investigation into this topic is necessary.³⁰⁹

Corruption and CBO/ Asset Recovery in Developing Countries:

The international agenda for CBO/ asset recovery views developing states as victim countries that seek support and assistance from developed jurisdictions to trace, freeze, and return their legitimate assets stolen by public officer or private persons. From the global perspective, by adopting CBO/ asset recovery laws and establishing equal investigation and prosecution procedures, developing countries contribute to strengthening the rule of law.³¹⁰

Narrowing the focus to each victim country, the claim is that it benefits from successful CBO/ asset recovery greatly in terms of regaining stolen funds and obtaining resources for public services. Developing countries through restoration of the stolen assets then have the possibility of shifting resources from corrupt officers to ordinary citizens.³¹¹

Corruption is the crucial barrier and obstacle to developing countries on the path to development and economic growth because of enormous amounts of resources may be revealed through corruption. CBO/ Asset recovery is a legitimate and comprehensive means of combating corruption and promoting development in victim countries with developing or transitioning

³⁰⁹ See ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273.

³¹² See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11; *see also*, Susan Rose-Ackerman & Henry R. Luce, *supra* note 141.

³¹³ Susan Rose-Ackerman, "Governance and Corruption" in *Global Crises, Global Solutions*, ed. Bjorn Lomborg (Cambridge: Cambridge University Press, 2004), at 338; *see also*, generally, ARTICLE: SUBVERTING THE SCOURGE OF CORRUPTION IN NIGERIA: A REFORM PROSPECTUS, 34 N.Y.U. J. Int'l L. & Pol. 397

economies. Sustainable country development requires continuous provisions of political effort, decision-making, and public services dedicated to the poverty reduction.³¹²

Corruption-caused illicit financial flows strengthen uncertainty and risk in the national economy, which discourages investment and potential contribution to the quality of life improvement. In privatizing and transferring public assets abroad, corrupt officials weaken efficiency of anti-poverty social and economic measures. While enjoying an easy access to foreign health care and education services, corrupt officials leave ordinary citizens of developing countries out of the reach of essential public services.³¹³

Although corruption is not the only reason for the needs of the population in most developing countries, it is a critical barrier and obstacle to the country's development and growth. For example, low-income countries in the African region are likely to experience an increase in their economic development and proactive involvement in the international market because of higher foreign investment when corruption is effectively combatted.³¹⁴

Thus, the unstable economy and high rates of corruption in African countries create a barrier to these countries achieving from improved infrastructure, new jobs, increased incomes, and therefore, a reduction in need. Corrupt official elites have already removed valuable resources from Africa to foreign bank accounts leaving victim countries with limited funding.³¹⁵

³¹⁴ OECD, *Aid Effectiveness 2011: Progress in Implementing the Paris Declaration* (Paris: OECD Publishing, 2012), at 77; *see also*, generally, ARTICLE: CORRUPTION, DEVELOPMENT AND GOOD GOVERNANCE: CHALLENGES FOR PROMOTING ACCESS TO JUSTICE IN ASIA , 16 Mich. St. J. Int'l L. 475

³¹⁵ *See* Janvier D. Nkurunziza, *supra* note 1; *see also*, generally, ARTICLE: Moving Money: International Financial Flows, Taxes, and Money Laundering, 37 Hastings Int'l & Comp. L. Rev. 1

³¹⁶ The World Bank, *Global Economic Prospectus and the Developing Countries* (Washington: The World Bank Publications, 2000), at 50; *see also*, ARTICLE: CHANGE OR THE ILLUSION OF CHANGE..., *supra* note 87.

³¹⁷ *See* Mark Robinson, *supra* note 299, at 5-9.

Developing countries in Asia and the Caribbean suffer from corruption in the same way as African countries. In opposition to considerable, but combative corruption rates in developed countries like Italy, corruption in the developed world remains unprecedentedly high and unsolved.³¹⁶

CBO/ Asset recovery is the only mechanism that allows under-developed and youthful jurisdictions of African countries to trace their financial flows, to detect corruption, and to issue a request for mutual legal assistance to recipient countries. Under the guidance and support of developed countries, developing countries receive an opportunity to return their assets stolen by officials exposed persons and to invest recovered funds in poverty-reduction programs. Therefore, assets redeemed through the CBO/ asset recovery process and mechanisms are useful to fight against poverty and corruption in developing countries.³¹⁷

Even though the apparent enrichment of CBO/ asset recovery to anti-poverty initiatives is clearly necessary, many developing countries need effective follow-up mechanisms to ensure that returned funds are acceptably allocated to social care projects without corruption.³¹⁸ Furthermore, the amounts of returned public assets are considerably lower in comparison to the amounts stolen by corrupt officials.³¹⁹

³¹⁸ Peter Calvert and Susan Calvert, *Politics and Society in the Developing World* (New York: Routledge, 2014), 331-333; *see also*, ARTICLE: Combating Corruption Through International Law, *supra* note 270.

³¹⁹ *See* Peter Calvert & Susan Calvert, *supra* note 318; *see also*, generally, ARTICLE: Moment of Truth: Development in Sub-Saharan Africa and Critical Alterations Needed in Application of the Foreign Corrupt Practices Act and Other Anti-corruption Initiatives, 26 Am. Int'l L. Rev. 315

³²⁰ *See* Peter Calvert & Susan Calvert, *supra* note 318.

³¹⁹ *See* generally, ARTICLE: The International Dimension of Africa's Struggle Against Corruption, 10 Asper Rev. Int'l Bus. & Trade L. 35

For example, the successful CBO/ asset recovery of funds embezzled of Abacha allowed Nigeria to regain \$1.2 billion out of the expected theft value ranging from \$3 to \$5 billion.³²⁰ Therefore, the issue of effective and fair allocation of returned assets is central for developing countries seeking development. Repatriated funds should help to develop the quality of life of people living in the victim country to ease poverty rather than allow secondary misuse of public resources.³²¹

The gap between the original value of stolen public assets and the value of returned funds does not reduce the participation of the CBO/ asset recovery framework to establishing the rule of law and combating poverty globally. The comprehensive agenda for CBO/ asset recovery support establishment of transparent financial systems in developing countries, thus reducing illicit financial flows through the forced cooperation with developed countries.³²²

The concept of mutual legal assistance means proactive engagement in the processes of both by the requesting country and the donor. The above overview of negative cases of CBO/ asset recovery shows that though requesting assistance, victim countries frequently fail to adopt specific laws and policies, to establish procedures, and to enable repatriation of funds.³²³

The Accra Agenda for Action (AAA) shows the commitment of developing countries with help from developed countries to enhance their systems of investigation, judiciary,

³²² See Peter Calvert & Susan Calvert, *supra* note 318.

³²¹ International Journal of Law in Context, *Corruption, legal solutions and limits of law* 3, 3 pp. 227-255 (2007)

³²⁴ World Bank, "Fighting "Dirty Money" and Illicit Flows to reduce Poverty: Helping Countries Establish Transparent Financial Systems and Robust Mechanisms for Asset Recovery." World Bank Public Release, (May 23, 2012), at 1-4; see also, The World Bank Group, "Module 5 Asset ...", *supra* note 7.

³²⁵ See World Bank, "Fighting "Dirty Money", *supra* note 324; *see also*, generally, ARTICLE: ESTABLISHING AN INTERNATIONAL CRIMINAL COURT: WILL IT DO JUSTICE?, 20 Md. J. Int'l L. & Trade 199

transparency, and accountability in using public funds to comply with policies, frameworks, and arrangements of international law in regard for tracing, freezing, and restoring illegal assets.³²⁴

The success of CBO/ asset recovery requires commitment and action by the jurisdiction of the public officer or private persons as well as jurisdictions holding stolen assets. To prove the illegal nature of assets held by a person suspected of corruption, the victim country needs to provide to the donor or requesting country the necessary evidence, information, and judicial order to facilitate freezing, confiscating, and returning of funds.³²⁵

The above section outlines requirements for the donor country's commitment to introducing additional legislation and effective mechanisms to facilitate CBO/ asset recovery even in the absence of the victim country's capacity to continue the request for mutual legal assistance. In continuing to save resources within the country and applying them to programs on economic development and poverty reduction, developing countries are subject to several responsibilities.³²⁶ Political will is fundamental for the victim country's cooperation with donor country and domestic coordination of the process of mutual legal assistance in CBO/asset recovery.³²⁷ This needs changes and restructuring efforts at institutional, legislative, and executive levels.

Another important element of international cooperation for the purposes of CBO/ asset recovery concerns the design and establishment of a rational legislative and regulatory

³²⁶ OECD, *Accra Agenda for Action*, (Paris: OECD Publishing, 2008), at 1; *see also, the report of the 3rd High-Level Forum on Aid Effectiveness, Accra Agenda for Action*, available at <http://www.oecd.org/dataoecd/58/16/41202012.pdf> In P 13(c) of the Accra Agenda for Action, donor and partner countries undertook to "ensure that their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability."

³²⁷ *See* ARTICLE: ESTABLISHING AN INTERNATIONAL..., *supra* note 325; *see also*, SYMPOSIUM: Is There a Right to Be Free from Corruption?, *supra* note 229.

³²⁸ *See* Neil Boister, *supra* note 177, at 245.

³²⁹ *See* UNODC & WB, *supra* note 64.

framework. The final aim of increasing the quality of life in developing countries is to adopt the type of legal tools and mechanisms to build up a national capacity to investigate and process illicit financial flows.³²⁸

Today, developing countries utilize such tools in general in cases of the flight, death, or immunity of the governmental official in question, which shows the need to expand the scope of conditions allowing anti-corruption investigations. The key limitation and thus, necessity for change in developing countries within the international framework of CBO/ asset recovery is the actual need for action in the pursuit of cases.³²⁹

To freeze, confiscate, and repatriate assets suspected of having been corruptly transferred from their home country, the country that leads in tracking the case requires similar proceedings on the side of the victim country to explain credibility of accusations and the legitimacy of funds returning to the country of origin. The international cooperation in question is critical in the case of absent domestic coordination between multiple stakeholders. Open communication and high-level commitment facilitates strategic thinking and priorities set to inform decisions on CBO/ asset recovery on the side of the requesting jurisdiction.³³⁰

Furthermore, successful recovery of stolen assets requires building and maintaining a global network of CBO/ asset recovery specialists. Informal specialists' communication and cooperation encourages an exchange of experiences, best practices, and effective strategies in investigating, freezing, and confiscating illicit funds. Through a practitioner network, CBO/ asset

³³⁰ See SYMPOSIUM: Is There a Right to Be Free from Corruption?, *supra* note 229; see also, ARTICLE: Defining The Relationship Between Human Rights and Corruption, *supra* note 294.

³³¹ See SYMPOSIUM: Is There a Right to Be Free from Corruption?, *supra* note 229; see also, Why StAR? Why Now? *Supra* note 166.

³³² See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 244; see also, ARTICLE: Combating Corruption Through International Law, *supra* note 270.

recovery specialists of the requesting country are likely to encourage implementation of the mutual legal assistance process.³³¹

Finally, developing countries are responsible for creating and maintaining an adequate cadre of CBO/ asset recovery specialist, such as financial analysts, examiners, prosecutors, and judges. Thus, it is developing countries' responsibility to reach to the technical assistance providers, international organizations engaged in international CBO/ asset recovery, and development agencies to find and utilize all available educational services and programs.³³²

As an example, the Kingdom of Saudi Arabia is under review and examination of its initiative for competing corruption, protecting integrity, and CBO/ Asset Recovery.

The Kingdom of Saudi Arabia initiative for competing corruption and protecting Integrity:

The Kingdom of Saudi Arabia economy is one of the strongest economies in the Middle East. It has an oil-based economy that possesses 18% of the world's proven oil reserves (262.8 billion barrels) and stands as the most significant exporter of petroleum, and that lead The KSA to be one of the G20 countries and the central position in the Organization of the Petroleum Exporting Countries (OPEC) members. From being an underdeveloped country before the concurrence, the KSA has grown to consider to be one of the wealthiest countries in the Middle East and the world since the country's massive oil resources.³³³

³³³ See ARTICLE: ESTABLISHING AN INTERNATIONAL..., *supra* note 325; see also, generally, J Int Economic Law (2005) 8 (1): 191.

³³⁴ See Weilert A. Katarina, *supra* note 200; see also, ARTICLE: ASSESSING THE RELEVANCY..., *supra* note 209.

³³³ FATF, MENA. *Mutual Evaluation Report of the Kingdom of Saudi Arabia*. (MENA FATF Publications, 2010), 14.

The Saudi economy is considered as free market principles, with a role of the government in the central economic projects, but with low levels of taxation and low-interest rates. The KSA has a population of 24.5 million; it has an average annual increase of 2.3%. Saudis estimate for 73% of the population. About one-third of the people are under 15 years old, and the educated (literacy) rate is 79%. The literacy percentage of younger people is considerably high. The national language is Arabic.³³⁴

Saudi Arabia recognizes the importance of the ongoing global work on protecting the integrity and combating corruption as a shared responsibility. Which is consistent with the Kingdom's (Saudi Vision 2030) that emphasizes on transparency and combating corruption as its important road to support the principles of accountability in both public and private sectors. Besides, there is no indifference or toleration towards corruption in all its forms and levels. The Kingdom was keen on joining international conventions related to the fields of protecting integrity and combating corruption.³³⁵

Some efforts made by the Kingdom include, but not limited to, signing and ratification of the United Nations Convention against Corruption in 2013 UNCAC. Which led to the establishment of an independent body concerned with combating corruption and maintaining integrity. The National Anti-Corruption Commission, which builds its work on the National Strategy for Maintaining Integrity and Combating Corruption. In addition, other controls and accountability bodies have been established such as The Public Prosecution body, the General Auditing Bureau and Control and

³³⁴ *Id*

³³⁵ "Nazaha's Second International Conference." Official Website for Nazaha International Conference, http://conf2.nazaha.gov.sa/?page_id=200

Investigation Board, all aiming toward eliminating financial and administrative corruption and related offenses.³³⁶

Also, Development and enhancement of legislation have been made to bridge corruption gaps in laws and regulations, laws such as Anti-Bribery Law, Illegal Enrichment Law, and Anti-Money Laundering Law. Also, E-Government forms a significant part of the present and the future of Saudi Arabia, as the Kingdom remains the forty-fourth place out of 193 UN Member Countries in the UN E-Government Survey 2016. This has been archived due to the establishment of the E-Government Program "Yesser", and other electronic portals and platforms, such as The Saudi Project for Exchanging Information Electronically and Government e-Procurement Portal, and many other projects.³³⁷

As great idea, The Kingdom took the initiative in 2006 to open a general bank account that aims at giving an opportunity to those who took bribery or embezzled public money or such to pay back those quantities without any legal consequences or implications. The amount deposited since then has exceeded 300 Million Saudi Riyals.³³⁸

To sum up, CBO/ asset recovery is a powerful legitimate framework that provides mechanisms for tracking stolen assets and returning them to the country of origin, which indirectly adds to the decrease of poverty and the country's economic development. In the pursuit of increasing the quality of life, developing countries are subject to several obligations that

³³⁶ *Id*

³³⁷ *Gan Integrity, "Saudi Arabia Corruption Report.", GANBACP.*
<http://www.business-anti-corruption.com/country-profiles/saudi-arabia>

³³⁸ *Id*

require reviewing, restructuring, changing, and adjusting their legal, regulatory, and institutional systems to enable repatriation of illicit funds by the donor country.

Implementation Issues and Their Outcomes:

The above evidence supports both parties of the CBO/ international asset recovery process having responsibilities and obligations to facilitate the achievement of mutual legal assistance. However, the investigation of global integrity and coordination in CBO/ asset recovery remains a hardly achievable phenomenon. While developing countries that carry out overwhelming outcomes of domestic corruption submit requests for assistance to developed jurisdictions, the latter appear unable to return legitimate funds of victim countries because of the absence of CBO/ asset recovery provisions in the country-of-origin legislation. Interestingly, Nigeria representing the developing world was the one to introduce a draft resolution on the transfer of illegal funds and the repatriation of illegal funds to the victim country in 2001.³³⁹

The resolution was later included in a new anti-corruption convention of the United Nations titled UNCAC. Hence, the UNCAC convention obliges donor countries to freeze, confiscate, and return funds examined and proved as originating from crime conducted by foreign exposed persons. Accordingly, the U.N. convention requires parties to cooperate and coordinate in the process of mutual legal assistance, covering the follow-up investment of restored funds that includes funds that are public and private officials' crime related.³⁴⁰

Though being a barrier and obstacle to return of the money, the follow-up monitoring mechanisms remain outside of the UNCAC jurisdiction, which gives the grounds to donor

³⁴¹ United Nations, *Forum on Crime and Society* (New York: United Nations Publications, 2002), at 154; *see also*, Ibi Ajayi & Léonce Ndikumana, *supra* note 29.

³⁴² *See* Marco Arnone & Leonardo S. Borlini, *supra* note 14, at 491; *see also*, *See* UNCAC, *supra* note 53, at, 5-14 (outlining the preventative measures and roles of public and private officials and institutions in preventing and fighting corruption).

country to refuse repatriation of funds to highly corrupt countries.³⁴¹ In light of a limited amount of successful cases of CBO/ international asset recovery, these cases require careful consideration of reasons support the decision of donor country to freeze and confiscate, but not repatriate illicit funds.³⁴²

Specifically, the implementation of the CBO/ asset recovery process is complex and challenging because of the differences in the legal systems between the requesting and requested jurisdictions. The UNCAC convention that establishes a general framework for CBO/ international asset recovery is quite an addition for the global rule of law and law enforcement mechanisms.³⁴³

In addition to traditional provisions concerning confiscation regulations and procedures, the UNCAC convention mentions cooperative mechanisms for direct recovery and return of stolen assets as a CBO from the country of origin to the requested jurisdiction. This new distance in international cooperation results in the limited experience of both developed and developing countries to adjust various legal systems to convention standard, and to determine the best model for incorporating UNCAC provisions in domestic jurisdiction and regulatory regime.³⁴⁴

The legislative, institutional, and economic fundamentals of developed countries allow for quick adjustment to and adoption of new laws and procedures under CBO/ international asset recovery. However, in unstable economies, high corruption and poor infrastructure are critical

³⁴³ See Marco Arnone & Leonardo S. Borlini, *supra* note 14, at 491.

³⁴² *U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation*, <https://www.state.gov/documents/organization/276387.pdf>

³⁴⁵ See Mark Pieth, *supra* note 205, at 354; *see also*, UNCAC, Ch. 3-4, Art. 15-44 (providing for the criminalization of acts of corruption and necessary law enforcement mechanisms).

³⁴⁶ See Mark Pieth, *supra* note 205, at 354; *see also*, It's important to note that the UNCAC's asset recovery provisions apply more fittingly only to international actors working within the country, especially NGOs and government contractors.

barriers and obstacles to implementation of the changes required by the mutual legal assistance agenda.³⁴⁵

For example, in the case of Zambia against Frederick Chiluba and his associates, the U.K. refused to return recover funds transferred to bank accounts of London and other European institutions by the former Zambia president Frederick Chiluba. In addition, the European locations of all assets and the majority of offenders, the U.K. appeared unable to repatriate the requested funds because of the absence of bilateral and multilateral agreements of Zambia with international equals, procedural safeguards, evidence-collecting experience, and capacity to prove the illegal nature of funds transferred.³⁴⁶

The 2014 final report of the Human Rights Council's Independent Expert, Cephass Lumina,³⁴⁷ emphasized the value of unrecovered assets for developing countries. It is a well-recognized fact that illicit financial flows produce an overwhelming effect on any economy, especially on transitional and developing ones. Non-repatriation of funds stolen through embezzlement or corruption by a public official or private elite persons and other public officials reduced the capability of implementing fundamental human rights in the country of the assets' origin.³⁴⁸

In relation to the annual estimated financial gap valued at approximately \$112 billion, the developing world shows the ultimate inability to achieve the Millennium Development Goals

³⁴⁷ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 16; *see also*, generally ARTICLE: Treaties' End: The Past, Present, and Future of International Lawmaking in the United States, 117 Yale L.J. 1236

³⁴⁸ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

³⁴⁹ Cephass Lumina, "The Negative Impact of the Non-Repatriation of Funds of Illicit Origin on the Enjoyment of Human Rights." (25th Sess., Agenda Item 3), Mar 7, 2014, A/HRC/25/52.

³⁴⁸ See ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273.

related to fair and equal provisions of education, food security, sanitation, water, and health care.³⁴⁹

Corruption cuts down a developing country's resources required for realization of social, economic, and cultural rights of its population. Illicit financial flows deny the developing world from the capability of investing in social programs, building up civil and political institutions, and using available resources to maximize realization of basic human rights.³⁵⁰

Repatriation of illegal funds allows returning the required resources to invest in the country development, human rights' fulfillment, and poverty reduction. For example, in 2011, the developing world lost up to \$946.7 billion through illicit financial flows,³⁵¹ which imposed additional assistance requests on the developed world to fill in financial gaps for sustainable development and poverty reduction in victim countries.³⁵²

CBO/ Asset recovery is a solution of mutual benefit; it allows the victim country to return stolen money while denying donor countries from additional investment in the development and growth of the developing world. Therefore, repatriation of illegal funds is fundamental within the international CBO/ asset recovery framework.³⁵³ Repatriation-oriented mutual legal assistance requires the transparency, accountability, participation, and a non-discriminative nature in the process. These principles rely on the core of successful international cooperation and integrity.³⁵⁴

³⁵¹ See Cephias Lumina, *supra* note 349.

³⁵² See ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273; *see also*, Cephias Lumina, *supra* note 349.

³⁵³ See Cephias Lumina, *supra* note 349.

³⁵² See generally, Harry Leroy Jones, International Judicial Assistance: Procedural Chaos and a Program for Reform, 62 YALE L.J. 515, 516 (1953).

³⁵⁵ See OECD, Aid Effectiveness 2011, *supra* note 314.

³⁵⁴ It's important to realize the contrast between how statutes and treaties function within US constitutional system, for interesting reading about this, see Article: Making Treaty Implementation More Like Statutory Implementation, 115 Mich. L. Rev. 1309

Unfortunately, these values face negative traditions and norms from the most autocratic regimes of the developing world.³⁵⁵ Resistance to change in political, legislative, regulatory, and institutional areas result in the incompletion of developing jurisdictions with the requested mutual legal assistance.³⁵⁶

The major reason for the limited international integrity and cooperation in CBO/ recovering stolen assets successfully is a lack of political will. Thus, political constraints are key barriers and obstacles to the CBO/ asset recovery's effectiveness and capability.³⁵⁷ The current anti-corruption reality is conflicting with international anti-corruption programs and provisions of specific organizations.³⁵⁸

For example, the U.N. Commissioner for Human Rights once emphasized the need and importance of countries' cooperation in CBO/ recovering assets under international human rights law. Thus, victim and donor countries should diligently collaborate for the purposes of CBO/ asset recovery.³⁵⁹

An example of the importance of a useful exchange and coordination between a requested country and the requesting country concerns the case of Diepreye Alamieyeseigha, the ex-governor of Bayelsa State, Nigeria. Nigeria through strong cooperation with authorities in the U.K. and South Africa, managed to recover \$17.7 million transferred by Diepreye Alamieyeseigha from Nigeria to the U.K. through investment in real estate and bank accounts.³⁶⁰

³⁵⁷ See Cephias Lumina, *supra* note 349, "The Negative Impact of the Non-Repatriation of Funds of Illicit Origin on the Enjoyment of Human Rights."

³⁵⁶ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9, at 54.

³⁵⁹ See Ibi Ajayi & Léonce Ndikumana, *supra* note 29, at 9.

³⁵⁸ See ARTICLE: Corruption, Development and Good Governance, *supra* note 314.

³⁶¹ See Radha Ivory, *supra* note 55, at 284; *see also*, See Cephias Lumina, *supra* note 349.

³⁶² See Radha Ivory, *supra* note 55, at 42.

After losing immunity, Diepreye Alamiyeseigha was subject to investigation by Nigerian lawmakers governed and supported by foreign counselors in criminal proceedings and CBO/ asset recovery procedures. This close cooperation with the U.K. authorities was important for the success in finding, confiscating, and repatriating Alamiyeseigha's funds located in London back to Nigeria.³⁶¹

Far from all legislative and procedural requirements, narrowing in on corruption, developed countries require victim countries to invest returned funds in anti-corruption and human rights' programs. This is possible through the conditioning of the repatriation of funds, the developed countries try to prevent second-time corruption with the funds in question. In the case of the Peruvian CBO/ asset recovery, Switzerland and the U.S. kept frozen Montesinos' funds until the Peruvian government guaranteed investing all returned assets in anti-corruption and anti-poverty initiatives.³⁶²

Therefore, CBO/ asset recovery battles a threat to a classification of corrupt regimes in developing countries. In other words, a victim country's request for mutual legal assistance in corruption-related crime does not eventually suggest the diligent and corruption-free administration of people in power. Furthermore, CBO/ Asset Recovery to the legitimate owner requires transparent monitoring and regulatory mechanisms to avoid fund re-looting and to introduce them into a government.³⁶³

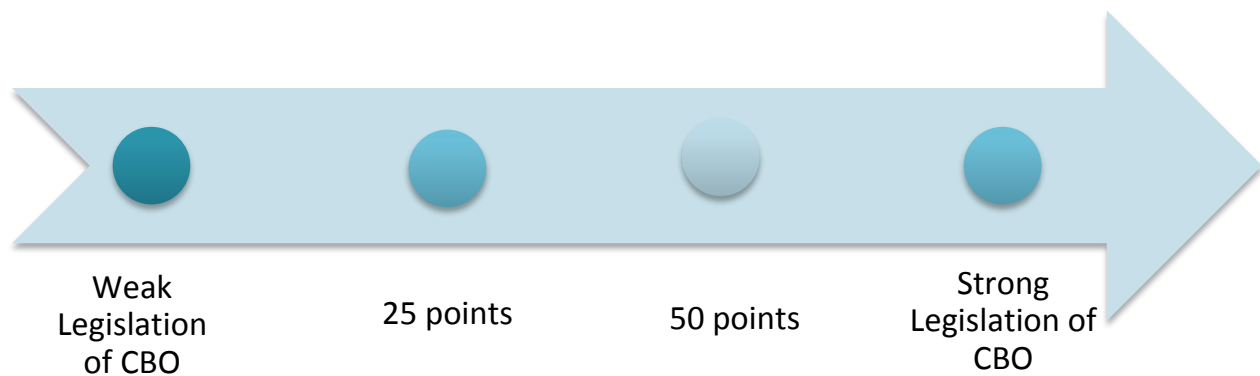
³⁶¹ ARTICLE: COMBATING CORRUPTION IN NIGERIA: A CRITICAL APPRAISAL OF THE LAWS, INSTITUTIONS, AND THE POLITICAL WILL, 14 Ann. Surv. Int'l & Comp. L. 99

³⁶⁴ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 16; see also, SYMPOSIUM: A CAUTIONARY TALE: TEN MAJOR FLAWS IN COMBATING CORRUPTION, 10 Sw. J.L. & Trade Am. 269

³⁶⁵ Tax Justice Network-Africa, *Tax Us If You Can: Why Africa Should Stand Up for Tax Justice* (Cape Town: Fahamu/Pambazuka, 2011), at 32.

Questionnaire on criteria for standing in any legal system:

For any researcher who is seeking to determine any country standing in the legal system. These questionnaire designs to obtain Information regarding CBO/ Asset recovery, legal mechanisms, and methods to identify, trace, and seize corruption proceeds. Each question divides into 5 points, total of 100 points for each country:



The Questionnaire:	
1. Has your country signed and ratified, or only signed, the United Nations Convention against Corruption UNCAC?	11. Does your country have legislation for tracing and freezing?
2. Does your country have any reservations regarding UNCAC?	12. Do foreign governments have the legal capacity to bring civil actions in your domestic courts directly? Without MLA?
3. Does your country take into consideration G20 Guides to Asset Recovery and promoting international cooperation, including mutual legal assistance MLA and extradition consistent with the UNCAC?	13. Name all offices or agencies in your country that may involve in an investigation relating to the asset recovery?
4. Does your country respond with the Financial Action Task Force (FATF) recommendations?	14. Name a government focal point in your country that foreign governments can reach on a 24-hour, 7-day support for professional and legal assistance in stole and thieved asset matters?
5. Does your country require their own formal investigation or the requesting country investigation is enough to provide MLA regarding CBO/ Asset recovery?	15. Does your country have a database policy for the registration of CBO/ asset recovery? And who has access to the database?
6. What kind of information does your country require from a requesting country to accept assistance regarding identification, tracing, and seizure of stolen assets?	16. Are there training programs for those who specialize on the CBO/ Asset Recovery? If so, please describe the programs.
7. What evidence is required for your country to open its investigation or civil action regarding stolen assets?	17. Please explain the jurisdiction of your government to repatriate seized assets, once those assets are under your supervision or control?
8. How is a formal application for Mutual Legal Assistance (MLA) started in your country? Also, what are your domestic procedures for responding to a formal	18. Does your country has the authority to implement cross border order forfeiture judgments?
	19. Please intimate whether your country

<p>MLA?</p> <p>9. Can a foreign government make an MLA request directly to an agency without going by a central point of contact or embassy?</p> <p>10. Does your country cooperates with StAR initiative to supports their authorities in the implementation of the asset recovery programs?</p>	<p>can extradite persons who engaged in foreign corruption crimes?</p> <p>20. Does your country have legislation regarding the management of seized and confiscated assets?</p>
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Mr. Abdullah Al-Forihi (The Director of International Cooperation Department) in the Ministry of Justice, in The Kingdom of Saudi Arabia, has answered the questionnaire regarding KSA as follow:

The Kingdom of Saudi Arabia Legal System Questionnaire

1. Has your country signed and ratified, or only signed, the United Nations Convention against Corruption UNCAC?
Yes. Signature Date: 9 January 2004. Ratification date: 29 April 2013.
2. Does your country have any reservations regarding UNCAC?
No.
3. Does your country take into consideration G20 Guides for Asset Recovery and promoting international cooperation, including mutual legal assistance (MLA) and extradition consistent with the UNCAC?
Yes. Saudi Arabia has established its Standing Committee of Requests for Mutual Legal Assistance, which drafted the Procedures Manual for CBO/ Asset Recovery in the Kingdom of Saudi Arabia, issued in both Arabic and English languages.
4. Does your country respond with the Financial Action Task Force (FATF) recommendations?
Yes.

5. Does your country require their own formal investigation or the requesting country investigation is enough for providing Mutual Legal Assistance (MLA) regarding CBO/ asset recovery?

No. It does not require its formal investigation. However, there are some conditions (release publicly) that must be taken into consideration to provide MLA.

6. What kind of information does your country require from a requesting country to accept assistance regarding identification, tracing, and seizure of stolen assets?

The request shall include necessary information on the subject matter of the request to ensure the accuracy of the legal characterization of the crime committed and facilitate effective processing therefor by forwarding it to the competent authority. Such information shall mainly include the following:

- Legal grounds for the request.
- Name and powers of the agency issuing the request.
- The subject matter of the request including the type of case, description of the charge or crime.
- The purpose for which evidence, information or procedures is requested.
- Names of persons involved and their personal data.
- A time limited -if necessary for processing-.
- Reasons and grounds establishing the relevance of the request to the crime.

7. What evidence is required for your country to open its investigation or civil action regarding stolen assets?

The purpose for which evidence, information or procedures are requested. Also, names of persons who involved and their personal data, and any evidence that proves the criminal acting.

8. How is a formal application for Mutual Legal Assistance (MLA) started in your country? Also, what are your domestic procedures for responding to a formal MLA?

There are some rules for requesting legal assistance, for more details please see The procedures Manual for Asset Recovery in the Kingdom of Saudi Arabia.

9. Can a foreign government make an MLA request directly to an agency without going

by a central point of contact or embassy?
Yes, in urgent cases.
10. Does your country cooperates with StAR initiative to supports their authorities in the implementation of the asset recovery programs?
Yes, Partially.
11. Does your country have legislation for tracing and freezing?
Yes.
12. Do foreign governments have the legal capacity to bring civil actions in your domestic courts directly? Without MLA?
Yes.
13. Name all offices or agencies in your country that may involve in an investigation relating to the CBO/ asset recovery?
<ul style="list-style-type: none"> • Public prosecution. • Financial Intelligence Unit.
14. Name a government focal point in your country that foreign governments can reach on a 24-hour, 7-day basis for professional and legal assistance in stole and thieved asset matters?
<ul style="list-style-type: none"> • Ministry of Foreign Affairs. • Interpol Liaison Department/Ministry of Interior. • Financial Intelligence Unit.
15. Does your country have a database system for the registration of CBO/ asset recovery? And who has access to the database?
No.
16. Are there training programs for those who specialize in the CBO/ Asset Recovery? If so, please describe the programs.
No.
17. Please explain the jurisdiction of your government to repatriate seized assets, once those assets are under your supervision or control?

The proceeds of stolen asset confiscated shall devolve to the Kingdom of Saudi Arabia. Unless otherwise agreed on a case-by-case authority, or by relevant bilateral agreements or treaties.

Also, in the cases where legal assistance is provided, that do not mean the right of the Kingdom to the proceeds of the stolen asset is repeal, as well as the rights of the Kingdom for bona fide persons, shall not be prejudiced.

18. Does your country has the authority to implement cross border order forfeiture judgments?

Yes.

19. Please intimate whether your country can extradite persons who engaged in foreign corruption crimes?

Yes. However, a bilateral agreement must exist, and this agreement in the frame of the international instruments likes the UNCAC.

20. Does your country have legislation for the authority of seized and confiscated assets?

Yes.

Based on the questionnaire above, the Kingdom of Saudi Arabia has met 85% of the criteria of standing in the Saudi legal system. It is significant to note that KSA can enhance its efforts by examining the international experiences of other states, in the field of combating corruption and protecting integrity. Given this evidence, learning about the best practices, exchange of ideas, and expertise, with developed countries is vital.

Furthermore, sharing knowledge can advantage the Kingdom in developing training courses for the employees of the control and accountability bodies. Special training courses can improve the employee's capacity for combating corruption and enforcing the law. KSA should develop and enhance legislations to bridge corruption gaps in legislation and regulations. Also, cooperating with non-profit organizations NGOs to develop KSA system (Governance).

Moreover, it is important to raise awareness to implement the values of integrity and transparency in school curriculums.

Conclusion:

To sum up, the international framework for asset recovery is an unprecedented accomplishment of international law in the fight against corruption and for omnipresent enjoyment of human rights. The UNCAC-based global agenda has already illustrated its efficiency in tracing, freezing, confiscating, and returning stolen funds back to victim countries under the strong support and coordination of developed donor states. Success of any asset recovery campaign depends on the presence of corresponding provisions in jurisdictions of both parties, their open and fruitful communication and cooperation, and transparency in funds' returning and re-injecting in the government of origin. The latter is the major cornerstone in multiple processes of mutual legal assistance. Donor countries intolerant of corruption are reluctant to return illegal funds to countries characterized by high corruption, immature legal systems, and absent capacity for ensuring fair return of stolen funds and their immediate investment in human rights' programs.

Chapter 5: International Cooperation as a Path Towards Improving International Transparency and Integrity

This chapter explores the role of international cooperation and cross-border communication in successful CBO/ asset recovery. More specifically, it is argued that cooperation of different jurisdictions is the key to the timely recovery of assets that can help the countries not only repatriate proceeds of corruption but possibly prevent criminals and fraudsters from hiding illicit funds in safe havens. The first section presents an analysis of existing ways and channels of cross-border cooperation to assess how international relations and communication affect CBO/ asset recovery. Further, informal cooperation channels are discussed as one of the ways to enhance the process of CBO/ asset recovery.³⁶⁴

The second section is dedicated to analyzing problems and challenges associated with cooperation on CBO asset recovery, with particular attention to existing barriers and obstacles to effective communication between jurisdictions and using examples of several cases to confirm how communication challenges prevent countries from successful CBO/ asset recovery. Finally, the last section provides recommendations for enhancing cross-border communication, which is the key to unchallenged and timely enforcement of cross-border orders.³⁶⁵

Ways and Channels of Cross-Border Cooperation:

Cross-border asset recovery is impossible without effective cooperation between jurisdictions and agencies, because illicit funds are usually hidden abroad. As the range of

³⁶⁴ See generally, Transparency International, *Exporting Corruption Progress Report 2014: Assessing Enforcement of the OECD Convention on Combating Foreign Bribery*, http://www.transparency.org/whatwedo/publication/exporting_corruption_progress_report_2014_assessing_enforcement_of_the_oecd

³⁶⁵ See generally, Transparency International, "How Do We Stop Countries from Exporting Corruption" (Oct. 23, 2014), http://www.transparency.org/news/feature/how_do_we_stop_countries_from_exporting_corruption

corruption and money laundering increases regularly, and billions of dollars are hidden in bank accounts in financial centers, the international community works on creating effective counter-measures that could prevent criminals from committing corruption crimes.³⁶⁶

Over past decades, countries signed a number of important multilateral treaties and designed instruments requiring countries parties to assist one another in financial/corruption investigations, the collection of evidence, confiscation, and asset repatriation. Due to such international efforts as UNCAC and StAR,³⁶⁷ cross-border cooperation has become a necessary part of each side of CBO/ asset recovery including tracing, freezing, confiscation, and repatriation. Traditionally, under these treaties, countries rely on formal requests for assistance in CBO/ asset recovery cases.³⁶⁸

This assistance is made through one of four channels, including but not limited to “(1) an international convention or agreement providing for mutual legal assistance (“MLA”); (2) a bilateral mutual legal assistance treaty (“MLAT”); (3) domestic legislation permitting international co-operation; or (4) a promise of reciprocity through diplomatic channels (often called a “letter rogatory”).”³⁶⁹

The primary channel for international cooperation on CBO/ asset recovery is *mutual legal assistance* (MLA). Mutual legal assistance in CBO/ Asset recovery is a process by which countries seek and provide assistance for evidence collection, information gathering, and enforcement of orders and judgments directing asset tracing and recovery for use in criminal

³⁶⁶ See generally, ARTICLE: Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention, 53 Va. J. Int'l L. 1

³⁶⁷ The initiative's website available at: <http://star.worldbank.org/star/>

³⁶⁸ See generally, ARTICLE: Keynote Speech: Global Corruption and the Universal Approach of the United Nations Convention against Corruption, 53 Osgoode Hall L.J. 7

³⁶⁹ Jean B. Weld, “*International Cooperation on recovery of Criminal Assets*,” 146th International Training Course, (Mar 20, 2017) http://www.unafei.or.jp/english/pdf/RS_No83/No83_07VE_Weld2.pdf.

cases. The effect of MLA extends well beyond gathering information and evidence to prevention of corruption cases and safe havens.³⁷⁰

As noted corruption crimes become more complicated in the domestic jurisdiction but on the other hand, cross-border crime transactions become more prevailing. An MLA request is typically submitted in writing and obligates the receiving jurisdiction to proceed according to protocols, procedures, and conditions provided in domestic legislation and multilateral or bilateral agreements.³⁷¹ Often, countries use the MLA request writer mechanism developed by the United Nations Office on Drugs and Crime.³⁷²

Notably, StAR recommends starting any MLA request with the list of conventions, treaties, and agreements that regulate international cooperation on CBO/ asset recovery. This provides confirmation that the formal request has a sound legal basis and encourages countries to cooperate more willingly. Advance contact with the recipient before sending a formal MLA request to a foreign jurisdiction is recommended to obtain information necessary to make the request and avoid problems with communication. It is also advisable to seek a voluntary

³⁷⁰ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 127; *see also, e.g.*, MLA in Europe has The Camden Assets Recovery Interagency Network (CARIN) which is an informal network of law enforcement and judicial authorities established to improve international asset recovery, for more information See OECD, Typology on Mutual Legal Assistance in Foreign Bribery Cases, at 89 (2012), <http://www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf>.

³⁷¹ ADB-OECD (2017), *Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*, Available at: <https://www.oecd.org/.../ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf>

³⁷² For more information regarding Europe initiative on MLA, See OECD & World Bank, *Tracking Anti-Corruption and Asset Recovery Commitments*, 40 (2011) (discussing EU Council Decision 2007/845/JHA, 6 Dec. 2007).

cooperation with the party concerned because the owner of the account or holder of the information may agree to provide a voluntary statement and assist the investigation.³⁷³

A country that plans to send an official MLA request should also consider the concept of dual criminality³⁷⁴ and obtaining a court order addressing the corrupt activities. This principle means that the offense under investigation is criminal in both the requesting and requested jurisdictions.³⁷⁵ Some countries do not require dual criminality to accept an MLA request; some may require it only when search and seizure are needed, while others may refuse an MLA request if dual criminality is absent.³⁷⁶ Because countries vary in their approaches to dual criminality, it is important for the country to consider all potential barriers and obstacles before sending a request.³⁷⁷ It is also essential to understand whether the challenged actions are considered criminal in both jurisdictions and try to fit the activity at issue into a particular offense if the countries have different approaches to the same offenses.³⁷⁸

Notably, according to UNCAC, a country may insist on the dual criminality in CBO/asset recovery cases only when a coercive measure is required. Additionally, UNCAC

³⁷³ OECD & ADB, *Anti-Corruption Initiative for Asia and the Pacific Denying Safe Haven to the Corrupt and the Proceeds of Corruption*, (Paris: OECD Publishing, 2007), at 27; see also, generally, ARTICLE: GLOBAL APPROACH TO ANTI-BRIBERY AND CORRUPTION, AN OVERVIEW: MUCH DONE, BUT A LOT MORE TO DO . . . , 37 T. Marshall L. Rev. 303.

³⁷⁴ Dual Criminality is possible only in criminal cases where an activity is illegal in both countries and punishable under their laws, for more information, see, Test of "dual criminality" where extradition to or from foreign nation is sought, 132 A.L.R. Fed. 525

³⁷⁵ See Neil Boister & Robert J. Currie, *supra* note 4.

³⁷⁶ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9, at 33.

³⁷⁷ John Hatchard, *Combating Transnational Crime in Africa: Problems and Perspectives*, Journal of African Law, 50, 2 (Nov 14, 2006), at 145-160.

³⁷⁸ See generally, Article: Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law, 95 Minn. L. Rev. 110; see also, Test of "dual criminality", *supra* note 377.

encourages countries to assist each other through mutual legal assistance without dual criminality where possible.³⁷⁹

Bilateral mutual legal assistance treaty Mutual Legal Assistance Treaties (MLATs) mean agreements between jurisdictions that promote the exchange of information related to an investigation happening in one of the member countries. MLATs can be bilateral (country-to-country), multilateral, regional, and country-to-regional. Their categorization has a critical influence on what data is shared with foreign governments for criminal investigations and prosecutions. MLATs are considered another channel of cooperation in the CBO/ asset recovery process.³⁸⁰ They typically serve as an additional legal tool for cross-border cooperation, international conventions such as UNCAC, and domestic laws.³⁸¹

MLATs assist in information sharing among multiple financial investigations and jurisdictions about alleged criminals' bank transfers. They help the process of confiscation of assets and help the parties to obtain financial records, seizure warrants, and orders in a foreign jurisdiction. One of the primary advantages of MLATs is that they impose clearly articulated obligations on both parties, which guarantees reciprocity. Moreover, MLATs can help avoid the problem of dual criminality by introducing more flexible, country-specific provisions.³⁸²

MLATs are also much easier to correct and negotiate than the international conventions, and allow addressing the arising challenges more effectively. However, it may take too many years to negotiate MLATs with all the countries of the world, so countries usually sign MLATs

³⁷⁹ UNCAC, Ch. 4, Art. 43-49.

³⁸⁰ *Mutual Assistance in Criminal Matters*, Jan. 23, 1977, U.S.-Switz., 27 U.S.T. 2019

³⁸¹ See UNODC, Model treaty on mutual assistance, *supra* note 210; *see also*, generally, ARTICLE: Channeling Unilateralism, 56 Harv. Int'l L.J. 297.

³⁸² See Marie Chêne, *supra* note 73; *see also*, generally, ARTICLE: Foreign Affairs and Enforcement of the Foreign Corrupt Practices Act, 11 J. Empirical Legal Stud. 409.

with the countries where criminals most often hide the stolen assets or where the help is likely to be most needed in the nearest future.³⁸³

Many countries use MLATs as the primary channel for cooperation in CBO/ asset recovery cases. The United States, for example, has created an impressive framework of bilateral MLATs and has used these agreements to regulate mutual legal assistance with foreign jurisdictions.³⁸⁴ Similarly, in Asia Pacific region, member countries of the ADB/OECD Anti-corruption Initiative for Asia-Pacific concluded more than 60 bilateral MLATs to enhance the regional struggle against corruption and money laundering. In some cases, however, negotiating a bilateral agreement is not necessary because existing agreements or treaties, such as the ASEAN Treaty on Mutual Legal Assistance, already provide the necessary legal basis for cross-border cooperation.³⁸⁵

A *letter rogatory*, or promise of reciprocity, is another diplomatic tool that can be used to acquire evidence of corruption and criminal activity when a country is not a party to a global conventions or bilateral treaties for seeking legal assistance.³⁸⁶ By a letter rogatory a court in one jurisdiction requests assistance from a court in another jurisdiction, usually for evidence or information. These requests are communicated through diplomatic channels of each country in

³⁸³. James I.K. Knapp, *Mutual Legal Assistance Treaties as a Way To Pierce Bank Secrecy*, 20 Case W. Res. J. Int'l L. 405, 405 (1988) ("[An MLAT] is a treaty which typically provides for the direct exchange of information between two 'central authorities' - the U.S. Department of Justice and its foreign counterpart, bypassing both normal diplomatic channels and the involvement of a U.S., though not always a foreign, court in the making of a request.")

³⁸⁴. See UNODC, Model treaty on mutual assistance, *supra* note 210

³⁸⁵. See Stephenson et al., *supra* note 17, at 52.

³⁸⁶. "Letters rogatory are the medium, in effect, whereby one country, speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country; such request being made, and being usually granted, by reason of the comity existing between nations in ordinary peaceful times." *Tiedemann v. The Signe*, 37 F.Supp 819, 820 (E.D. La. 1941), quoted in Vassalo, *supra* note 195, at 188.

order to be accepted by the foreign court, and any information or proof must be exchanged in the same manner.³⁸⁷

Finally, international cooperation on CBO/ asset recovery may also be regulated by domestic legislation. In some jurisdictions, an MLA process is possible without a bilateral treaty. In such cases, the condition of exchange is usually applied, which means that a requesting country should provide MLAs in similar cases.³⁸⁸

Examples of successful cases show that countries using the formal channels for seeking cross-border assistance have high chances of recovering their assets held abroad. Take, for example, a case of Sani Abacha, the former president of Nigeria. During his term as the leader of the country, he embezzled approximately \$5 billion, which he then transferred to a foreign jurisdiction.³⁸⁹ In 1998, Nigeria began the process of CBO/ asset recovery from Switzerland based on the MLAT between the countries. In 2007, due to the substantial assistance of Switzerland, which led a thorough criminal investigation proving that the funds were collected illegally, Nigeria recovered more than \$700 million.³⁹⁰

However, one needs to note that besides formal cooperation channels involved in this complex case, a large number of countries, banks, and third parties were also involved through

³⁸⁷ See Jean B. Weld, *supra* note 371.

³⁸⁸ "Typical MLAT provisions include execution of requests regarding penal matters; taking testimony or statements; production of documents; service of writs, summonses, or other judicial documents; locating persons; and providing judicial records, evidence, and information." See Barry Kellman & David S. Gualtieri, *Barricading the Nuclear Window - A Legal Regime to Curtail Nuclear Smuggling*, 1996 U. Ill. L. Rev. 667, 671 (1996), at 727.

³⁸⁹ See Clare Fletcher and Daniela Herrmann, *supra* note 141, at 173.

³⁹⁰ See Cisse et al., *supra* note 180, at 254.

informal channels.³⁹¹ CBO/ Asset recovery was completed successfully because both countries were ready to cooperate and agree on the terms of the settlement. According to StAR, it has been decided that the recovered money would be used to fund developmental projects in the education, health, water, road, and electricity sectors.³⁹²

This is not the only example of the successful cooperation between the EU and Nigeria. For instance, the London Metropolitan Proceeds of Corruption Unit and Nigeria's Economic and Financial Crimes Commission have collaborated on several other cases of CBO/ asset recovery, assisting each other in asset tracing, seizure, confiscation, and repatriation.³⁹³

The case of Macao's Secretary of Transport and Public Works Ao Man Long is another example proving the importance of international cooperation on cross-border order/ asset recovery. An investigation uncovered that Ao and his wife possessed large sums of money, jewelry, expensive wine, and cigars worth millions of dollars. Money was deposited in 39 Hong Kong banks and more than 90 foreign bank accounts that formally belonged to Ao's relatives.³⁹⁴

In 2008, based on the MLAT between China, Hong Kong SAR, and the United Kingdom, as well as on UNCAC, Macao began the process of CBO/ asset recovery. Due to the active cooperation of the Hong Kong Independent Commission Against Corruption (ICAC) with other

³⁹¹ "There are informal means of obtaining evidence abroad that do not involve the use of letters rogatory, mutual legal assistance treaties, or executive agreements. Informal requests usually secure assistance more quickly and flexibly than formal ones" See ARTICLE: The Mexico-US Mutual Legal Assistance in Criminal Matters Treaty Another Step Toward The Harmonization of International Law Enforcement, 14 *Ariz. J. Int'l & Comp. Law* 1

³⁹² StAR, "*Sani Abacha / Swiss Mutual Legal Assistance Treaty Case*," 2016, <http://star.worldbank.org/corruption-cases/node/18575>.

³⁹³ James Maton, *Dealing with politically exposed persons: the risks*, (2007) 11 JIBFL 636.

³⁹⁴ Newman M. K. Lam & Ian Scott, *Gaming, Governance and Public Policy in Macao*, (Hong Kong: Hong Kong University Press, 2011), at 98.

jurisdictions through formal and informal channels, the country was able to recover assets from the UK by 2015, depriving the official of profits from his corrupt activities.³⁹⁵

These two cases of cross-border order/ asset recovery prove that formal channels of cooperation are the key to the successful recovery of assets. At the same time, they show that informal communication between agencies and parties is also significant, as it allows investigators to collect evidence and complete the recovery effectively.³⁹⁶

Finally, the case of the former Vice President of the Republic of Equatorial Guinea Teodoro Nguema Obiang, is an excellent example of how cross-border cooperation and involvement of international organizations can facilitate the investigation and CBO/ asset recovery.³⁹⁷ Although this case is still ongoing, this is a first case in which French courts allowed the famous anti-corruption association (Transparency International) to file a criminal complaint that started the investigation. At the same time as the court proceedings in France, the United States began its own investigation, as Teodoro Nguema Obiang allegedly possesses millions of dollars in the USA.³⁹⁸

The country is actively cooperating with France on this case to share information and evidence. The case is ongoing, but Equatorial Guinea has managed to recover an unspecified amount of assets that it used to establish a charity. This example should encourage governments and agencies to pursue CBO/ asset recovery cases, despite the overwhelming challenges that are faced in their operation.

³⁹⁵ *StAR*, “*Ao Man Long (United Kingdom)*,” 2016, <http://star.worldbank.org/corruption-cases/node/18463>.

³⁹⁶ See Barry Kellman & David S. Gualtieri, *supra* note 390, at 726.

³⁹⁷ Peter Leasure, “Asset recovery in corruption cases: Comparative analysis identifies serious flaws in US tracing procedure”, *Journal of Money Laundering Control* 19, no. 1 (2016), at 4-20.

³⁹⁸ *Id.*

Informal Cooperation Channels for CBO/ Asset Recovery:

Although formal cooperation channels have proven to help countries recover billions of stolen assets, in practice, multiple factors such as the lack of training, procedural delays, and differences in legal systems may reduce the effectiveness of formal legal assistance, which highlights the need for more informal forms of cooperation.³⁹⁹

As recognized at one of the conferences of the States Parties to the UNCAC, “the exchange of information should be developed and improved, both at the request of a State and on a spontaneous basis, but also using and promoting informal channels of communication.”⁴⁰⁰

These informal channels allow collecting information more quickly than through formal MLA requests, speed that can be especially important in preventing criminals from transferring and hiding their assets. In addition, using an informal communication channel allows the foreign jurisdiction to prepare for its role in the planned investigation and prevent potential challenges associated with the cross-border contact. Therefore, in addition to assistance that requires a formal MLA request, countries often seek informal assistance through several cooperation channels.⁴⁰¹

One of the most common channels for informal cooperation and assistance in cross-border asset recovery are *financial intelligence units* (FIUs).⁴⁰² Notably, UNCAC encourages

³⁹⁹ See Marie Chêne, *supra* note 73; see also, OECD, *supra* note 372.

⁴⁰⁰ See Marco Arnone & Leonardo S. Borlini, *supra* note 14, at 506.

⁴⁰¹ "International treaty agreements have historically been enforced through informal state-to-state mechanisms, such a reciprocity and retaliation." See, ARTICLE: The Domestic and International Enforcement of the OECD Anti-Bribery Convention, 15 Chi. J. Int'l L. 84; see also, generally, Alexander Thompson, *The Rational Enforcement of International Law: Solving the Sanctioners' Dilemma*, 1 INT'L THEORY 307 (2009).

⁴⁰² The World Bank Group, “Module 5 Asset ...”, *supra* note 7.

every state party to create an FIU as a “national center for the collection, analysis and dissemination of information regarding possible money laundering.”⁴⁰³

The type of assistance they provide may vary depending on a country and on the style of an FIU itself. More specifically, administrative FIUs have less authority and power than law enforcement FIUs; therefore the range of assistance they provide varies considerably. Some FIUs have authority to freeze funds, while others are more useful in gathering the factual basis for a full investigation. Currently, approximately 127 FIUs from all over the world are the members of the Egmont Group. FIUs included in this association have agreed to share financial intelligence in cases of criminal or terrorist investigations, as well as assist in corruption, money laundering, and embezzlement cases.⁴⁰⁴

The evidence they usually share, including bank account information, various records, cash transportation forms, *etc.* helps the countries to collect enough data to begin an official investigation or facilitate the cross-border asset recovery process. FIUs cooperate not only with counterpart FIUs but also with various agencies, financial institutions, prosecutorial authorities, and regulators, which makes tackling the problem of illicit financial outflows more efficient.⁴⁰⁵

⁴⁰³ UNCAC, Art. 14, Par. 1 (a).

⁴⁰⁴ ARTICLE: The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law, 31 NW. J. INT'L L. & BUS. 137; *see also*, what is The FATF 40 Recommendations? It has four groups or elements that each one specializes in perspective. These are *Group A*: Legal Systems, and that include the criminal offense of money laundering (1 and 2), provisional measures, and confiscation (3). *Group B*: Important measures for Financial Institutions, and Nonfinancial Institutions to Prevent Money Laundering, Terrorist Financing, and banks provision (4), customer due diligence and record-keeping (including client identification and transaction monitoring) (5-12). Moreover, reporting any unusual transactions and suggestion internal training and audit programs (13-16), Also recommending sanctions for incompetent with the Recommendations (17-20), measures regarding countries that do not adopt the FATF Recommendations (21-22), and regulation and supervision (23-25).

⁴⁰⁵ *Int'l Monetary Fund, Fin. Intelligence Units: An Overview 2 (2004)*, available at: <http://www.imf.org/external/pubs/ft/fiu/fiu.pdf>

According to the Egmont Group White Paper, FIUs are essential elements in the global fight against corruption.⁴⁰⁶ They are particularly helpful in the pre-investigative and intelligence gathering stages, where they serve as an intermediary between the law enforcement agencies and private parties and assist the agencies in obtaining and sharing the relevant financial information. The primary advantage of FIUs included in the Egmont Group is that they have established assistance mechanisms that facilitate communication and help the countries to collect, analyze, and exchange evidence more efficiently.⁴⁰⁷

However, the network of FIUs may sometimes work ineffectively, especially in Africa or countries from Central and Eastern Europe. The problem is that the mere existence of an FIU and anti-corruption and CBO/ asset recovery legislation is not enough; the lack of experience, training, political will, and commitment to transparent cross-border cooperation may undermine the process of information sharing between states.⁴⁰⁸

Further, law enforcement practitioners including prosecutors, investigative agencies, and investigating officers can also be helpful in building informal cooperation channels.⁴⁰⁹ There are also contact officers and law enforcement attaches, which can help the countries to communicate more effectively and avoid misunderstanding or the lack of awareness. Working in foreign embassies or consulates, these professionals enhance communication between jurisdictions by

⁴⁰⁶ An Egmont Group White Paper, “The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets,” 2012, <http://www.egmontgroup.org/news-and-events/news/2012/10/03/the-role-of-fius-in-fighting-corruption-and-recovering>.

⁴⁰⁷ *Id.*

⁴⁰⁸ Kilian Strauss, “The Situation of Financial Intelligence Units in Central and Eastern Europe and the Former Soviet Union,” 2010, https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_09.pdf; see also, generally, Stephen Fidler, The Human Factor: All is Not Well in Clandestine Intelligence Collection, *Fin. Times* (London), Jul 7, 2004, at 15.

⁴⁰⁹ The World Bank Group, “Module 5 Asset ...”, *supra* note 7.

assisting with MLA requests.⁴¹⁰ They are knowledgeable about the procedures and laws of the host and native jurisdictions, which allows practitioners to avoid the common barriers, obstacles, and misunderstandings. Before sending an official MLA request, it can be extremely helpful to contact an embassy or consulate to see if it is possible to obtain an expert opinion of a liaison magistrate or law enforcement experts, although not every jurisdiction maintains such employees.⁴¹¹

Regulatory authorities including bank, securities, and company regulators can also be helpful in facilitating contact between countries.⁴¹² However, unlike other informal cooperation channels, this contact often requires memorandum of understanding (MOU) and may present certain restrictions in sharing for law enforcement purposes.⁴¹³

Informal networks for practitioners such as Camden Assets Recovery Inter-Agency Network (CARIN) provide essential informal support for judicial authorities.⁴¹⁴ CARIN was created in 2004 to promote international inter-agency cooperation and communication to help countries fight corruption and money laundering. Although CARIN is an informal network that has no authority to make binding decisions, it can still be helpful in tackling the proceeds of crime.⁴¹⁵

Created after CARIN, there are also the Asset Recovery Interagency Network of Asia and the Pacific (ARIN-AP) and Asset Recovery Interagency Network (ARINSA) for Southern

⁴¹⁰ See generally, T. Markus Funk, *Mutual Legal Assistance Treaties and Letters Rogatory: A Guide for Judges*, Federal Judicial Center International Litigation Guide (2014).

⁴¹¹ *Id.*

⁴¹² See The World Bank Group, “Module 5 Asset ...”, *supra* note 7.

⁴¹³ See T. Markus Funk, *supra* note 412.

⁴¹⁴ Ángeles Gutiérrez Zarza, *Exchange of Information and Data Protection in Cross-border Criminal Proceedings in Europe* (The Hague: Springer, 2014), at 110.

⁴¹⁵ Deirdre Healy et al., *The Routledge Handbook of Irish Criminology* (London: Routledge, 2015), n.p.

Africa, are also considered the regional centers of professional network in combatting corruption.⁴¹⁶ Additionally, OECD members have established focal points under the Global Focal Point Network promoted by Interpol and StAR. These focal points include professionals who respond to emergency requests in cases when immediate action is required to secure funds. Further, Interpol, Europol, Ameripol, and Aseanpol, as well as the European Judicial Network and Eurojust can provide informal assistance to states seeking to recover the stolen assets held abroad.⁴¹⁷

Interestingly, Brun et al. compared formal MLA requests and informal assistance to highlight their advantages and disadvantages.⁴¹⁸ According to the scholars, the main aim of an informal investigation on CBO/ asset recovery is to collect evidence that may be useful in a formal investigation.

Unlike formal assistance based on coercive investigative measures, informal assistance uses non-coercive methods and encourages foreign jurisdictions to disclose information that may be helpful in the case. Informal communication also requires agency-to-agency direct contact, which helps to obtain information timely and verify facts to proceed with investigation and order enforcement.⁴¹⁹

However, unlike formal cooperation, which collects evidence that can be used in court, information collected through informal channels is sometimes not admissible.⁴²⁰ Generally, because both formal and informal cooperation have their advantages and disadvantages, the

⁴¹⁶ See Jan Wouters, Alberto Ninio, Teresa Doherty, & Hassane Cisse, *supra* note 182, at 466.

⁴¹⁷ See OECD & World Bank, *supra* note 374.

⁴¹⁸ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 129.

⁴¹⁹ See T. Markus Funk, *supra* note 412; see also, Jean B. Weld, *supra* note 371.

⁴²⁰ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11, at 129.

process of international cooperation requires a combination of formal assistance through MLA requests and informal and personal communication between jurisdictions.⁴²¹

Problems and Challenges of Cooperation on Cross-Border Asset Recovery:

The UNCAC explained the significance of international cooperation in the criminal matter in Article 43 (1): (UNCAC, Ch. 4, Art. 41.): "*States Parties shall cooperate in criminal matters in accordance with articles 44 to 50 of this Convention. Where appropriate and consistent with their domestic legal system, States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption.*"⁴²²

Asset tracing and recovery often take years because a country cannot conduct any legal, investigative, and enforcement procedures in foreign jurisdictions. Therefore, success mainly depends on assistance from jurisdictions where the funds are located, and this process is often complicated by considerable differences in legal frameworks, laws, procedures, technical capacities, languages, and even time zones.⁴²³

Problems with the mutual recognition of confiscation orders also arise in many cases, preventing countries from timely freezing and repatriation of the stolen assets. If communication channels are limited, or if there is not enough contact between agencies, all of these difficulties

⁴²¹ See OECD, *supra* note 372.

⁴²² UNCAC, Ch. 4, Art. 41 (1).

⁴²³ See OECD, *supra* note 372; see also, generally, Peter Eigen, *Removing a Roadblock to Development, Innovations: Tech., Governance, Globalization*, Spring 2008, available at: <http://www.policyinnovations.org/ideas/policylibrary/data/01499/res/id=saFile1/INNOVATIONSEigenTI.pdf>.

are practically impossible to overcome, which means that billions of dollars are left in the foreign bank accounts of criminals and corrupt officials.⁴²⁴

As previously noted, international cooperation on CBO/ asset recovery has a sound legal basis including multilateral conventions, agreements, and treaties, bilateral mutual assistance agreements and treaties, domestic legislation, a promise of reciprocity through diplomatic channels, *etc.*⁴²⁵

Together, these conventions, treaties, and agreements determine how and when countries may cooperate or refuse a request for formal or informal assistance.⁴²⁶ However, all these initiatives and instruments focus primarily on tracing, seizure, and confiscation orders, managing the importance of communication.⁴²⁷

The problem of exchanging information necessary for the issuance and enforcement of confiscation orders is not addressed or regulated well in these conventions and agreements, which weakens the process of cross-border asset recovery.⁴²⁸ Thus, for example, although UNCAC includes provisions encouraging state parties to cooperate and exchange information, these provisions clearly are not enough to regulate the complex process of cross-border order cooperation.⁴²⁹

Possibly, this gap in legal framework may be explained by the fact that information gathering happens during the formal investigation, and many countries simply do not make a

⁴²⁴ See generally, *Felipe Dantas Araujo, An analysis of the National Strategy Against Corruption and Money Laundering*, 2 Brazilian Journal of Public Policy 53 (Jan/June 2012), available at

<http://www.publicacoesacademicas.uniceub.br/index.php/RBPP/article/view/1649/1592>.

⁴²⁵ See UNODC & World Bank, *Stolen Asset Recovery*, *supra* note 166.

⁴²⁶ See Radha Ivory, *supra* note 55, at 123.

⁴²⁷ *Id.*

⁴²⁸ Colin King & Clive Walker, *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (New York: Routledge, 2016), at 39.

⁴²⁹ See ARTICLE: *Combating Corruption Through International Law*, *supra* note 270.

distinction between financial information gathering and the legal process. Another problem associated with cross-border order asset recovery is that information exchange is often ineffective. There are usually several and various agencies concerned with the method of the investigation, and without clear communication rules and practices, their work risks being useless. When they are not informed properly about the work of their colleagues in other agencies, CBO/ asset recovery efforts may be unnecessarily duplicated or simply unsuccessful because important information is not shared.⁴³⁰

Ineffective information exchange is also an important issue because it allows criminals to transfer assets quickly or prepare for the investigation. Therefore, administrative information should necessarily be sent to the law enforcement authorities to detect criminal activity, but individuals under investigation should not be informed until the appropriate time.⁴³¹

CBO/ Asset recovery cases often fail or take years to complete because there is no active sharing of information between the relevant agencies and investigators at a system-wide level. Stakeholders are not willing, for the most part, take a proactive stand in communication and information sharing, so many cases of CBO/ asset recovery remain uncompleted.⁴³²

Furthermore, as emphasized by Pereira, cross-border cooperation is hampered by the lack of follow-up.⁴³³ In other words, there is currently little feedback among the agencies that share administrative and criminal information. When an agency receives some information from an

⁴³⁰ *Basel Institute on Governance, "Capacity Building in Asset Recovery," 2011, https://www.baselgovernance.org/sites/collective.localhost/files/publications/capacity_building_in_asset_recovery.pdf; see also, U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation, available at:*

<https://www.state.gov/documents/organization/276387.pdf>

⁴³¹ Pereira, Pedro Gomes, *Analytical Study on Mechanisms for Asset Recovery and Confiscation in Moldova* (Basel: Basel Institute on Governance, 2016), at 5.

⁴³² Philippa Webb, *The United Nations Convention Against Corruption*, 8 J. Int'l Econ. L. 191, 206-12 (2005).

⁴³³ See Basel Institute on Governance, *supra* note 432.

equal agency, it rarely informs it about the usefulness and relevance of this information to the investigation. This means that the requested agency knows nothing about the quality of data provided and misses the opportunity to improve its effectiveness in future. As a result, agencies can continue to share irrelevant or outdated information without knowing each other's needs and requirements.⁴³⁴

Additionally, there is no follow-up system that would require each agency to inform the other agency about the actions that have been taken, which leads to efforts being repeated. Together, all these problems of the communication system lead to the ineffective and time-consuming process of CBO/ asset recovery, which engages many stakeholders but brings little positive results.⁴³⁵

It would, however, be wrong to claim that little information exchange is being made between different jurisdictions. For the past two decades, both developing and developed countries have made significant progress in the fight against illicit financial flows, money laundering, tax evasion, and corruption.⁴³⁶

Many countries have introduced considerable changes in the operation of their agencies to be able to comply with recommendations of UNCAC, the Financial Action Task Force, and other agreements, treaties, and initiatives.⁴³⁷ For example, as stated in 2014 OECD report, more than 1,300 tax data exchange arrangements have been signed recently, and billions of dollars

⁴³⁴ See Basel Institute on Governance, *supra* note 432.

⁴³⁵ See ARTICLE: Keynote Speech: Global Corruption..., *supra* note 370.

⁴³⁶ NOTE: THE GLOBAL FINANCIAL CRISIS AND THE TRANSNATIONAL ANTI-CORRUPTION REGIME: A CALL FOR REGULATION OF THE WORLD BANK'S LENDING PRACTICES, 45 Geo. J. Int'l L. 1293

⁴³⁷ ARTICLE: INTERNATIONAL ACTORS AND THE PROMISES AND PITFALLS OF ANTI-CORRUPTION REFORM, 34 U. Pa. J. Int'l L. 447

have been returned to their owners due to active cooperation and information sharing among jurisdictions.⁴³⁸

Even Switzerland, which is traditionally believed to be one of the most attractive safe havens for illicit funds from all over the world, has made significant efforts to distance itself from its banking secrecy regime. For the past decade, it helped foreign jurisdictions such as Kazakhstan, Mexico, and Angola to get their stolen funds back.⁴³⁹ Nevertheless, some countries that are considered safe havens for illicit assets are sometimes unwilling to ensure the transparency of ownership and cooperate on CBO/ asset recovery cases. When confronted with demands for legal assistance, countries still show persistent reluctance to assist foreign jurisdictions and provide administrative and financial information that could help in investigations.⁴⁴⁰ In this way, not all countries share the same level of focus and commitment to recovering illegal funds and are not responsive to international requests for legal assistance.⁴⁴¹

Difficulties related to cooperation between jurisdictions refer not only to information sharing but also to communication in general. For instance, Greenberg et al. explained that sometimes, countries could not build effective cooperation because of using different

⁴³⁸ See OECD, *supra* note 28.

⁴³⁹ Yves Klein, "A Civil Perspective on Asset Recovery (With a Focus on Swiss Law)," 2014, available at: <http://whoswholegal.com/news/features/article/31670/a-civil-perspective-asset-recovery-with-focus-swiss-law>.

⁴⁴⁰ Ivan Pavletic, "The Political Economy of Asset Recovery Processes," 2009, (May 22, 2018) available at: https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_07.pdf

⁴⁴¹ Eurojust, "Report on Eurojust's Experience in the field of Asset Recovery, including Freezing and Confiscation," 2014, available at: <http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20Experience%20in%20the%20field%20of%20Asset%20Recovery/Report%20on%20Eurojust%20Experience%20in%20the%20field%20of%20Asset%20Recovery.pdf>.

terminology in legal assistance requests.⁴⁴² The problem is that there may be different terms for the same concept (*e.g.*, freezing, confiscation, forfeiture, *etc.*) or simply no corresponding term for a certain offense. As a result, when a jurisdiction sending an informal or formal request uses terms that are not applicable or used differently in requested jurisdiction, it leads to misunderstanding. To avoid these challenges, countries are recommended to involve contact officers and law enforcement attaches that are aware of the differences in terminology and can help translate and adjust the request to the foreign legal standards.⁴⁴³

Further, because of the lack of authority to enforce cross-border restraining/court orders, countries often fail to cooperate effectively on CBO/ asset recovery cases. Assets can move from one jurisdiction to another very quickly, so it is critical to freeze them before they are hidden or dissipated. However, while the country begins their domestic procedures to do that, criminals often easily transfer illegal funds to another jurisdiction. To avoid such situations, it is critical to enforce foreign restraining orders as if the local court issues them.⁴⁴⁴

This not only allows facilitating the process of asset freezing, confiscation, and recovery, but also helps countries build and retain human and technical resources needed for the domestic investigation and court proceedings.⁴⁴⁵ Moreover, some countries can enforce a foreign confiscation order but may have no legal authority to open their own investigation or action. However, enforcement of foreign orders may sometimes be associated with substantial costs, which prevents countries from recovering assets successfully and timely.⁴⁴⁶

⁴⁴² See Theodore S. Greenberg, Linda M. Samuel, Wingate Grant & Larissa Gray, *supra* note 32.

⁴⁴³ See NOTE: "To Return the Funds at All", *supra* note 302.

⁴⁴⁴ See Ivan Pavletic, *supra* note 442.

⁴⁴⁵ *Id.*

⁴⁴⁶ See Mark Pieth, *supra* note 205, at 343.

Another point of disagreement that sometimes arises between jurisdictions is the use of recovered assets. According to UNCAC provisions, assets should be returned to the prior legitimate owners or victims of criminals under investigation. If the forfeiture order is enforced by the jurisdictions where laundered or embezzled public funds are located, the country must return these assets.⁴⁴⁷ However, this country may require concluding an agreement concerning how repatriated assets will be used. This is the point where disagreements arise, as countries aiming to get their assets back may be unwilling to bargain.⁴⁴⁸

In most cases, a jurisdiction holding the assets requires the state to spend the recovered funds on developmental or anti-corruption purposes to benefit the citizens (*e.g.*, the case of Vladimiro Montesinos/Victor Alberto Venero Garrido). Under certain circumstances, countries involved in investigation and confiscation of assets may share money, a result designed to encourage cross-border cooperation.⁴⁴⁹ In this case, disagreements may also arise concerning the sums each country should receive.⁴⁵⁰ Additionally, because of the differences in laws concerning asset sharing in different parts of the world, cooperation between European and Asian, or South American and African countries may be challenging.

In addition to information sharing and communication challenges, countries face the same legal obstacles and barriers in the formal MLA processes.⁴⁵¹ Sending and receiving an MLA request takes tremendous human and technical resources of all jurisdictions, because expensive intelligence and specialized financial investigators are necessary to prepare and process them.

⁴⁴⁷ See ARTICLE: Combating Corruption Through International Law, *supra* note 270; *see also*, Jean B. Weld, *supra* note 371.

⁴⁴⁸ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

⁴⁴⁹ For more information about Vladimiro Montesinos offenses and life, See ISSUES AND POLICY: The Fall of Fujimori: A Diplomat's Perspective, 30 Fletcher F. World Aff. 191

⁴⁵⁰ See Ivan Pavletic, *supra* note 442.

⁴⁵¹ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." *supra* note 9, at 29.

Naturally, when a country has limited resources, it fails to cooperate effectively with the other country, because it has to set priorities and choose what cases require immediate actions.⁴⁵²

Moreover, developing countries that suffer from illicit financial outflows the most often have limited experience with the use of MLA to track financial crimes. Due to the lack of clarity concerning the information needed and limited resources to begin an investigation, many countries even do not try to send a formal MLA request to the foreign jurisdiction. In general, many other factors account for the uncertain or unsuccessful prosecution of cross-border order asset recovery cases and unproductive cross-border cooperation.⁴⁵³ Besides challenges outlined above, the lack of political will, unprofessional prosecution by the respective agencies, political protection, and corrupt judiciaries all contribute to the failure to recover proceeds of corruption located in foreign jurisdictions.⁴⁵⁴

Requesting Mutual Legal Assistance in Criminal Matters (KSA and USA):

Requesting mutual legal assistance in criminal matters can vary from country to country, but such requests are a fundamental tool in the international fight against corruption and transnational crime. Countries engaged in the investigation, prosecution, and all criminal activity to defeat them, and for that, they must frequently rely on each other to bring criminal to justice and recover the assets of crime. In particular, combating severe crime such as corruption,

⁴⁵² See, e.g., "London police return Alamieyeseigha's £1m loot": article on the website of the Economic & Financial Crimes Commission through out MLA as the first process, available at: www.efccnigeria.org

⁴⁵³ Abdullahi Y. Shehu, "Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria," *International Law Research* 3, no. 1 (2014): at 186-201.

⁴⁵⁴ See ARTICLE: the anti-corruption principle, *supra* note 165.

organized crime is a growing cross-border concern, and all countries face the risk that corrupt officials or private persons may flee or transfer stolen assets abroad.⁴⁵⁵

The UNCAC mentioned the MLA as one of the essential tools for protecting the integrity and competing corruptions. In Article 46: (UNCAC, Ch. 4, Art. 46.):

UNCAC Art.	Mutual legal assistance
Art. 46 (1)	"States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention."
Art. 46 (2)	"Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party."
Art. 46 (3)	"Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: (a) Taking evidence or statements from persons; (b) Effecting service of judicial documents; (c) Executing searches and seizures, and freezing; (d) Examining objects and sites; (e) Providing information, evidentiary items and expert evaluations; (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; (h) Facilitating the voluntary appearance of persons in the requesting State Party; (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party; (j) Identifying, freezing and tracing proceeds of crime in

⁴⁵⁵ See Marie Chêne, *supra* note 73.

	accordance with the provisions of chapter V of this Convention; (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.”
Art. 46 (4)	“Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.”
Art. 46 (5)	“The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.”
Art. 46 (6)	“The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.”
Art. 46 (7)	“Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.”
	“States Parties shall not decline to render mutual legal

Art. 46 (8)	assistance pursuant to this article on the ground of bank secrecy."
Art. 46 (9)	<p>"(a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;</p> <p>(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;</p> <p>(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality."</p>
Art. 46 (10)	<p>"A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:</p> <p>(a) The person freely gives his or her informed consent;</p> <p>(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate."</p>
Art. 46 (11)	<p>"For the purposes of paragraph 10 of this article:</p> <p>(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;</p> <p>(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;</p> <p>(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of</p>

	<p>the person;</p> <p>(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.”</p>
Art. 46 (12)	<p>“Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.”</p>
Art. 46 (13)	<p>“Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.”</p>
	<p>“Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at</p>

Art. 46 (14)	the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith."
Art. 46 (15)	"A request for mutual legal assistance shall contain: (a) The identity of the authority making the request; (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding; (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents; (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed; (e) Where possible, the identity, location and nationality of any person concerned; and (f) The purpose for which the evidence, information or action is sought."
Art. 46 (16)	"The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution."
Art. 46 (17)	"A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request."
Art. 46 (18)	"Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party."

Art. 46 (19)	"The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay."
Art. 46 (20)	"The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party."
Art. 46 (21)	"Mutual legal assistance may be refused: (a) If the request is not made in conformity with the provisions of this article; (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests; (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted."
Art. 46 (22)	"States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters."
Art. 46 (23)	"Reasons shall be given for any refusal of mutual legal assistance."

<p>Art. 46 (24)</p>	<p>"The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required."</p>
<p>Art. 46 (25)</p>	<p>"Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding."</p>
<p>Art. 46 (26)</p>	<p>"Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions."</p>
<p>Art. 46 (27)</p>	<p>"Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will."</p>

Art. 46 (28)	"The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfill the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne."
Art. 46 (29)	"The requested State Party: (a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; (b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public."
Art. 46 (30)	"States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article." 456

Moreover, in this section, I will present and analyze a step-by-step summary of the requisite methods of the Kingdom of Saudi Arabia and the United States of America to assure requests are accepted and processed as efficiently as possible. However, if requests do not include the required information they cannot be achieved efficiently.⁴⁵⁷ The harm of useless investigations and prosecutions, especially in developing countries, cannot be overestimated.⁴⁵⁸

Any country needs access to necessary and important data on what they need to achieve their requests. Special focus is placed on the requirements for achieving common standards of

⁴⁵⁶ UNCAC, Ch. 4, Art. 46 (1-30).

⁴⁵⁷ See Harry Leroy Jones, *supra* note 354.

⁴⁵⁸ See artical: the anti-corruption principle, *supra* note 165.

legal assistance, including but not limited to, obtaining witness testimonies or statements, seizing and confiscating assets, executing search warrants, and court-ordered documentary evidence.

This example also lists connection information for the pertinent country officials to help communication between countries.⁴⁵⁹

The Kingdom of Saudi Arabia

Steps to Follow When Seeking Mutual Legal Assistance From The Kingdom Of Saudi Arabia:

1) **Introduction:**

Any requests made under a treaty/convention submitted by countries are admissible when there is a bilateral mutual legal assistance treaty (MLAT), and/or a UN convention to which Saudi Arabia and the requesting country are members too, such as UNCAC. It is important to note that "Letters rogatory" requests (court-issued or non-treaty requests) asked are inadmissible unless they have been offered and granted through diplomatic channels of Saudi Arabia. On-treaty requests must likewise be presented and granted via diplomatic channels, and dual criminality is generally required.⁴⁶⁰

2) **Central Authority:**

The Ministry of Interior is the Central Authority for KSA for all MLATs signed between KSA and its treaty partners. Moreover, Ministry of Interior is also the Central Authority for KSA to the Convention on

⁴⁵⁹ See article: the anti-corruption principle, *supra* note 165.

⁴⁶⁰ G20 Mexico 2012, "Requesting Mutual Legal Assistance in Criminal Matters From G20 Countries", available at: http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf?__blob=publicationFile&v=1

Transnational Organized Crime (UNTOC), the Protocols, and the Convention on Narcotic Drugs and Psychotropic Substances (SAARC). However, the Saudi National Anti-Corruption Commission is the Central Authority to the United Nations Convention against Corruption (UNCAC).⁴⁶¹

3) Seeking Mutual Legal Assistance from The Kingdom Of Saudi Arabia:

Step One –It is advised that the requesting country directly contact the Central Authority in Saudi Arabia in advance as a pre-viewing procedure, which may allow the requesting country's request to be granted quickly. It is also recommended to present a draft report of the request to the Central Authority through e-mail. The Central Authority may pre-analyze it and provide with feedback, improvement, and remarks. After receiving the Central Authority's feedback, the requesting country may complete the request letter and provide translation and make the final step, which is submitting. The request for mutual legal assistance (MLA) will be reviewed first by the Central Authority for evaluating, conferring, and implementing, to ensure the inquired assistance is available under the laws of KSA and meets the legal provisions of KSA laws.⁴⁶²

Step Two – It is important to assure that the crime identified request for assistance is similar to the level of Saudi crimes to be investigated. If the assistance requested is simply for the exchange of data for the investigation, it is advised to seek it through Saudi Arabian National Central Bureau of Interpol, and/or other law enforcement cooperation channels, and not through MLA. The formal assistance channel is MLAT, and it is for inquiring assistance for public prosecution and court trial. If the crime under investigation

⁴⁶¹ See G20 Mexico 2012, *supra* note 462.

⁴⁶² See UNODC "Manual on Mutual...", *supra* note 72; see also, generally, 1-7 Guide to International Legal Research § 7.01 (2017).

is minor, the request may be given low priority except unless it is mentioned in the Bilateral Mutual Legal Assistance Treaty between Saudi Arabia and the requesting country that all requests shall be treated in high priority.⁴⁶³

Step Three – When drafting an MLA request; begin with clearly identifying the MLAT, and/or conventions such as (UNCAC, UNTOC) or other tools of cooperation for seeking the assistance from Saudi Arabia.⁴⁶⁴

Step Four – Identify the appropriate authority: In the kingdom of Saudi Arabia, all general crimes are investigated by the Saudi police at the General Directorate of Public Security, led by the Ministry of Interior. Also, the General Directorate of Narcotics Control at the Ministry of Interior reviews and investigates the illicit trafficking in narcotic drugs and psychotropic substances. Moreover, any corruption-related crimes are investigated by the Saudi National Anti-Corruption Commission, which reports to the King without any interference with any another government authority.⁴⁶⁵

The Financial Investigation Department at the Ministry of Interior supervises suspicious financial transactions, analyzes them, and provides and submits reports to the responsible authorities. It also exchanges information with the relevant authority in Saudi Arabia. The responsible department in the Saudi Arabian Customs at the Ministry of Finance manages crimes related to customs. However, it's important to note that the public prosecutions have the jurisdictions over all crimes that happened to be in KSA territory.⁴⁶⁶

⁴⁶³ See G20 Mexico 2012, *supra* note 462.

⁴⁶⁴ "Breaking Down The Barriers." *Mutual Legal Assistance in Criminal Matters*, available at: https://www.oas.org/juridico/mla/en/can/en_can_prost.en.html

⁴⁶⁵ See G20 Mexico 2012, *supra* note 462.

⁴⁶⁶ See G20 Mexico 2012, *supra* note 462; *see also*, for a general understanding of the KSA legal system, See, ARTICLE: On A Slow Boat Towards The Rule Of Law: The Nature Of Law In The Saudi Arabian Legal System 26 *Ariz. J. Int'l & Comp. Law* 1

Step Five – Summarize the case by providing an outline with details of the case under investigation, including but not limited to details of the evidence that supports the MLA.

The outline should include the following points:⁴⁶⁷

- If a witness statement is being used, the requesting country should provide a passport or ID, telephone number, and address of the witness. Moreover, the requesting country should identify the link between the case and the witness.
- If the evidence is documented, the requesting country should point to the location of the documents and the link between the case and the documentation.
- If the enforcement of a search warrant is requested, the requesting country should provide a copy of the search warrant assigned by the court or the judicial authority, which refers explicitly to the house, person, or/and items.
- If the confiscation of criminal proceeds is requested, the requesting country should submit their request with a confiscation order, which may explicitly refer to the items, assets, and proceeds of crime. Also, it is important to note that an official statement may be required, which should be written by the prosecutor or judge who is responsible describing how and when the case will be prosecuted and going to the court trial, and how the evidence collected, what proceeding followed to conclude, and how the decision will be made.

Step Six – The Applicable Legal Provisions - the requesting country should identify the exact text of all relevant legal provisions relevant to the investigation, including but not limited to appropriate punishments. An MLA may be declined because of an absence of dual criminality. However, The Kingdom of Saudi Arabia may, when necessary, assist

⁴⁶⁷ See Breaking Down The Barriers, *supra* note 466.

the requesting country in the area it chooses at its consideration, regardless of the dual criminality.⁴⁶⁸

Step Seven – The requesting country should identify the assistance being requested. Such as, outline the crimes, in exact terms, exactly what you are seeking to receive from The Kingdom of Saudi Arabia, and any special requirements that must be met. Besides, considering the nature of the assistance required.⁴⁶⁹

Step Eight – In The Kingdom of Saudi Arabia all requests for MLA is confidential. However, some disclosure may be required, especially where mandatory measures are required to assist. If the requesting country case is especially sensitive, the necessity and reasons for confidentiality should be clearly provided.⁴⁷⁰

Step Nine – The requesting country should provide any time limit in the request, and the reason for the time limitations, for example, Litigation proceedings or sensitive investigation. However, Saudi Arabia is not required to meet the deadline.⁴⁷¹

Step Ten – The requesting country should provide a list of relevant contact points in its country, include but not limited to a record of the names and phone numbers for key law enforcement authorities who are in charge of the case. Moreover, providing contact information of the requesting country central authority, in case the Saudi Central Authority wants to contact for clarification or additional information.⁴⁷²

⁴⁶⁸ See UNODC "Manual on Mutual...", supra note 72.

⁴⁶⁹ See G20 Maxico 2012, supra note 462.

⁴⁷⁰ See UNODC "Manual on Mutual...", supra note 72.

⁴⁷¹ *Id.*

⁴⁷² *Id.*

Step Eleven – The Kingdom of Saudi Arabia requires all requests for MLA to be provided, in the Arabic language. However, the request can be receiving in English in critical situations.⁴⁷³

Step Twelve – The Kingdom of Saudi Arabia has limitations on the use of the evidence provided. Any evidence provided by the government of Saudi Arabia in response to an MLA may only use for the particular purpose stated in the request. However, If the requesting country seeks further use of the evidence, they must first receive a consent from Saudi Arabia’s Central Authority.⁴⁷⁴

The United States of America

Steps to Pursue When Requesting Mutual Legal Assistance From The United States of America:

1) Introduction:

An Authority of a foreign country may request the execution of request for assistance (“ERA”) from the United States of America in the collection of evidence for criminal matters such as investigations, prosecutions, and court trial. The requesting country may seek an ERA through three channels:⁴⁷⁵

⁴⁷³ *Id.*

⁴⁷⁴ See UNODC "Manual on Mutual...", supra note 72.

⁴⁷⁵ UNODC, *Requesting Mutual Legal Assistance in Criminal Matters From G8 Countries: A Step-By-Step Guide*, Working paper, Commission on Crime Prevention and Criminal Justice Twentieth session Vienna, (Apr 12, 2011), at 56-62, available at: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

I. Requests Under a Treaty/Convention:

Any requests seek a Mutual Legal Assistance Treaty (MLAT) are provided based on the terms of the agreement and United States domestic law, especially "Title 28 United States Code Section 3512 and Title 28 United States Code Section 1782".⁴⁷⁶

When an MLAT request has been received by the United States, the Office of International Affairs of the Criminal Division of the Department of Justice (OIA) evaluates it. Usually, after that, the request is forwarded to one of the (94) federal U.S. Attorney's Offices for execution, depending on where the evidence or witness is located. Moreover, routinely the Assistant U.S. Attorney in that district; asks the U.S. district court for an order to select him/her as a commissioner to execute the foreign request.⁴⁷⁷

Under U.S. law, a commissioner has the authority to issue warrants to enforce the presence of the witness to provide testimony or to give documents. Once the commissioner collects the requested evidence, it is forwarded to OIA again, and then the OIA forwards it to the foreign authorities, following the procedures and terms of the treaty.⁴⁷⁸

II. Letters Rogatory Requests:

The court-issued request or non-treaty request has no underlying MLAT or other relevant treaty. When the U.S. receives a letters rogatory request from a foreign country the request is forwarded to the OIA for execution. Moreover under U.S. domestic law,

⁴⁷⁶ See G20 Mexico 2012, *supra* note 462.

⁴⁷⁷ See G20 Mexico 2012, *supra* note 462; *see also*, Validity, Construction, and Application of Mutual Legal Assistance Treaties, *supra* note 203.

⁴⁷⁸ See generally, III. HOW THE WORLD WILL RELATE TO THE COURT: THE COOPERATION OF STATES WITH THE INTERNATIONAL CRIMINAL COURT, 25 Fordham Int'l L.J. 767

requests may be affected if there is no multilateral agreement or treaty between the two countries, though for the most part, the government of the U.S. will assist the requesting country with all relevant tools. These tools include assistance on the investigative stage, such as access to government records/data, managing witness interviews, and collecting evidence exemplars. In general, almost all-necessary evidence required for the use of the case the U.S. might provide either a warrant or judicial order by only letter rogatory.⁴⁷⁹

III. Non-Treaty Letters of Request:

This is another example of an absence of the MLAT or other applicable multilateral treaties. Where a foreign government submits only a letter of request seeking legal assistance from the U.S., the request should also be forwarded to OIA for execution. Following to the U.S. domestic law, the requests can be accomplished on a flexible basis.⁴⁸⁰

IV. Dual Criminality:

Generally, dual criminality is not required when a foreign government submits an MLAT to the United States. However, if a foreign government seeks a search warrant or other measures that interfere with freedom, the U.S. requires dual criminality as part of an MLAT request under Title 18 United States Code Section 3512. There may be additional cases in which an MLAT request seeks the freezing and confiscation of assets

⁴⁷⁹ Rush Mark A. & Jared A. Kephart, *"Lifting the Veil on the MLAT Process: A Guide to Understanding and A Guide to Understanding and Responding MLA Request."* K&L Gates, Jan 20, 2017, available at: <http://m.klgates.com/files/Publication/669681d7-12d7-451e-8240-a33cf67c959f/Presentation/PublicationAttachment/ec5fc22d-3e3c-4607-bcb3->; see also, generally, FIFTH ANNUAL PHILIP D. REED MEMORIAL ISSUE: NOTES: International Judicial Assistance: Does 28 U.S.C. 1782 Contain An Implicit Discoverability Requirement?, 18 Fordham Int'l L.J. 332

⁴⁸⁰ See G20 Mexico 2012, *supra* note 462.

where dual criminality is required. Furthermore, some requests may relate to freedom of speech, and that is protected under the U.S. law.⁴⁸¹

2) **Central Authority:**

All requests for MLA in criminal matters can be submitted to OIA, which is the U.S.

Central Authority. As shown below:⁴⁸²

Office of International Affairs

Criminal Division

United States Department of Justice

1301 New York Avenue, N.W.

Washington, D.C. 20005

Telephone: +1 202 514 0000

Facsimile: +1 202 514 0080

3) **Seeking Mutual Legal Assistance from The U.S.:**

Step One – It is advisable to consult with the U.S. authority before submitting the request, especially if it is the first time, or with any complicated request, and in the most serious cases. This also helps ensure the assistance being requested is available under the U.S. law and will meet the U.S. legal terms. The (OIA) is the U.S. central authority.⁴⁸³

Step Two – It is advisable to draft a request of MLA and identifying which treaty is applicable, such as (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or another basis for obtaining the assistance from the United States.⁴⁸⁴

Step Three – It is essential for a foreign country seeking an MLAT to name which authority in that country is leading the investigation and/or prosecution.⁴⁸⁵

⁴⁸¹ See Rush Mark A. & Jared A. Kephart, *supra* note 481.

⁴⁸² See G20 Mexico 2012, *supra* note 462.

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

Step Four – It is important to present a comprehensive outline of the case under investigation, including a report of the evidence that supports the investigation.

Moreover, the outline should also include the following:⁴⁸⁶

- If the evidence that justifies the MLAT request was based on witness statements or testimony, the request should also include the name and location of the witness, the relevance of the witness to the case, and explanation as to how the information requested from the witness relates to the case.
- If the evidence requested is documentation, the requesting country should identify the specific document that is being requested from the U.S. For example, the title, and information about the document, the location of the document, and how the document needed is related to the case.
- If the request seeks execution of a search warrant, the requesting country should at least:
 - Explain why there is "probable cause" to believe that the search warrant that may expose new evidence;
 - Identify the location for execution of the search warrant that is being requested;
 - Identify the items that are being requested to be seized;
 - Explain why the requested search is necessary; and
 - Explain how the evidence to be seized is connected to the case.

⁴⁸⁶ See G20 Mexico 2012, *supra* note 462; see also, ARTICLE: The Mexico-U.S. Mutual Legal Assistance, *supra* note 309.

- If the request is for seizure/confiscation of criminal proceeds, the requesting country should at least:
 - Identify the assets the U.S. is being asked to freeze;
 - Explain the relationship between the assets in the U.S. and the criminal charge;
 - Explain the connection between the suspect and any entities that may be cooperating in hiding the asset;
 - Include any restraining order issued by the court of the requesting country; and
 - Include any confiscation order in the requesting country.

Step Five – Identify the applicable legal provisions and include the exact text of any relevant legal provisions (whether a claim is under investigation or prosecution) and any applicable penalties.⁴⁸⁷

Step Six – The requesting country should provide an outline, in specific terms, exactly what they are seeking to get from the U.S. and any special provisions that must be met.⁴⁸⁸

Step Seven – Under U.S. law, filing documents of courts are public, unless otherwise requested. However, the nature and type of requests for assistance may be held confidential. Therefore, if the requesting country especially asked for confidentiality and gave a reason for it, confidentiality may be provided, but it is important to note that confidentiality must be requested to be provided. Moreover, in some cases revealing can be significant, even though after a request for confidentiality.⁴⁸⁹

⁴⁸⁷ See UNODC Requesting Mutual Legal Assistance, *supra* note 477.

⁴⁸⁸ See G20 Mexico 2012, *supra* note 462.

⁴⁸⁹ See UNODC Requesting Mutual Legal Assistance, *supra* note 477.

Step Eight – If the requesting country has any time limit, it must be identify it in the request along with the precise dates. Moreover, the requesting country must provide a reason for the time limitations, such as pending court proceedings or the reasons that the investigation is time-sensitive.⁴⁹⁰

Step Nine – The requesting country must include a listing of contact numbers and names for law authorities that are familiar with the case.⁴⁹¹

Step Ten – The U.S. requires that any request for mutual legal assistance be provided in English.⁴⁹²

Step Eleven – The limitation of the information that can be provided by the U.S. is identified in the articles of the treaty.⁴⁹³

Sample of Mutual Legal Assistance Request:

The sample request below includes examples of evidence that could be requested to assist those who are looking to a sample when drafting a request for assistance. Note, however, that the requesting country must follow the specific Step-by-Step Guide of the requested country to ensure the requirements for seeking MLA in the case are being asked for.

⁴⁹⁰ *Id.*

⁴⁹¹ See UNODC Requesting Mutual Legal Assistance, *supra* note 477.

⁴⁹² See G20 Maxico 2012, *supra* note 462.

⁴⁹³ *Id.*

SAMPLE OF MLA REQUEST

** Translated to the language of the requested country**

**CONFIDENTIAL/*URGENT
(Just when the request is urgent)**

REQUEST FOR MUTUAL LEGAL ASSISTANCE VIA THE COUNTRY (X) TO THE COUNTRY (Y)

**Based On The Bilateral Mutual Legal Assistance Treaty
Between The Country (X) And The Country (Y) We are Seeking The Following
Assistance or Information Based Upon the Following Facts:**

I. OVERVIEW OF THE INVESTIGATION AND UNFINISHED PROSECUTION:

The National Anti-Corruption Bureau and the National Prosecuting Service of the country (X) are investigating a claim of Fraud on its government, contrary (X) to section (101) of the Punitive Code of the (X) country. This crime is claimed against:

Minister (H)

Date of Birth: February 6, 1951

Resident of 123 Mission Rd, City of Lawra, (X) Country

Minister (H) has been charged with the Fraud on its government and is currently waiting for his trial scheduled to begin on November 1, 2019. Aside from the crimes against Minister (H), he is also the head of a political investigation under the Conflict of Interest Code of the Country (X) and will be discharged from office if he is discovered to have violated his required duties under the Code. Moreover, concerning the criminal investigation/prosecution, the National Anti-Corruption Bureau and the National

Prosecuting Service of the Country (X) seeking the following assistance:

- Verified bank records from the Northern Bank of the (Y) Country located at 123 Descol Rd in the City of Nebro in the (Y) Country.
- Statement of Ms. (S), living at 123 Road May, in the City of May, in the (Y) Country. Ms. (S) is the daughter of Minister (H) and is thought by the investigators to have received the Stolen Assets of Minister (H) who is claimed against criminal activity.
- Authorization to attend in the Country (Y) and attend the sworn witness questioning of Ms. S.

The above assistance is needed as evidence in the expected prosecution of Minister (H) and to determine the assets of the claimed criminal activity, and these assets may be subject to future freezing and/or confiscation. In this regard, freezing and confiscation orders will be requested under the Bilateral Treaty between Country (X) and (Y).

Furthermore, the (X) Country aims to submit additional requests to (Y) Country seeking the enforcement of the court orders regarding the freezing and confiscation of assets.

**** Please Note: This request is confidential for the reasons described under ****

II. RELATED LEGAL PROVISIONS:

The related Penal-Code of (X) Country says: every one who commits a crime either, being an official or private person, accepts or offers or agrees to take from any person for his benefit or benefit another a reward, profit or gain any kind as consideration for cooperation, assistance, or engage in the illegal transaction of business.

Punishment: Section 123(4) says:

“Everyone who commits a crime under this section is subject to arrest for a time not exceeding five years.”

III. SUMMARY OF THE CASE:

Summary of the Charges against Minister (H):

In October of 2006, Minister (H) was elected to head of the Ministry of Commercial in the (X) country and started getting a Minister's salary by that point. As a Minister, he was obliged, under the Conflict of Interest Code of the (X) country, to publicly disclose his private income every year based on the disclosure policy.

In December of 2009, the Anti-Corruption Bureau of the (X) Country received an anonymous tip through whistleblower policy, which claimed that Minister (H) was using his position to provide legal assistance to a company in exchange for receiving foreign stocks.

As a result of the whistleblower's tip, the investigators started an investigation. They concluded that Minister (H) had inappropriately accepted payments of \$280,000.00 and foreign stocks of \$100,000.00 from two companies (HYZ Inc. And ABC Corp.) for his efforts and assistance. The evidence confirming these accusations and linking money transfers to a bank in the (Y) Country is summarized below.

- Evidence Received in Support of the whistleblower/Sources:

(1) Public Records Linking Minister (H) to HYZ Inc. and ABC Corp. The investigators received the public records regarding Minister (H)'s claimed private interests and concluded that, before and after his appointment, he was being paid by HYZ Inc. and ABC Corp. Based on records, the investigators found that during the negotiation of the assistance, his contact with HYZ Inc. and ABC Corp. is Ms. (L).

(2) Statement of Ms. (L) (Owner Shareholder of HYZ Inc. and ABC Corp.). Ms. (L)

claimed that Minister (H) was being paid for his effort and assistance. Moreover, the investigators questioned Ms. (L) as a witness. She revealed that Minister (H) role is to provide any information and opportunities can benefit Ms. (L)'s companies, and to help them secure substantial government grants. Finally, Ms. (L) revealed that, for his effort, Minister (H) received payments of \$280,000.00 and foreign stocks of \$100,000.00.

According to Ms. (L), most of Minister (H)'s efforts to obtain government grants for her companies were successful.

(3) Search warrant executed at the residency of Minister (H) revealed bank transfers from his account in the (X) country to a foreign bank account in the (Y) country. Dated in October of 2009, a search warrant was executed at the residency Minister (H) at 123 Like Lane, City of Mebra, in the (Y) Country. The items seized included bank statements confirming deposits made by HYZ Inc. and ABC Corp. to Minister (H) personal bank account (no. 1111 1111 1111) payments of \$280,000.00.

(4) Thereafter, investigators seized bank reports from the Book Bank under the (X) country regarding bank account no. 1111 1111 1111. These records show that (28) orders to be transferred, individual in the sums of \$10,000.00 (totally \$280,000.00), were made from Minister (H)'s personal account no. 1111 1111 11111 at the Book Bank of the (Y) country to account no. 9999 9999 9999 held by a Ms. (S) at the Foreign Bank of the (Y) country. Based on the available information on Minister (H)'s personal matters, Ms. (S) is Minister (H)'s daughter, who is currently located in 123 Road May, in the City of May, in the (Y) Country.

(5) Conclusion: According to the evidence found, as summarized above, the investigators conclude that Minister (H) illegally used his position authority to secure

government privileges for the benefit and interest of Ms. (L) two companies. Therefore he received financial benefit gain for doing so; and transferred the monies taken from Ms. (L) to the Foreign Bank of (Y) country.

IV. REQUESTED ASSISTANCE:

To assist the investigation, prosecution, and the case. The investigation/prosecuting authorities of the (X) country request the following assistance from the (Y) country:

(1) To obtain approved bank records for account no. 999-9 99-99 99-99 maintained by Ms. (S) at the Foreign Bank of the (Y) country, located at 123 Road May, in the City of May, in the (Y) Country. Bank records are queried from June 2007 to November 2007.

The records queried include, but not limited to:

- Bank account applications;
- The current balance of the bank account;
- Signature cards;
- Account statements of deposits and withdrawals;
- Cheques, including canceled ones;
- Money orders, online orders, receipts;
- Any communication reports;
- Memorandums and letters of any investment with the bank;
- The content of any safety deposit boxes; and
- Any contracts.

(2) The court-ordered statement of Ms. (S) Date of Birth: February 12, 1974, a dual

citizen of the (X) country and (Y) country, residing at 123 Road May, in the City of May, in the (Y) Country. The following questions and topics to be asked for Ms. (S):

- Can she verify her relationship to Minister (H)?
- What are the details about the 28 transfers of \$10,000 each from Minister (H)'s personal account to her account?
- Did Minister (H) mention to her from where he had received that money?
- Did Minister (H) direct Ms. (S) do anything with the money?
- What was her plan for the monies received?

The (X) country requests permission from the authority to allow the investigators and prosecutors to attend and audit the witness examination of Ms. (S).

V. CERTIFICATION REQUIREMENTS:

Ms. (S) should also be asked to give any reports or documents that she may mention in her answers. Moreover, under the (X) country law the witness must do the following formalities before giving his/her answers:

- The witness must be under oath (sworn).
- The witness must be warned, (on the record), that he/she may be subject to charges in the (X) country for any false or incorrect information.
- A verbatim transcript is required.

VI. URGENCY:

The (X) country asks that their request be given high priority. Both Minister (H) and Ms. (S) are aware of the criminal investigation and may take moves to transfer any assets

that remain in Ms. (S)'s account. Further, the evidence is sought for the use in the upcoming trial of Minister (H).

VII. CONFIDENTIALITY:

Confidentiality of this request is necessary to maintain the continuing criminal procedures against Mr. (H) and to allow for the future freezing and confiscation of any stolen assets uncovered.

VIII. CONTACT PERSONS IN THE REQUESTING COUNTRY:

Here are the contact numbers, names, and information of the Central Authority and the key point prosecutors/ investigators in this matter in the (X) country:

Mr. (I)

Central Authority of the Requesting Country

3000 Moon Street

The City of Moon, (X) Country

Telephone: (444) 444 4444

Facsimile: (888) 888 8888

Email: Mr.I@CentralAuthority.com

Officer R

National Anti-Corruption Bureau

400 Sun Street

City of Moon, (X) Country

Telephone: (666) 666 6666

Facsimile: (777) 777 7777

Email: OfficerI@NationalAntiCorruption.com

Ms. (W)
 Superior Prosecutor
 National Prosecuting Bureau of the (X) Country
 4000 Moon Street
 City of Moon, (X) Country
 Telephone: (111) 111 1111
 Facsimile: (555) 555 5555
 Email: Ms.W@NationalProsecutingBureau.com

IX. CONTACT PERSONS IN THE REQUESTED COUNTRY:

Detective (O) of the Central Investigation Force of the (Y) country is familiar with this case since he has provided some informal assistance to the (X) country. His contact information is: Telephone (888) 888 8888 / Facsimile (222) 222 2222 / Email DetO@CentralInvestigationForce.com

Dated at the (X) Country, this 2nd day of November 2011.

((Signature))

The Central Authority of the (X) Country

494

495

⁴⁹⁴ See UNODC, *supra* note 72.

⁴⁹⁵ See G20 Maxico 2012, *supra* note 462.

Recommendations for Enforcing Cross-Border Orders and Communication:

Evidence demonstrates that international cooperation and communication on cross-border order/ asset recovery cases need to be improved. Jurisdictions need to agree to share information and cooperate irrespective of the place where the asset is located and without regard to which authority conducts the investigation. Modern society is seriously affected by corruption, so both developed and developing countries should commit their resources and energy to help each other effectively fight illicit financial outflows that undermine economies.⁴⁹⁶

To begin with, countries that are still not parties to the UNCAC should sign and ratify this convention, as well as enter bilateral and multilateral agreements and treaties that would allow them to cooperate more efficiently. Countries are also encouraged to sign MLATs with the most significant possible number of countries to help the provision of legal assistance. In cases where several countries are keen to cooperate to combat corruption and illicit financial outflows, regional MLATs can be signed to establish a useful framework for international communication. A shared vision and approach to combatting corruption is necessary to be able to prevent its adverse consequences for economies and poor communities.⁴⁹⁷

Building national capacity for cooperative assistance is another aspect without which the cooperation on international asset recovery is practically impossible to enhance. Although cross-border cooperation depends much on the willingness to communicate and ability to work with different jurisdictions, and more importantly "political will," dedicated national resources and legal framework also influence it considerably.⁴⁹⁸ Therefore, it is recommended to continue to

⁴⁹⁶ See ARTICLE: ASSESSING THE RELEVANCY..., *supra* note 209.

⁴⁹⁷ See generally, ARTICLE: Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery, 10 Nw. U. J. Int'l Hum. Rts. 19.

⁴⁹⁸ See Marco Arnone & Leonardo S. Borlini, *supra* note 14, at 510.

analyze and value the country's overall capacities, institutional arrangements, policies, and drawbacks in the sphere of CBO/ asset recovery to be able to make necessary improvements.

This analysis may also include evaluation of both successful and unsuccessful CBO/ asset recovery cases, which would facilitate determining the weak points and avoiding future mistakes. If needed, countries are encouraged to change their laws on money laundering, corruption, asset forfeiture, and enforcement of foreign orders. National capacity also includes information systems used in the investigation, so it is essential to support and develop those, including compliance with international requirements. Finally, relevant education and training are recommended to allow the local agencies to identify and track suspicious transactions, communicate with foreign jurisdictions, and are able to handle the complexity of MLA requests.⁴⁹⁹

Further, it is also recommended to promote international cooperation in each aspect of the CBO/ asset recovery including early investigation, MLA, freezing, confiscation, recovery, and repatriation. Engaging in both formal and informal assistance is essential build international cooperation, as it allows collecting necessary evidence, preparing for the MLA request, expecting potential challenges, and preventing misunderstanding. During the process of cross-border order/ asset recovery, the country should not work alone because this process requires the active involvement of all involved stakeholders and jurisdictions.⁵⁰⁰

As previously noted, developing personal connections with individual stakeholders, agencies, NGOs, etc. may also be useful, because informal communication channels serve as an effective means of collecting information. The more communication channels are used, the more

⁴⁹⁹ See UNODC & World Bank, *Stolen Asset Recovery*, *supra* note 166.

⁵⁰⁰ Jack Smith, Mark & Guillermo Jorge, *The Recovery of Stolen Assets: A Fundamental Principle of The UN Convention Against Corruption*, 2007 Basel Institute on Governance, (U4 BRIEF), available at: <http://www.u4.no/themes/uncac/asset-recovery.cfm>

chances exist that a country will be able to track and recover assets from corruption in foreign jurisdictions. Corruption and illicit financial outflows are global concerns, so countries need to share information and experience to empower each other in the common fight against corrupt officials and fraudsters.⁵⁰¹

Enforcement of orders is another crucial element of successful international cooperation on CBO/ asset recovery. Given multiple issues and differences related to enforcing foreign orders, it is recommended that countries should consider enacting legislation that would maximize the enforceability of foreign judgments. Notably, a jurisdiction should have both the capacity to enforce a foreign judgment in relation to assets located within its borders and be able to obtain a forfeiture judgment against assets held abroad. It is also important to enforce international non-conviction confiscation orders, even if such practice is absent in a domestic jurisdiction.⁵⁰² Even if countries actively communicate and cooperate on CBO/ asset recovery cases, the failure to enforce a foreign judgment means that all efforts have been made for nothing.

Sometimes, legal barriers and obstacles to successful CBO/ asset recovery result not from the drastic differences between legal systems but from the mere unwillingness or failure to appreciate and account for those differences. Effective communication between jurisdictions could eliminate these negative attitudes and enable the countries to cooperate more willingly. International conferences, task forces, informal networks, inter-agency asset recovery working

⁵⁰¹ See ARTICLE: The Role of Non-Governmental..., *supra* note 185.

⁵⁰² See, e.g., 2018-1 GTDT: Asset Recovery Cyprus (2014)

groups, *etc.* could serve as informal channels for communication that inform countries about differences in legal frameworks and help them overcome these difficulties.⁵⁰³

Maximizing the availability and use of information is also important, so it would be useful to create a database of national and international legislation and requirements for cooperation for each country to help countries manage the CBO/ asset recovery process more efficiently. Such a database would save much time during the investigation and help avoid misunderstanding between the parties.⁵⁰⁴

Conclusion:

Evidence provided in this chapter shows that international cooperation and cross-border communication play a critical role in successful CBO/ asset recovery. Countries have a wide range of communication channels available to use in CBO/ asset recovery process, such as MLA, MLAT, domestic legislation, letters rogatory, and multiple informal contacts between practitioners and agencies. Using all these channels flexibly is the key to timely tracing and freezing the assets, as well as for their ultimate repatriation to the countries of origin. International cooperation is important not only for successful recovery of illicit funds but also for stopping corrupt officials and criminals from committing financial crimes and hiding assets in safe havens. However, despite the difference of communication channels available for international cooperation, some challenges still exist. These problems relate to the limited resources, inefficient information sharing, the complexity of MLA procedures, lack of political

⁵⁰³ See generally, SYMPOSIUM: CITIZENS UNITED: ARTICLE: THE UNSPOKEN INSTITUTIONAL BATTLE OVER ANTI-CORRUPTION: CITIZENS UNITED, HONEST SERVICES, AND THE LEGISLATIVE-JUDICIAL DIVIDE, 9 First Amend. L. Rev. 363

⁵⁰⁴ The World Bank Group, “*Module 5 Asset ...*”, *supra* note 7.

will, and reluctance to agree on the use of recovered assets. Therefore, it is recommended to enhance the cross-border cooperation by building the national capacity, making better use of existing communication channels, improving the system of enforcement of foreign orders, and changing domestic legislation.

Chapter 6: Solutions and Recommendation for Global Cross-Border/ Asset Recovery System

This chapter provides solutions and recommendations for enhancing the current international cross-border order/asset recovery system. Based on the challenges, obstacles, and barriers identified in the previous chapters, and using the current recommendations developed by international organizations, the chapter presents solutions within legislative, institutional, operational, and policy spheres. The first section discusses options that countries should consider to improve their anti-corruption and cross-border order/asset recovery laws and legislative frameworks.

The next section presents recommendations concerning building the national capacity and institutional frameworks, with the focus made on CBO/ asset recovery agencies and international cooperation. Finally, the section addresses policy and political reforms that need to be made on the national level to facilitate international cross-border order/ asset recovery.

The main recommendations that any country can adopt for the meantime and current situation involve ten principles that ease the challenges and provide improvements that enhance in the international anti-corruption framework and facilitate the process of CBO/ asset recovery.

While these principles could be adopted immediately, this chapter suggests, as the first step, to start with G20 countries since the most of illicit outflows are hidden in their jurisdictions. However, any country can adopt these principles:

10 ANTI-CORRUPTION PRINCIPLES FOR CBO/ ASSET RECOVERY

Principle 1: Introduce legislative reforms on the national level that would improve anti-corruption and CBO/ asset recovery methods.

Principle 2: Join international agreements, conventions, and initiatives to prove commitment to combatting corruption and improving the process of CBO/ asset recovery.

Principle 3: Enhance laws and regulations on non-conviction-based forfeiture and enforcement of foreign orders without a criminal conviction.

Principle 4: Build technical capacity on the national level; train and educate professionals to be able to work with foreign partners.

Principle 5: Ensure public access to information on cross-border order/ asset recovery cases (open data) and the use of repatriated assets.

Principle 6: Improve national and international capacity on cross-border communication and cooperation.

Principle 7: Make CBO/ asset recovery a national and international priority.

Principle 8: Develop and solidify the distinction between political disputes and corruption matters.

Principle 9: Introduce legislative reforms to allow civil society, including NGOs, to participate in fighting corruption, by observing public services, raising awareness of corruption's effects, and contributing to the implementation of international anti-corruption instruments.

Principle 10: Study the possibility of making a single judgment enforced in each jurisdiction in only (corruption cases) especially in regions or national unions with shared cultures, beliefs, and principles, such as Europe Union and Gulf Cooperation Council, taking into consideration, the preservation of the principle of national sovereignty.

These, as well as some other recommendations and solutions, are discussed in more detail in the following sections. However, it will be complicated for some countries to adopt these principles in the meantime, owing to differences in legal frameworks, laws, procedures, technical capacities, languages, human, financial, and more importantly political will.

Legislative Improvements:

Tracking down and recovering stolen assets requires substantial expertise, commitment, juridical support, and active cooperation by financial institutions. In fact, even if all these requirements are met, the process of cross-border order/asset recovery is often slow and very costly, and efforts can be unproductive or produce unexpected results. Even if it is seen as a means to prevent and discourage corruption, embezzlement, and money laundering, the cross-border/ asset recovery process often fails to succeed in practice. Quite often, those jurisdictions seeking to return the illicit wealth falter at one or several common obstacles or barriers, such as the lack of collaboration between jurisdictions and insufficient material evidence.⁵⁰⁵

The requested country may also refuse recovery of the proceeds of corruption when a country seeks assistance recovery during or immediately after a political upheaval or conflict, basically, because the fairness of the court proceedings is questioned. In such cases, evidence

⁵⁰⁵ See generally, ARTICLE: RETOOLING LAW ENFORCEMENT TO INVESTIGATE AND PROSECUTE ENTRENCHED CORRUPTION: KEY CRIMINAL PROCEDURE REFORMS FOR INDONESIA AND OTHER NATIONS, 30 U. Pa. J. Int'l L. 183; see also, See ARTICLE: ASSESSING THE RELEVANCY..., *supra* note 209.

provided may be biased and distorted because of lack of judicial independence, separation of power, political interference, *etc.*⁵⁰⁶ All these concerns must be addressed in comprehensive legislation that would leave no options for corrupt officials, governments, and private persons to pursue their goals.⁵⁰⁷

Analysis of the existing legal frameworks and CBO/ asset recovery systems reveals a central difficulty that should be defeated if countries want to combat the problem of corruption and illicit financial outflows. This problem relates to the major gaps in the national legislation of the countries most affected by corruption, as well as the existence of international safe havens. In the absence of legal mechanisms that would allow countries to track and recover assets held abroad, international agreements such as UNCAC will remain ineffective.⁵⁰⁸

Similarly, if countries fail to sign bilateral and multilateral agreements, requests for legal assistance in cross-border order/asset recovery cases will largely depend on the authorities' "political will" to cooperate in the face of competing domestic priorities or their capacity to provide assistance. In this way, the success of the CBO/ asset recovery procedure cannot be expected because it depends on multiple factors rather than merely on the existing laws and legal standards.⁵⁰⁹

To start with, it is recommended to sign the most important and legally binding international conventions and agreements. Because the process of designing new domestic laws to enhance CBO/ asset recovery procedures is long and costly, the most forward-leaning solution

⁵⁰⁶ *Id.*

⁵⁰⁷ See Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *supra* note 11.

⁵⁰⁸ See Ivan Pavletic, *supra* note 442.

⁵⁰⁹ *Id.*

is simply to ratify the UNCAC.⁵¹⁰ This convention provides requirements for the signatory states to detect, freeze, confiscate, and recover the proceeds of corruption.⁵¹¹

Further, an important advantage of UNCAC is that the convention contains requirements allowing the state parties to create legal mechanisms for mutual legal assistance, without which cross-border order/ asset recovery is practically impossible. Along with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and United Nations Convention against Transnational Organized Crime (UNTOC), UNCAC allows states to seek MLA and help each other minimize legal barriers and obstacles associated with CBO/ international asset recovery. If countries have not yet signed UNCAC or bilateral agreements, they can use the principle of reciprocity in seeking legal assistance.⁵¹² The case of Alberto Fujimori of Peru (in chapter 2) is a perfect example of CBO/ asset recovery based on this principle. In general, UNCAC establishes many offenses for which a person may be prosecuted in cross-border order/asset recovery cases. These include:

(1) “bribery of national public officials, and of foreign public officials, and officials of public international organizations” (e.g., the case of Vladimiro Montesinos);⁵¹³

⁵¹⁰ Mark V. Vlastic & Gregory Cooper, “Beyond the Duvalier Legacy: What New “Arab Spring” Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery,” *Northwestern Journal of International Human Rights* 10, no. 19 (2011), at 19-26.

⁵¹¹ UNCAC, Art. 14, 23, 31; Novriady Erman, “The Role of International Instruments in Asset Recovery: What Can We Learn so Far?” *Jurnal Opinio Juris* 11, no. 1 (2012), at 17-43; *see also*, UNCAC is superior to the UN Convention against Transnational Organized Crime (UNTOC) because countries that ratify UNTOC are not obligated to endorse laws that criminalize crimes included in UNCAC. William Minter & Timothy Scarnecchia, “Africa’s Capital Losses: What Can Be Done?” *Concerned Africa Scholars*, 2012, available at: <http://www.ieim.uqam.ca/IMG/pdf/ACAS-Bulletin87-caploss.pdf#page=30>.

⁵¹² See generally, ARTICLE AND ESSAY: In Defense of the Global Regulation of a “Duty to Report Crime”, 57 *Washburn L.J.* 77

⁵¹³ UNODC, “*Digest of Asset Recovery Cases*,” 2015, https://www.unodc.org/documents/corruption/Publications/2015/15-05350_Ebook.pdf.

(2) “embezzlement, misappropriation or other diversion of property by a public official”
(*e.g.*, the case of Raúl Salinas);⁵¹⁴

(3) “illicit enrichment” (*e.g.*, the case of Diepreye Alamiyeseigha);⁵¹⁵

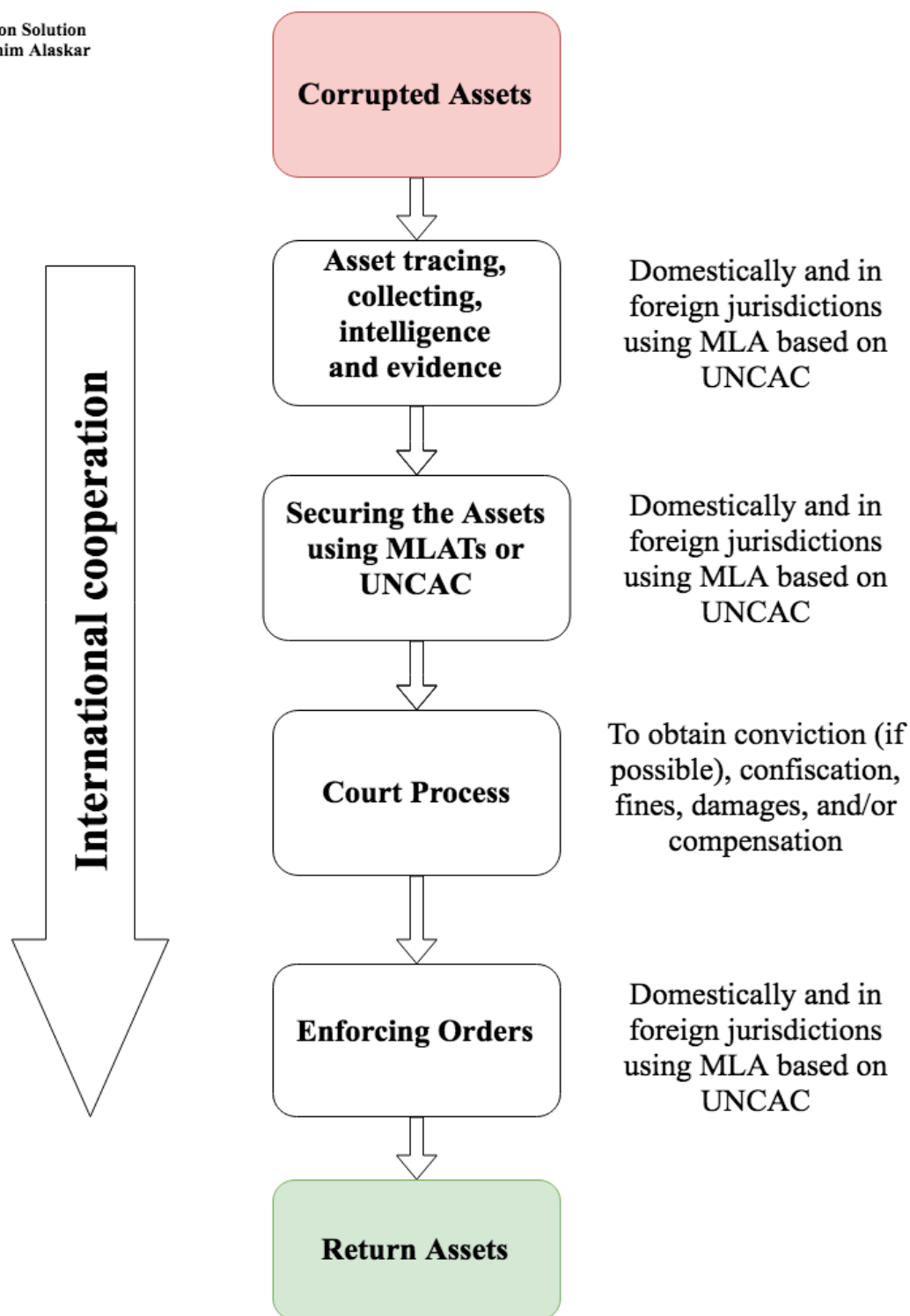
(4) “laundering and concealment of proceeds of crime,” and several others.

UNCAC provides a solution depends heavily on cooperation between state parties, while the rule of the UNCAC is binding, a lot of non-cooperation happen in the implementation stages, primarily because of state party control in the process, In figure below I explain the process of the UNCAC to recover the stolen assets successfully:

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

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Unfortunately, even with UNCAC in place, the challenges arising from corruption investigations and cross-border order/asset recovery cases are massive.⁵¹⁶ Tax haven jurisdictions are often unwilling to cooperate, and investigators often cannot build enough communication and cooperation channels with their cross-border partners. Sometimes, countries themselves do not want to involve foreign jurisdictions in civil and criminal cases, seeing such involvement as a threat to their national sovereignty.⁵¹⁷

Therefore, it is recommended to raise awareness about the necessity of international cooperation and encourage countries to sign MLATs with the biggest number of countries. MLATs have proven to be very useful means of cross-border legal assistance and cooperation because they create a legal framework and coordination mechanism for the countries to cooperate.⁵¹⁸ Increasing the network of MLATs will benefit all countries, as it will allow them to unite their resources in dealing with complex CBO/ asset recovery cases.

At the same time, the use of MLATs involves several weaknesses. To begin with, MLATs allow the countries to execute requests by domestic law. This means that when the domestic laws prevent the country from taking certain actions, MLAT provisions are ineffective.⁵¹⁹ Furthermore, despite MLATs in place, sending a restraint order to a foreign jurisdiction may be challenging. The problem is that some countries have specific requirements

⁵¹⁶ *Id.*

⁵¹⁷ See generally, Note: The Stop Tax Haven Abuse Act: A Unilateral Solution to a Multilateral Problem, 19 Minn. J. Int'l L. 241

⁵¹⁸ See OECD, "ADB/OECD Anti-Corruption Initiative for Asia..." supra note 9.

⁵¹⁹ Anthony Smellie, "Prosecutorial Challenges in Freezing and Forfeiting Proceeds of Transnational Crime and the Use of International Asset Sharing to Promote International Cooperation: The Need for global Standards," Journal of Money Laundering Control 8, no. 2 (2004), at 104-114.

concerning restraining orders, and when a foreign jurisdiction fails to meet them, the country may simply allow the assets to be transferred or hidden.⁵²⁰

For example, some countries cannot obtain restraint orders when the case is still under investigation. Although such rules are intended to protect the rights of those under investigation, they may present a challenge to foreign agencies and prosecutors. Finally, many safe havens are still unwilling to improve the transparency policy and reveal the ownership of assets despite the existence of MLATs.⁵²¹

As seen, the lack of powerful domestic legal mechanisms to promote working within international treaties and agreements is an important obstacle and barrier to successful CBO/ asset recovery.⁵²² Even if a country is a state party to UNCAC, it does not fundamentally mean that it will be able to implement all its provisions effectively. Many countries still do not have the laws allowing NCB confiscation, rapid freezing of assets, and efficient enforcement of foreign confiscation orders. Therefore, each country should improve its laws and regulations concerning corruption, money laundering, and CBO/ asset recovery, and best way to start is to review G20 countries (best practices) that are available after meetings.⁵²³

There is a strong need to fill the legal gaps that prevent countries from effectively using international conventions and agreements such as UNCAC. More flexible and efficient legal

⁵²⁰ See generally, ARTICLE: MIDNIGHT IN THE GARDEN OF NE BIS IN IDEM: THE NEW URGENCY FOR AN INTERNATIONAL ENFORCEMENT MECHANISM, 23 *Cardozo J. Int'l & Comp. L.* 485

⁵²¹ *Id.*

⁵²² *Minter and Scarnecchia, "Africa's Capital Losses,"* accessed (25 Feb, 2018) <http://www.ieim.ugam.ca/IMG/pdf/ACAS-Bulletin87-caploss.pdf#page=30>.

⁵²³ UNODC, *State Of Implementation Of The United Nations Convention Against Corruption - Criminalization, Law Enforcement And International Cooperation* (2015), available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03457_ebook.pdf

frameworks need to be created on a national level to use both civil and criminal courts to target criminal assets.⁵²⁴

One of the possible ways to improve the domestic legislation in relation to CBO/ asset recovery is to use *non-conviction-based confiscation*. It is important to explain that in most of the countries, a clear difference is made between criminal and civil courts, which use different standards, requirements, and procedures. For the past several years and decades, criminal courts have used confiscation of the proceeds as an essential part of the criminal process, successfully removing criminals of illicit gains based on their conviction.⁵²⁵

However, the impact of this confiscation approach has been limited because before confiscation of assets, a country needs to obtain enough evidence for a criminal conviction, which is a complicated and long procedure. At the same time, civil courts have been limited in using the same approach because of the concerns about the assumption of innocence,⁵²⁶ the low standard of proof, and the double jeopardy rule.⁵²⁷

Non-conviction based confiscation is a powerful legal tool that can be recommended to address the challenges of criminal transactions and the limitations of civil courts. This procedure is primarily useful when it is not possible to get a conviction or when criminal proceedings take too much time during which a suspect may easily transfer assets to another jurisdiction. NCB confiscation can be applied when it is suspected that an individual under investigation has assets whose value does not match the suspect income or when this person is allegedly connected with

⁵²⁴ ARTICLE: Transnational Corruption: Regulation Across Borders, 47 Va. J. Int'l L. 413

⁵²⁵ See Philippa Webb, *supra* note 207.

⁵²⁶ ARTICLE: THE RHETORIC OF INNOCENCE, 70 Wash. L. Rev. 329

⁵²⁷ Anthony Kennedy, "Justifying the civil recovery of criminal proceeds," Journal of Financial Crime 12, no. 1 (2004), at 8-23.

criminal organizations.⁵²⁸ The process is simple, quick, and transparent, as a case needs to be simply taken before a civil court, which could decide that assets in question can be confiscated because of their alleged connection with corruption or any other criminal activity.⁵²⁹

In NCB confiscation, the burden of proof and evidence shifts to the owner of the assets or bank account, who must prove that his or her assets have no connection with crime, which is the most important advantage.⁵³⁰ Sometimes, a combination of conviction-based and non-conviction-based confiscation is recommended to make the process of CBO/ asset recovery more effective.⁵³¹

Notably, UNCAC emphasizes the possibility of using civil courts in certain CBO/ asset recovery cases and allows NCB forfeiture of assets when the offender cannot be prosecuted. Particularly, the Convention encourages the state parties to “consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”⁵³²

Many countries have acknowledged NCB confiscation as an effective legal tool for cross-border order/ asset recovery and have adopted NCB forfeiture to enhance their cross-border order/ asset recovery systems.⁵³³ Many countries. For example, South Africa, Canada, New

⁵²⁸ Patricia Faraldo Cabana, “Improving the Recovery of Assets Resulting from Organised Crime,” *European Journal of Crime, Criminal Law and Criminal Justice* 22 (2014), at 13-32.

⁵²⁹ Arvinder SAMBEI, *Civil Forfeiture (Confiscation in Rem): Explanatory and Impact Study* (Strasbourg: Council of Europe, 2012) at 5.

⁵³⁰ See ARTICLE: THE RHETORIC OF INNOCENCE, *supra* note 539.

⁵³¹ Angela V.M. LEONG, *The Disruption of International Organized Crime* (Aldershot: Ashgate, 2007) at 77.

⁵³² UNCAC, Art. 54, 1 (c).

⁵³³ Arnar Jensson, “Crime Should not Pay: Iceland and the International Developments of Criminal Assets Recovery,” University of Iceland, 2011, available at : http://skemman.is/stream/get/1946/10146/25325/1/ma_ritg_arnar_jensson_-_sept_2011.pdf.

Zealand, the UK, and Antigua and Barbuda have introduced NCB asset forfeiture laws that apply to all offenses, while Italy, Netherlands, France, Austria, and Switzerland have some laws addressing unexplained wealth.⁵³⁴ Furthermore, examples of non-conviction cases of Alamiyeseigha of Bayelsa and Dariye of Plateau State show that NCB forfeiture can be useful in recovering the proceeds of money laundering and corruption.⁵³⁵

Criminal forfeiture and NCB asset forfeiture are both accepted internationally to recover the proceeds of stolen assets and have in common the same purpose—the forfeiture by the country of the proceeds of the stolen asset. However, they have important differences, identified in the box below, though this information is general because of wide variation among various countries' legal systems.⁵³⁶

⁵³⁴ Booz Allen Hamilton, “*Comparative Evaluation of Unexplained Wealth Orders*,” 2012, <https://www.ncjrs.gov/pdffiles1/nij/grants/237163.pdf>.

⁵³⁵ Vladimir Kozin, “*Digest of Asset Recovery Cases*,” Conference of the States Parties to the United Nations Convention against Corruption Fifth session, Panama City, (Nov 3013), at 25-29.

⁵³⁶ *G-8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets*, accessed (25 Jan, 2018) http://www.justice.gov/criminal/cybercrime/g82004/G8_Best_Practices_on_Tracing.pdf

Criminal forfeiture	Non-conviction-based forfeiture
<p>Legal Action: Against the Corrupted person</p> <p>It takes place on the trail as part of the punishment in the criminal case.</p> <p>Proving unlawful conduct: Criminal conviction required and must establish criminal activity on the trail.</p> <p>The link between stolen asset and the unlawful conduct are Object-based or value-based.</p> <p>Forfeiture: Forfeit defendant's interest in the stolen assets after convicting the corrupted person.</p> <p>Jurisdiction: criminal or civil (Usually Criminal).</p>	<p>Legal Action: Against the Corrupted assets</p> <p>It can be filed before, or during, or after the criminal case, or even if there is no criminal charge against the corrupted person because it's against the assets itself.</p> <p>Proving unlawful conduct: Criminal conviction not required and must establish the illegal conduct in a standard of proof on the trail.</p> <p>The link between stolen asset and the unlawful conduct are Object-based.</p> <p>Forfeiture: Forfeit the thing itself, regardless of the suspect owners.</p> <p>Jurisdiction: criminal or civil (Usually Civil).⁵³⁷</p>

Overall, according to Gray et al., criminal confiscation accounts for only 13% of the total assets returned, while methods such as non-conviction-based confiscation and criminal

⁵³⁷ See Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray, *supra* note 32, at 10.

restitution and reparations (40% and 34% respectively) have been far more productive.⁵³⁸

Moreover, statistics prove that in a period from January 2010 to June 2012, nearly \$60 million was recovered in NCB confiscation actions.⁵³⁹ Nevertheless, the effectiveness and possible challenges connected with NCB confiscation are under-researched, and countries are still struggling to create a unified framework that would help successful cross-border order/ asset recovery without infringing the human rights.⁵⁴⁰

Before using NCB forfeiture, it is recommended to ensure that the existing laws can protect citizens from unlawful abuse of this procedure. Unfortunately, individuals having large amounts of money in their bank accounts can be accused of a crime simply because the amounts in question are so big to suggest that they can be earned legally. Until these people prove that they are innocent, they are considered almost guilty, which threatens the fundamental principle of the assumption of innocence "the suspect is innocent until proved guilty."⁵⁴¹

Moreover, arguments against NCB confiscation note that the legal standards of proof for civil forfeiture are lower than the golden standard "beyond a reasonable doubt" applied in criminal convictions.⁵⁴² In the USA, which has been using NCB forfeiture for some time, critics argue that law enforcement agencies abuse this legal tool as the source of funding, which is unacceptable. Attracted by an opportunity to raise their budgets, agencies may prefer NCB cases

⁵³⁸ *Id.*

⁵³⁹ See OECD, *supra* note 372.

⁵⁴⁰ Federico Alagna, "Non-conviction Based Confiscation: Why the EU Directive is a Missed Opportunity," *European Journal on Criminal Policy and Research* 21, no. 4 (2015), at 447-461.

⁵⁴¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976)

⁵⁴² Marian R. Williams, Jefferson E. Holcomb, Tomislav V. Kovandzic and Scott Bullock, "Policing for Profit: The Abuse of Civil Asset Forfeiture," Institute for Justice, 2010, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf.

and abuse their power.⁵⁴³ Therefore, before introducing NCB confiscation laws, which are certainly an effective tool to enhance cross-border order/ asset recovery, governments should consider human rights issues and other challenges associated with non-conviction-based procedures.⁵⁴⁴

Further, another solution to effective cross-border order/ asset recovery legislation is replevin law. As previously discussed, criminals often hide their stolen assets in several jurisdictions, so it is costly and incapable to bring court proceedings to each of those jurisdictions.⁵⁴⁵ Besides, it is important to mention that stolen assets are not only money, but assets of any economic value, anything tangible or intangible that can be maintained or controlled to produce a value. Simply stated, assets represent the amount of ownership that can be converted into cash (although cash itself is also considered an asset). Therefore, the stolen asset can be any sorts of assets, laundered money, and misappropriation of funds or property, stolen by public officials or private persons, precious metals, arts, and artifacts.

This is important, because, in common law countries, such as the Kingdom of England and the United States of America have replevin law, which is also known as "claim and delivery," facilitating recovery personal property that was wrongfully taken or restrained. Replevin law seeks the return of the actual thing itself, as opposed to money damages. Therefore, in this dissertation, I suggest if the stolen assets are property "tangible" and happen to be located in a country that adopts replevin law or something similar, it would be the best option to use. However, if the stolen assets are money in a bank account, "intangible," and happen to be located

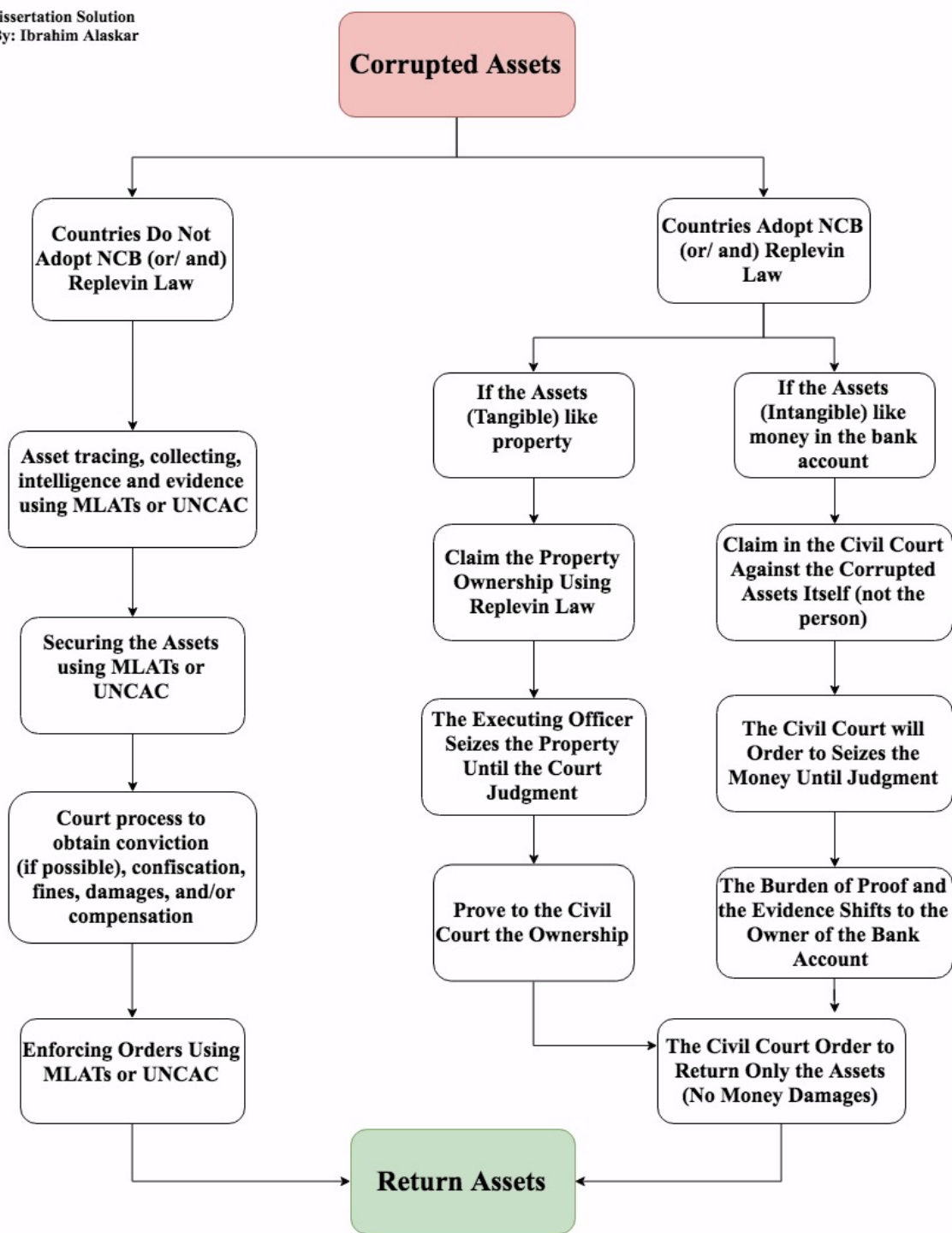
⁵⁴³ *Jensson*, "Crime Should not Pay," 2011, http://skemman.is/stream/get/1946/10146/25325/1/ma_ritg_arnar_jensson_-_sept_2011.pdf.

⁵⁴⁴ A. Kennedy, 'Justifying the Civil Recovery of Criminal Proceeds' (2004) 12(1) *Journal of Financial Crime* 8; T. P. Farley, 'Asset Forfeiture Reform: A Law Enforcement Response' (1994) 39 *New York Law School LR* 149.

⁵⁴⁵ *Id.*

in countries that have fully adopted NCB, in this case, NCB would be the best option. The figure below explains the process of this suggestion:

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Overall, global efforts are required to ensure that international and domestic legal frameworks address all challenges associated with the cross-border order/ asset recovery process. For now and for some time to come, a large gap will exist between the mechanisms and specialized legislations for CBO/ asset recovery established in different parts of the world.⁵⁴⁶ The current differences block the effective international cooperation and limit the applicability of UNCAC. Some countries actively use NCB forfeitures and enforce foreign orders, while others are still straggling regarding introducing effective anti-corruption and CBO/ asset recovery legislation. In many countries, CBO/ asset recovery remains a long and complex process that takes many years and resources. Therefore, it is recommended to strengthen both international and domestic laws related to CBO/ asset recovery and improve legislation to address the requirements of individual countries while together allowing for wider cross-border cooperation and communication.

Institutional and Operational Improvements:

Along with legal changes that should be made on the national and international levels, institutional and operational improvements need to be made to make cross-border order/ asset recovery more effective. First, a specialized agency should be created to deal with national and

⁵⁴⁶ Wang Xue-cheng & Zhang Jian, “*The Research on Mechanisms of Seizing and Confiscating the Proceeds of Crime in Transnational Corruption Cases of China*,” Contemporary Law Review, 2007, http://en.cnki.com.cn/Article_en/CJFDTOTAL-DDEX200703009.htm.

cross-border order/ asset recovery. In recommendations provided by the G20⁵⁴⁷ Anti-Corruption Working Group, such units are referred to as “kleptocracy units.”⁵⁴⁸

These groups need to include prosecutors and investigators whose main aim is to track, freeze, confiscate, and repatriate assets that have been illegally transferred to foreign jurisdictions. It is important for these units to have all available technical and human resources, access to information and databases, and authority to contact and work with foreign colleagues. Specialized CBO/ asset recovery agencies need to cooperate with respective international groups such as, for example, the *Kleptocracy* Asset Recovery Initiative, as well as with FIUs, judicial authorities, and law enforcement agencies to unite their efforts and target illicit financial outflows more effectively.⁵⁴⁹

Naturally, people working on CBO/ asset recovery cases need to be properly educated and trained. This means that countries should ensure that all officials including investigators, prosecutors, judges, *etc.* are well trained and can handle complex cases involving several jurisdictions.⁵⁵⁰ Because CBO/ asset recovery cases often take years, human resources need to be

⁵⁴⁷ "The G20 is an informal intergovernmental conference, involving a regular process of ministerial meetings and leaders' summits, which is held by 20 of the world's most significant economies: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States and the European Union. Together, the G20 countries account for 85 per cent of global gross domestic product ('GDP') and two thirds of the world's population." See ARTICLE: THE GROUP OF 20: A SHORT LEGAL ANATOMY FROM THE PERSPECTIVE OF INTERNATIONAL INSTITUTIONAL LAW, 14 Melbourne J. of Int'l Law 550

⁵⁴⁸ See OECD, *supra* note 372.

⁵⁴⁹ See NOTE: "To Return the Funds at All", *supra* note 302; see also, *Asset Forfeiture and Money Laundering Section, U.S. Dep't of Justice*, (last visited Apr 8, 2018), <https://www.justice.gov/criminal-afmls>; see also, generally, SYMPOSIUM FIGHTING CORRUPTION IN AMERICA AND ABROAD THE "DEMAND SIDE" OF TRANSNATIONAL BRIBERY AND CORRUPTION: WHY LEVELING THE PLAYING FIELD ON THE SUPPLY SIDE ISN'T ENOUGH, 84 Fordham L. Rev. 563

⁵⁵⁰ See Wang Xue-cheng & Zhang Jian, *supra* note 559.

provided efficiently to ensure that all cases are handled correctly. Each country also needs to ensure that specialized agencies and commissions have all technical resources to be able to seek and provide MLA to meet the country's needs. These include various information databases, equipment, translators, consultants, *etc.*, which help to avoid the common barriers and obstacles and make the process of CBO/ asset recovery easier for all. Additionally, all staff should commit to ongoing professional education because national and international laws and procedures are rapidly evolving, and employees need to be aware of all changes. Therefore, each country should consider providing specialized education and training for investigators, prosecutors, and judges.⁵⁵¹

Further, CBO/ asset recovery agencies are recommended to perform a case-by-case strategic analysis.⁵⁵² It is essential to collect data on all domestic and cross-border order/ asset recovery cases and evaluate the effectiveness of actions taken to recover illicit funds. Any challenges detected during the assessment must be analyzed completely to minimize and avoid problems in future. Information about the value of assets frozen, confiscated, and repatriated needs to be publicly shared to show that CBO/ asset recovery agencies are working towards finding and punishing corrupt officials, private persons, and criminals. A specialized website can be created that would contain information on CBO/ asset recovery cases and increase transparency in the national CBO/ asset recovery policy. Moreover, such a website could contain detailed information on how repatriated assets have been used.⁵⁵³

⁵⁵¹ See generally, ARTICLE: TRAINING THE NEXT GENERATION OF ANTI-CORRUPTION ENFORCERS: INTERNATIONAL ANTI-CORRUPTION CURRICULUM IN U.S. LAW SCHOOLS, 14 J. Int'l Bus. & L. 169

⁵⁵² See Stephenson et al., *supra* note 17, at append. A.

⁵⁵³ See Tracing Stolen Assets, *supra* note 16; *see also*, generally, Essay: Rights-Based and Tech-Driven: Open Data, Freedom of Information, and the Future of Government

The system of mutual legal assistance should also be improved. As identified in previous chapters, countries face multiple challenges when seeking MLA. These include differences of the legal systems, differences in legal terminology and procedures, hesitation to cooperate, lack of technical capacity, and so on. Many of these challenges could be avoided basically by allowing transparent access to the information about CBO/ asset recovery regulations, investigation procedures available, and requirements for cooperation in each specific jurisdiction. In this way, a country planning to send an MLA request could learn about the requesting jurisdiction and adjust its CBO/ asset recovery strategy to accommodate the foreign legal system. International workshops involving different professionals working on CBO/ asset recovery could also be organized to raise awareness about the differences in legal frameworks and educate CBO/ asset recovery agencies on potential challenges.⁵⁵⁴

Because the problem of illicit financial outflows is closely connected to the financial sector, it is recommended that countries develop a comprehensive banking policy and cooperate with banks in detecting and tracing suspicious transactions.⁵⁵⁵ This especially relates to cases involving politically exposed persons (PEP), who are defined by FATF⁵⁵⁶ as individuals who have been “entrusted with a prominent public function.”⁵⁵⁷

Transparency, 19 Yale H.R. & Dev. L.J. 1; *see also*, ARTICLE: Sanctionable Practices at The World Bank: Interpretation and Enforcement, 18 U. Pa. J. Bus. L. 985

⁵⁵⁴ *See* Wang Xue-cheng & Zhang Jian, *supra* note 559; *see also*, *See* ARTICLE: The Role of Non-Governmental..., *supra* note 185.

⁵⁵⁵ *See* Wang Xue-cheng & Zhang Jian, *supra* note 559.

⁵⁵⁶ Financial Actions Task Force, www.fatf-gafi.org

⁵⁵⁷ FATF, “Politically Exposed Persons,” 2013, available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

For example, when a bank detects a suspicious transaction made by a PEP, it could inform authorities about it, who would then track and investigate whether the assets have been gained legally. Jurisdictions should also inform each other on cross-border transactions made by PEPs to prevent and timely address illicit financial outflows.⁵⁵⁸ Naturally, both banks and specialized CBO/ asset recovery agencies need to create and regularly update their databases of PEPs as well as develop risk management systems to combat corruption, embezzlement, and money laundering more effectively.⁵⁵⁹

This recommendation is closely related to the problem of bank secrecy. Many financial institutions, especially those located in international safe havens, are still reluctant to share information about their clients, persistently protecting their privacy and confidentiality. Countries are faced with the problem of conflict of interests with the financial system, which inhibits development of effective CBO/ asset recovery systems. However, some countries have acknowledged the importance of CBO/ asset recovery and whose banks have been protecting their reputation and integrity by actively cooperating with authorities and participating in international initiatives.

⁵⁵⁸ Theodore S. Greenberg, Larissa Gray, et al., *Stolen Asset Recovery, Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures*, (2009), available at: <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf>

⁵⁵⁹ See generally, Transparency International, *2010 Progress Report: Enforcement of the OECD Anti-Bribery Convention*, (July 2010), available at: http://www.transparency.org/news_room/latest_news/press_releases/2010/2010_07_28_oecd_progress_report

One such country is Switzerland, which has recently demonstrated its commitment to increasing transparency and fighting the policy of bank privacy.⁵⁶⁰ For example, in 2009, the country decided to agree with the OECD standards regarding the exchange of tax-related data or information between jurisdictions. Switzerland has also been encouraging its banks to cooperate more in tax evasion, money laundering, and corruption cases, which has already helped to recover millions of dollars. Other countries should follow the example of Switzerland, which has demonstrated a considerable degree of change, perseverance, and commitment in dealing with cross-border order/ asset recovery.⁵⁶¹

Its experience in cooperating with financial institutions can be adopted by other countries that want to build a sound and effective institutional and operational framework for CBO/ asset recovery. However, This raise an important question, which is; "If Switzerland has improved their legislation, perseverance, and commitment in dealing with cross-border order/ asset recovery. Further research much determine why, notwithstanding these reforms, it remains one of the most attractive safe heaven countries for tax evasion, money laundering, and corruption assets!"⁵⁶²

Finally, one needs to note that no institutional or operational improvements in cross-border order/ asset recovery are possible without the international cooperation and involvement of various joint-task forces and organizations. A wide range of international initiatives and

⁵⁶⁰ Rita Adam, "Innovation in Asset Recovery: The Swiss Perspective," The World Bank Legal Review, (accessed Jul 23, 2017), available at: <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/finanzplatz-wirtschaft/Rita-Adam-Legal-Innovation-and-Empowerment-for-Development-World-Bank-Legal-Review.pdf>.

⁵⁶¹ *Id*; see also, Michael Johnston, *supra* note 89.

⁵⁶² ARTICLE: Secrets and Lies? Swiss Banks, *supra* note 273; see also, Robert Kinsman, *Your New Swiss Bank Book*, (rev. ed. 1979), at 7-41; see also, Melanie Warner, *How to Open a Swiss Bank Account (Try It, You'll Like It)*, Fortune, (Mar. 31, 1997), at 166.

working groups has been established in recent years to help the countries in the field of cross-border order/ asset recovery. Their main aim is to facilitate the exchange of information among jurisdictions and inform them of the best practices that can be used.⁵⁶³

Such task forces can also consult national agencies on issues related to international CBO/ asset recovery and help them establish contacts with foreign colleagues. Moreover, giving more freedom to international organizations and public actors is essential for raising the technical capacity of the countries. During the past decade, organizations and initiatives such as Transparency International, CARIN, FATF, etc. have been surprisingly effective in raising awareness about the problem of corruption and financial crimes, and they have added much to developing national and international CBO/ asset recovery agenda.⁵⁶⁴

These organizations and NGOs can influence the national authorities, support judicial and legal reforms, conduct independent research, and even help in CBO/ asset recovery cases informally (*e.g.*, the case of Teodoro Nguema Obiang). Developing countries that have limited capacity in dealing with CBO/ asset recovery are expected to benefit from such international support the most.⁵⁶⁵

Political and Policy Improvements:

Because the outcome of CBO/ asset recovery procedures depends on the political commitment and stability, it is necessary to prepare and sustain political support from governments in both requesting and requested countries.⁵⁶⁶ The governments of developed and developing countries should be under continuous political pressure to respect and comply with

⁵⁶³ See Stephenson et al., *supra* note 17, at append. A.

⁵⁶⁴ See ARTICLE: The Role of Non-Governmental..., *supra* note 185.

⁵⁶⁵ See generally, ARTICLE: Overcoming NGO Accountability Concerns in International Governance, 31 Brooklyn J. Int'l L. 139

⁵⁶⁶ See Ivan Pavletic, *supra* note 442.

the international requirements and commitments. They need to be forced to join the global fight against corruption and establish clear policies to demonstrate that they are committed to the CBO/ asset recovery agenda. Progress towards achieving set targets should regularly be assessed in a transparent manner to show the rest of the world that a given country is working towards the sound national CBO/ asset recovery policy.⁵⁶⁷

A country needs to both have a publicly available and clear CBO/ asset recovery policy and policy statements and also align its resources to support them. This policy should be published and distributed to relevant agencies to confirm the commitment to improvement at the highest political level.⁵⁶⁸

Governments should also be encouraged to set timetables for the implementation of international regulations and possibly authorized for not making enough efforts. In this case, a stronger framework needs to be developed to impose and enforce sanctions when countries fail to comply with agreed treaties. Once the country proves its reliability and desire to cooperate on the CBO/ asset recovery cases, individual financial service providers, as well as public officials in the agencies and the judiciary will find it difficult to ignore international commitments.⁵⁶⁹ It would also be easier for foreign countries to encourage a country to respect its commitments when comprehensive policies and laws that could be appealed to are already in place.⁵⁷⁰

Increasing political support is a challenging task because specific agencies and individuals need to be targeted that are involved in CBO/ asset recovery and can press the

⁵⁶⁷ ARTICLE: CORRUPTION IN DEVELOPING COUNTRIES: WHAT KEEPING IT IN THE FAMILY MEANS FOR EVERYONE ELSE, 53 Osgoode Hall L.J. 267; *see also*, SYMPOSIUM: Is There a Right to Be Free from Corruption?, *supra* note 229.

⁵⁶⁸ *See generally*, Article: Are Anti-Corruption Efforts Paying Off? International and National Measures in the Asia-Pacific Region and Their Impact on India and Multinational Corporations, 31 Hawaii L. Rev. 59

⁵⁶⁹ *See* ARTICLE: The Role of Non-Governmental..., *supra* note 185.

⁵⁷⁰ *See* 33 Ariz. J., *supra* note 102.

government within the country. Therefore, financial investigators, prosecutors, and administrative and judicial authorities need to be prepared to encourage their countries to allocate more resources to anti-corruption and CBO/ asset recovery efforts.⁵⁷¹

In every country, there are active and committed prosecutors, judges, ministers, law enforcement officers, and investigators who can support improvements in domestic CBO/ asset recovery policies. These professionals can help overcome resistance from political actors, especially those involved in corrupt activities and show the global community that the country takes its commitments seriously.⁵⁷² Similarly, powerful international organizations and NGOs like the World Bank or Transparency International can also be involved to make governments strengthen their policies related to corruption and CBO/ asset recovery.⁵⁷³ They can do this indirectly by raising awareness about the problem, shaping public opinion, providing technical support for developing countries, and strengthening the national capacity for such efforts.

Stephenson et al. provided several more policy recommendations designed to eliminate barriers and obstacles to CBO/ asset recovery.⁵⁷⁴ Countries should not refuse MLA requests unless they have strong evidence that the requesting country failed to guarantee due process to individuals under investigation. More specifically, Stephenson et al. specifically emphasize that jurisdictions should develop a comprehensive policy consistent with international treaties and agreements, which would determine when MLA requests should be accepted and establish

⁵⁷¹ See ARTICLE: The Role of Non-Governmental..., *supra* note 185; *see also*, ARTICLE: WHY UN INSPECTIONS? CORRUPTION, ACCOUNTABILITY, AND THE RULE OF LAW, 11 S.C. J. Int'l L. & Bus. 227

⁵⁷² See ARTICLE: WHY UN INSPECTIONS? *supra* note 584.

⁵⁷³ See generally, NOTES AND COMMENTS; A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland, 14 Am. U. Int'l L. Rev. 257

⁵⁷⁴ See Stephenson et al., *supra* note 17, at append. A.

specific grounds for legitimate refusal. In addition, developed countries should provide technical and legal assistance to developing ones, thus helping to target corruption on the international level.⁵⁷⁵

The strong political will and desire to change the existing policies are especially important for developing countries, which are most affected by corruption and which have limited resources to recover the stolen wealth. Government officials of these countries need to start on a long and challenging road to CBO/ asset recovery. People in control of their national policies and legislation need to introduce legislative reforms and show commitment to prosecuting corrupt officials and private persons.⁵⁷⁶ Irrespective of their current or former position or their influence in the country, all criminals must be prosecuted to disincentives' and prevent other dishonest officials or private persons from committing financial crime.⁵⁷⁷

At the same time, clear policy initiatives need to be developed to prosecute and control a broader range of government officials, private persons, bankers, multinational corporations, and private sector operators to demonstrate that no one is allowed to steal money regardless of their position and influence. Additionally, by identifying illicit financial outflows as a threat to national security, developing countries could start on a course of progressive improvement and economic recovery, which is crucial for their own future development.⁵⁷⁸

CBO/ asset recovery is a challenging process in countries torn apart by corruption, political instability, and a weak or captive judiciary system. Developed countries that most often

⁵⁷⁵ See Article: International Legal Mechanisms..., *supra* note 184.

⁵⁷⁶ See generally, ARTICLE: Redeeming Extraterritorial Bribery and Corruption Laws, 54 Am. Bus. L.J. 641

⁵⁷⁷ See Ivan Pavletic, *supra* note 442.

⁵⁷⁸ *Illicit Financial Flows from Developing Countries: 2002-2011* (Washington: Global Financial Integrity, December 2013) at 1, available at: iff.gfintegrity.org/iff2013/Illicit_Financial_Flows_from_Developing_Countries_2002-2011-HighRes.pdf

serve, as safe havens for proceeds of corruption are often unwilling to return assets to countries with unstable political conditions and to governments that are even more corrupt than their predecessor.⁵⁷⁹

Take, for example, the case of Iraq, where lots of assets related to oil trade only created instability and massive corruption in the country. Even if an agreement on the use of repatriated assets were made, there would be no guarantee that the country will be able to ensure the transparent and just distribution of recovered funds. Controlling the use of the recovered money is a difficult process, even when the international organizations like the World Bank are involved.⁵⁸⁰

Therefore, making the CBO/ asset recovery process effective requires fundamental changes in the government, judiciary, and public spheres, and an atmosphere that will sustain an ongoing, committed struggle against corruption. Political changes that prove a sincere desire to combat corruption would likely prove to the global community that a country can be trusted and encourage them to recover at least a part of its resources.⁵⁸¹ For developing countries whose economies are undermined by the conflicts and instability, even part of the stolen assets could have the economically significant potential for rebuilding the stable governance and funding basic public services.⁵⁸²

⁵⁷⁹ Council of the European Union, Plenary Session of the European Parliament. *Asset Recovery to Arab Spring Countries in Transition, Statement by Commissioner Füle on behalf of the HR for Foreign Affairs and Security Policy*, Strasbourg, (May 22, 2013), available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010058%202013%20INIT>

⁵⁸⁰ See generally, ARTICLE, ESSAY & NOTE: A Comfortable Sofa: The Need For An Equitable Foreign Criminal Jurisdiction Agreement With Iraq, 56 Naval L. Rev. 43

⁵⁸¹ *From 'Institutional' to 'Structural' Corruption: Rethinking Accountability in a World of Public-Private Partnerships* by Irma Sandoval-Ballesteros: SSRN, (last visited Jan 8, 2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370576

⁵⁸² See UNODC & World Bank, *Stolen Asset Recovery*, *supra* note 166.

Conclusion:

Organizing cooperation on enforcement of cross-border orders presents many challenges both for the victim countries and for the countries in which the stolen assets are collected. Such obstacles and barriers as procedural delays, differences in legal frameworks, laws, and technical capacity cause unnecessary extension of CBO/ asset recovery-related processes. Problems exist with mutual recognition of confiscation orders, while cooperation as a central legal tool for CBO/ asset recovery is still seriously under-appreciated. UNCAC now offers a set of guidelines and regulations for stimulation of cooperation, but they are not enough to guarantee mutual assistance for all CBO/ asset recovery investigations. Moreover, CBO cooperation is reduced by a lack of legally binding follow-up and a lack of domestic and international agencies' authority to enforce restraining CBOs, permitting further movement and dissipation of embezzled funds and their disappearance from investigators' focus. These challenges require the introduction of substantial legal reforms for enhancing the anti-corruption and CBO/ asset recovery legislation, encouraging the development and ratification of international treaties, conventions, and organizations of mutual legal assistance, and improvement in cooperation and communication at all levels for more efficient and timely detection, freezing, and recovery of stolen assets.

Chapter 7: Summary and Conclusions

This chapter synthesizes the above observations about the barriers and obstacles to CBO enforcement and possible solutions on overcoming them. The central emphasis for improving international asset recovery/ CBO improvement must first be the improvement of legal frameworks at the domestic and international levels to develop and promote more effective CBO enforcement, and to enhance communication and cooperation at all levels for timely CBO/ asset recovery. General conclusions are drawn to describe the dissertation's overall findings, and recommendations for further research in the field are made for informing further studies regarding enforcement of court orders and cross-border optimization and enhancement.

Summary of Barriers and Possible Solutions:

Analysis of data collected within this study showed that the major barrier and obstacle to efficient CBO enforcement and asset recovery is the major differences in the legal systems and procedures existing among countries initiating international corruption investigations. Differences in methods create procedural difficulties and errors slowing down the process of collaboration and communication and permitting further dissipation of assets, with some countries handling primary steps of embezzlement and corruption investigations through police resources, and others entrusting these tasks to prosecutors and investigating judges. When added to different approaches to asset forfeiture and confiscation, these challenges make delays critical with some assets disappearing from the focus of the investigators and moving to other safe havens for further coverage.

One solution to overcome this major barrier and obstacle may be found in the example of the successful aggressive asset forfeiture system practiced by the USA, shifting the burden of proof on the owner of assets who has to provide evidence of the legitimate, legal source of

frozen assets for them to be unblocked. This solution should be implemented alongside legislative acts that would protect citizens from unreasonable forfeitures in legally and economically weak, developing countries. Under the condition of satisfactory human rights' protection and objectivity of such a forfeiture system, asset freezing and recovery may be accomplished much simpler and quicker.

Moreover, a more rational and effective solution to the problem of cross-border order/ asset recovery is to make a single final judgment that can be enforced in each jurisdiction where the assets in question are located. This can be accomplished if the stakeholders (the victim country, receiving country, and lawyers) share the recovered assets.

Another major barrier and obstacle that weakens many cases of CBO/ asset recovery, investigations, and requests is a lack of international cooperation or hesitation to participate in prosecutions of one jurisdiction in the territory of another jurisdiction. This barrier is most significant between developed and developed countries because of "distrust" between such countries frequently deny developing countries, and MLA requests. Such reluctance is also justified by a fear that recovered assets will not be spent on economic, political, and social development but will be allocated to other corrupt officials or private persons again.

These concerns are indeed reasonable in some contexts, but such an environment of distrust and a lack of a legal basis for binding cooperation obligations make CBO/ asset recovery very challenging. Additionally, developed countries have no legal or moral right to withhold cooperation because of the potential mis use of the recovered stolen asset in the developing country. If the victim country has provided evidence that proves the ownership of these assets, the requested country for this reason should not reject the confiscation. One possible solution to

resolve such concerns could involve a third party such as World Bank to play a role in observing the use of the recovered assets in the victim country.

An additional currently sought by UNCAC and other international authorities promoting CBO/ asset recovery improvement is the increase of binding international treaties and conventions signed among countries to ensure that in case CBO/ asset recovery investigations are held, the parties of these treaties can expect mutual assistance.

Hesitation to cooperate and disinterest in assigning resources to investigations may also be targeted through the establishment of strong communication, cooperation, and channels of formal and informal assistance. Diplomatic relations are a very sensitive field of activity, but once certain structures (such as FIUs, law enforcement practitioners, and agencies) establish formal and informal communication networks, cooperation and information sharing will become much fuller and much more effective in coverage of asset tracing and freezing.

Currently, some necessary steps are made towards the encouragement of such networks' formation, which is evident in successful examples of CARIN, ARIN-AP, ARINSA, *etc.* However, much more needs to be done to make possible communication improvements to ensure that information on embezzled and illegally secured assets is shared fully, transparently, and in a timely manner to enable their seizure and block their further movement to safe havens.

Technical capacity and resource limitations within developing countries' domestic jurisdictions represent another serious barrier and obstacle to effective CBO/ Asset recovery and enforcement in cases of international asset seizure and recovery. In fact, before an MLA request is sent, and an international partnership is started on the issues of illegal asset seizure, the domestic jurisdiction should handle much resource-intensive work on detection and location of

assets, finding evidence on the links between criminals and stolen assets, and building a case on the basis of which the MLA request is made.

Unfortunately, many resource-poor and heavily corrupt countries fail to make those initial cases strong and evidence-rich, which causes distrust of countries in which stolen assets are kept and slows down the process of CBO/ asset recovery. An evident solution to this challenge is to invest heavily in resource -capacity- building, training, and preparation of experienced and competent professionals for asset embezzlement investigations. Strengthening of these structures will raise trust and willingness to cooperate among countries with more comprehensive anti-corruption systems and will ensure that stolen assets are returned to victims countries for further improvement of the economy and socio-political systems.

Strengthening domestic legislation is also one of the ways in which CBO/ Asset recovery can be promoted and enforced in a much more effective manner. As numerous researchers repeatedly noted, many countries have differences in their investigation and forfeiture systems, and even small deviations in the terminology related to international documentation may cause the CBO/ asset recovery case to delay.

Thus, in relation to these procedural barriers and obstacles, specialized agencies at the national and international levels (already mentioned “kleptocracy units”) should be created with a universal, internationally accepted protocol of all CBO/ asset recovery stages. UNCAC should become the primary promoter of such a universal system, and countries-signatories to the UNCAC should be bound to adopt legal changes and reforms in their domestic legislation incorporating that universal procedure and terminology simplifying the entire CBO/ asset recovery procedure.

Additional recommendations for making the CBO/ asset recovery enforcement and overall of CBO/ asset recovery processes more productive relate specifically to developing countries. Given that the political systems of such countries are often characterized by the indolence of the population, distrust of governmental officials by the general population, and general lack of political will, developing countries should dedicate special attention to the improvement of these critical areas. Mobilizing and sustaining political support, making the struggle against corruption a first-rank priority, and making an official policy statement regarding corruption and CBO/ asset recovery reforms and initiatives may help rebuild the trust of the population and prevent corrupted officials or private persons.

Governments of countries in which stolen assets are stored should in their turn set determined deadlines and schedules for CBO/ asset recovery investigations, thus showing their commitment to a timely and effective resolution of the case. Making increased use of NCB confiscations is also a potentially promising tool of CBO/ asset recovery improvement because it avoids the majority of procedural difficulties and ensures that assets are frozen for the period of investigation. Considering all mentioned challenges and implementing solutions developed especially for overcoming them will help make a recognizable step forward in CBO/ asset recovery at the national and international level.

General Conclusion:

Corruption is an evil of international scale and impact, which neither the poorest, struggling economies nor developed, growing countries can avoid. Corrupted officials and businessmen obtain illicit enrichment by stealing and allocating budgetary funds, thus causing an enormous drain on resources otherwise intended for economic growth, social development,

financing of fundamental healthcare, educational, and social resources, and other strategically important fields.

Hence, struggle against corruption, embezzlement, and money laundering come to the forefront of attention among national and international financial crime agencies several decades ago, and the international community is now working hard on improving national and international legal frameworks to discourage, prevent, and prosecute financial machinations and fraud.

UNCAC and StAR, among others, are to date the most successful initiatives of the international level regarding CBO/ asset recovery and financial crime investigations. Interpol is also active in this regard, and G8 and G20 initiatives are also valuable in the field of stolen assets detection, freezing, and recovery. UNCAC is a highly promising convention that obliges the signing members to improve their domestic legal systems so that they include prevention, criminalization, international cooperation, and CBO/ asset recovery and repatriation to victim countries.

So far, more than 160 countries have signed UNCAC, and the number is growing, which signals about global commitment to controlling corruption and international financial crime. However, there are still some weaknesses that UNCAC operation reveals, and some improvements are necessary for UNCAC to achieve the desired level of international ability and binding power.

For instance, the major weakness of UNCAC so far is a lack of regulations on CBO/ asset recovery follow-up, which currently causes many procedural problems. Some countries require victim countries to provide follow-up reports on the use of recovered assets, but only a few countries are implementing such guidelines. Other countries simply refuse to grant new MLA

until the old one is recovered, which weaken victim countries' economies and rip them off vital financial resources, will steal assistance upon MLA requests because of the fear that recovered assets. Another major weakness in UNCAC is a lack of structural accountability in a system where most of the provisions are based on good faith between countries, which do not reflect the reality of occasional (and sometimes frequent) conflict between countries.

Therefore, the introduction of hard follow-up regulations in the UNCAC may resolve some of the pressing issues related to the procedure of CBO/ asset recovery and guarantee that assets are recovered and properly used upon recovery. Moreover, UNCAC lacks regulations on the international recognition of confiscation orders and enforcement of NCB orders, which would also contribute to capability improvements and lift barriers and obstacles in the CBO/ international asset recovery processes.

Besides improving UNCAC guidelines, agencies involved in CBO/ international asset recovery should cover and respect numerous procedural and legal differences currently existing among countries for the sake of achieving an agreement and organizing productive, timely cooperation. Without that mutual respect of differences, numerous countries cause unreasonable delays in information sharing, do not cooperate with developing countries with low-trust governments, and generally fail to communicate on ongoing CBO/ asset recovery investigation issues.

These procedural and legal barriers and obstacles cause serious challenges to the restoration of justice and equality, and they slow down the international struggle against corruption and fund misappropriation. Therefore, lifting those barriers and obstacles through improving communication and cooperation channels, assistance to developing countries in capacity-building and increasing technical/human resource expertise, transparency and

information accessibility, stand among the highest-priority reform initiatives on the path to making CBO/ asset recovery quicker and more realistic.

Thinking Out of the Box:

Corruption is a unique crime and it has its own factors and cartelization; it becomes more difficult to treat it like any other crime. Besides, the most challenging kind of corruption is the stolen asset hidden across national borders, Recovering such assets is a daunting process in any country drawn apart by corruption, political instability, and a captive or weak judiciary system.

One of the most significant barriers to successful CBO/ Asset recovery, that unfortunately, has no solution yet, is the lack of "political will." Countries are the parties who control the process, and thus there is no way to avoid the power of political influence. Furthermore, if two countries have a "political dispute," there is often no way to see a channel that can work between them to recovering stolen asset without political influence and interference. In fact, a lot of requested countries will try to use the stolen asset in their jurisdiction as "political pressure" against the requesting "victim" country.

However, in practice, various circumstances make CBO/ Asset recovery very difficult, such as the lack of training, procedural delays, and differences in legal systems, laws, and technical capacity that cause additional extension of CBO/ asset recovery-related processes. Also, the requested country is often unwilling to return assets to countries with unstable political conditions and to governments that are even more corrupt than their predecessor.

Thus, I suggest that there is a need for a new idea, and a solution that can couple the rule of law with present approaches for avoiding the difficulties of CBO/ Asset recovery process. The solution is basically to set up, an *International Court of Civil Justice (ICJ)* with

jurisdiction over cross-border and some instances of international corruption and ownership disputes.

I imagine the ICCJ as an international tribunal with its official seat and headquarters located in Riyadh in the Kingdom of Saudi Arabia, but its proceedings may take place anywhere. An Assembly of States Parties will govern the ICCJ, and the state parties will be made up of states that already signed and ratified the UNCAC. It is essential to join the UNCAC first because most of the world countries have already joined UNCAC, and UNCAC requires party states to provide MLA to other party states seeking information or evidence for corruption cases.



The Assembly will be responsible for electing officials of the court, approves and collects the court's budget from corrupted assets, and adopt amendments to the MLA between countries.

The Court itself, however, is to be composed of five organs: the Presidency, the Judicial

Divisions (judges, cases process, MLA service), the Office of the Monitoring Asset Use to monitor the use of the return assets to the victim country, and the Training and Technical Capacity Office.

As I explained before, the problem with UNCAC, MLATs, and NCB, is that most of it based on good faith, and countries intersect with each other based on shifting interests! The ICCJ will solve the problem of facilitating court orders for MLA between countries, facilitating enforceable orders for confiscation and return stolen assets, and resolving disputes in an appropriate legal institution without the influence of politics.

Unfortunately, such an institution, for now, does not exist. Due to other courts' limited jurisdiction, none of the International Court of Justice (ICJ), International Criminal Court (ICC), international commercial arbitrations, nor international investment arbitrations, can cover these kind of corruption disputes.

Also, U.S. courts could have served such a purpose, especially, in cases where one of the parties is an American individual or entity. However, the trend in U.S. courts to limit foreigners'

access, to the text of the note epitomized by *the 2013 Kiobel decision*,⁵⁸³ made this option unavailable. European courts, on the other hand, are also not able to hear most of these kinds of corruption cases, because none would have personal jurisdiction over the target in most of the disputes.

While ICCJ can intersect with the sovereignty principle, I suggest that countries that signed and ratified UNCAC have the option to hear the case in their jurisdiction, or the plaintiff will sue in ICCJ. In addition, the primary costs of litigation in the ICCJ can be from the stolen assets: the court could have 20% of the corrupted asset, and litigators could have 10% of the corrupted assets, and finally, the requesting country "victim country" will receive 70% of the stolen assets. I also suggest that if the "receiving country" decides to hear the case in their own jurisdiction, they can have the same amount that the ICCJ will get.

Similar suggestions have been made. *Judge Wolf*, the former chief federal public corruption prosecutor in Massachusetts, had also suggested an internationalizing the adjudication

⁵⁸³ “Petitioner Nigerian nationals sued respondents, Dutch, British, and Nigerian corporations, under the Alien Tort Statute (ATS), alleging that the corporations aided and abetted the Nigerian Government in committing violations of the law of nations in Nigeria. The United States Court of Appeals for the Second Circuit dismissed the complaint, reasoning that the law of nations did not recognize corporate liability. Certiorari was granted”.... “After residents in Nigeria began protesting the environmental effects of the corporations' practices, Nigerian military and police forces allegedly attacked the residents, and the corporations allegedly violated the law of nations by aiding and abetting the Nigerian Government. The Supreme Court determined that the Nigerian nationals' case seeking relief for violations of the law of nations occurring outside the United States was barred because the presumption against extraterritoriality applied to claims under the ATS, 28 U.S.C.S. § 1350, and nothing in the ATS rebutted that presumption. Nothing about the historical context suggested that Congress intended federal common law under the ATS to provide a cause of action for conduct occurring in the territory of another sovereign. There was no clear indication of extraterritoriality here, and it would reach too far to say that mere corporate presence sufficed to displace the presumption against extraterritorial application”. For more information, see *Kiobel v. Royal Dutch Petro. Co.*, 569 U.S. 108, 133 S. Ct. 1659, 185 L. Ed. 2d 671, 2013 U.S. LEXIS 3159, 81 U.S.L.W. 4241, 43 ELR 20083, 24 Fla. L. Weekly Fed. S 142, 2013 WL 1628935.

of corruption (International of Anti-corruption Court “IACC”).⁵⁸⁴ Judge Wolf used the American legal system, as an example of combating corruption and protecting integrity, by mentioning that the legal system in the US does not depend on "state prosecutors" to fight corruption, mainly because, they are part of the political establishment and elections, but on the other hand, they depend primarily on federal investigators, prosecutors, and courts to pursue and punish corrupt state and local officials.⁵⁸⁵ But why, I think, ICCJ will be more reasonable and acceptable in the international community than IACC?

The problem with Judge Wolf’s suggestion, is that IACC would treat corruption cases as a matter of crime, and therefore, IACC would be like any criminal court, that will need hard evidence, and apply a high "beyond reasonable doubt" standard to obtain a conviction. Further, Judge Wolf believes that the most significant consequence of corruption is not the economic cost but because it "Destroys Democracy."⁵⁸⁶ While these are consistent findings, it is essential to keep in mind that this is a suggestion that will take place in the international community, and not all countries believe of democracy as the rule of law system, therefore, it will be difficult to convince the world that we need IACC to fight corruption and to protect democracy.

Moreover, countries have a moral responsibility to protect their citizens from being prosecuted by an international court. For example, the United States has not joined the ICC and initially used all its power to limit the ICC’s efforts because of a concern that United States citizens would be prosecuted, and for the same reason, IACC may not be an acceptable solution in the international community.

⁵⁸⁴ Mark L. Wolf, *The Case for an International Anti-Corruption Court*, July 2014, *Governance Studies The Brookings Institution*, <https://www.brookings.edu/wp-content/uploads/2016/06/AntiCorruptionCourtWolfFinal.pdf>

⁵⁸⁵ *Id*

⁵⁸⁶ *Id*

On the other hand, what unites countries and the international community is "economy," and it is no secret that we live in the era of capitalism. All countries can understand the economic advantages of recovering stolen national assets efficiently and effectively. Therefore, we will have a better chance if we treat international corruption, as a matter of civil dispute, a matter of ownership, and a matter to improve the global economy and international business in general.

The procedural and substantive provisions of the ICCJ would cover a lot of matters that will make international corruption and stolen assets has no safe heaven, some of which should include the following:

- 1- The ICCJ has no jurisdiction to prosecute individuals for the international anti-corruption crimes. However, the ICCJ has the jurisdiction over the corrupted assets itself.
- 2- The ICCJ is intended to complement existing national judicial systems and it may accordingly only exercise its jurisdiction when several conditions are met, such as when national courts are unwilling or unable to hear the case for many reasons including when assets move quickly from jurisdiction to another jurisdiction, there is a political dispute between the two countries, if the countries submit themselves to the ICCJ, or if the victim country fails to bring reasonable evidence due to the lack of technical capacity.
- 3- Even if the ICCJ does not make a final disposition of the dispute, it could still play a role in monitoring the use of the return assets to the victim country to make sure it will be used properly, or to provide technical capacity for the victim country to send a proper MLA to another country.
- 4- The ICCJ has the jurisdiction to facilitate international order, including but not limited to freezing, confiscating, and returning assets, with the help if the country where the assets are located.

- 5- Each state party has one vote for choosing judges, and the court has to be made to reach decisions by consensus between requested and requesting countries. Unless one party brings to the court attention reasonable doubt that the other party is not cooperating, then, the ICCJ is allowed to enforce the civil decision where the assets are located without consensus.
- 6- The Assembly meets in full session once every two years alternating between Washington DC and Riyadh, and may also hold special meetings where circumstances require, and sessions are open to discussing with the Judicial Divisions the necessity for any improvement.
- 7- The primary finance of the ICCJ will be from the stolen assets. The court will retain 20% of the recovered asset, and litigators could have 10% of the recovered assets, and finally, the requesting country "victim country" will return 70% of the stolen assets. It is also possible to the requested "receiving country" to retain the 20% of the corrupted assets if they decide to hear the case in their own jurisdiction and provide significant technical assistance to the victim country.
- 8- The ICCJ requires that several criteria exist in a particular case before an individual can bring a claim to the court. The ICCJ contains three requirements. All criteria must be met for a claim to proceed. The requirements are (i) the case against the assets not individuals, (ii) the case has no money damage claim, and (iii) if the case facts occur across national borders.
- 9- ICCJ trials are carried under common law and civil law judicial system, with a majority of the three judges present, to reach a decision, which must include a full and reasoned statement that discusses primly ownership matter in the dispute.
- 10- If a state party does not cooperate to enforce the ICCJ decision, the ICCJ has the right to freeze all of that state party's orders and proceedings, which is under the ICCJ jurisdiction.

- 11- Trials are supposed to be public, but proceedings are closed, and such exceptions to a public trial can be permitted if the dispute has political influence.
- 12- ICCJ accepts to hear a non-party state claim if the criteria in number 8 have met, and if the claim is against an asset where is located in a state party jurisdiction. However, the non-party state must voluntarily submit itself to the ICCJ jurisdiction regarding this case and cooperate with all ICCJ requirements.
- 13- The ICCJ decision is final, and there is no appeal option.
- 14- If the stolen assets under review of the ICCJ constitute intellectual property, the receiving country must consult with the victim country of the best way to recover the assets, and if they did not reach a conclusion, the ICCJ would choose to put the intellectual property to an auction and return the value to the victim country.
- 15- If the legitimate national investigations or proceedings into the assets have taken place or are ongoing, the ICCJ will not initiate or interfere with the proceedings, unless one party bring to the court attention reasonable doubt that the other party is not cooperating.

Finally, ICCJ will have better chances to be accepted globally because it will be a beneficial win-win situation for the international community for many reasons, including but not limited to: (1) if the receiving country agrees to hear the case in their jurisdiction they could have 20% of the recovered assets; (2) corruption affects international business, and by setting up such court, this will help the transnational business to grow better globally; (3) there will be no fear for citizens to be prosecuted by this court because it is a civil court and its jurisdiction is only over the assets itself, not the persons.

Recommendations for Further Research:

Due to the fact that this dissertation covered the concept of CBO/ Asset recovery, there is a need for further research and public surveys of some affected countries or by means of financial analysis of a specific country's effect caused by money laundering, corruption, and outflow of illegally appropriated assets. Another recommendation for further research is to analyze experiences of agencies involved in CBO/ asset recovery procedures and to focus on the ways in which recommended improvements can be really achieved in practice.

This dissertation took a global, universal, international approach to the evaluation of the problems surrounding CBO/ international asset recovery. Therefore, making a more focused inquiry in the view of legal, judicial, or investigating agencies on the delays and challenges of the CBO/ asset recovery process may also support the overall field of research by revealing the most problematic practical areas for improvement. This should include, in particular, further inquiry into why a country such as Switzerland, which has demonstrated a considerable degree of change, perseverance, and commitment in dealing with cross-border order/ asset recovery, is still one of the most attractive safe heaven countries for tax evasion, money laundering, and asset transfers arising from corruption.

Bibliography

Janvier D. Nkurunziza, "Illicit Financial Flows: A Constraint on Poverty Reduction in Africa." ASSOCIATION OF CONCERNED AFRICA SCHOLARS 87 (2012): 15-21

U.N. Office of Drugs & Crime, Anti-Corruption Tool Kit, 183 (2002), available at <http://www.unodc.org/pdf/crime/toolkit/f5.pdf> ("Corruption is not a 'victimless' crime, but the only victim in many cases is the general public interest, which is not aware of the crime or in a position to report or complain about it. For this reason, any anti-corruption strategy should include elements intended to bring to light the presence of corruption.")

UNCAC in a nutshell. "A quick guide to the United Nations Convention against Corruption for embassy and donor agency staff." U4. (Apr 2013)

Article III of UNCAC lists the series of corruption offenses that countries are meant to criminalize in their domestic laws, U4 Anti-Corruption Resource Centre, UNCAC in a Nutshell (Sep 2010), available at <http://www.u4.no/publications/uncac-in-a-nutshell-a-quick-guide-to-the-united-nations-convention-against-corruption-for-embassy-and-donor-agency-staff/>

Stolen Assets & Development, World Bank, http://www1.worldbank.org/finance/star_site/stolen-assets.html (Mar. 7, 2018).

Neil Boister & Robert J. Currie, *Routledge Handbook of Transnational Criminal Law* (London: Routledge, 2014), at 141.

Anne T. Gallagher & Fiona David, *The International Law of Migrant Smuggling* (Cambridge: Cambridge University Press, 2014), 541

Matthew Stephenson, UNCAC, *Asset Recovery and the Perils of Careless Legal Analysis*, Global Anticorruption Blog (May 8, 2014), <http://globalanticorruptionblog.com/2014/05/08/uncac-asset-recovery-and-the-perils-of-careless-legal-analysis/>.

Dev Kar & Joseph Spajers, Global Financial Integrity, *Illicit Financial Flows from Developing Countries: 2003-2012*, at vii, 18 (2014), available at <http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf>.

The World Bank Group, "Module 5 Asset Recovery Process and Avenues for Recovering Assets (Adopted from the Handbook for Practitioners on Asset Recovery under StAR Initiative)," (July 18, 2017), <http://pubdocs.worldbank.org/en/824561427730120107/AML-Module-5.pdf>.

William P. Olsen, *The Anti-Corruption Handbook: How to Protect Your Business in the Global Marketplace* (Hoboken, NJ: John Wiley & Sons, 2010), ch. 3

UNODC's, Action against Corruption and Economic Crime, (Jan 13, 2018)
<http://www.unodc.org/unodc/en/corruption/index.html?ref=menuside>.

OECD, ADB/OECD Anti-Corruption Initiative for Asia and the Pacific Asset Recovery and Mutual Legal Assistance in Asia and the Pacific (Paris: OECD Publishing, 2010), preface; see also, Mark J. Farrales, What is Corruption? A History of Corruption Studies and the Great Definitions Debate (June 2005), available at <http://ssrn.com/abstract=1739962>.

UNCAC, Ch. 5, Art. 51.

Richard D. Hartley, *Corporate Crime: A Reference Handbook* (Santa Barbara, CA: ABC-CLIO, 2008), 110

Jean-Pierre Brun, Larissa Gray, Clive Scott, & Kevin Stephenson, *Asset Recovery Handbook: A Guide for Practitioners* (Washington, D.C.: World Bank Publications 2011), 103.

UNCATOC, Art. 6 & Art. 12.

African Union Convention on Preventing and Combating Corruption and Related Offences (2003).

Marco Arnone & Leonardo S. Borlini, *Corruption: Economic Analysis and International Law* (Cheltenham: Edward Elgar Publishing, 2014), 508

Robert Neild, *Public Corruption; The Dark Side of Social Evolution* (Anthem Press 2002).

Tracing Stolen Assets: *A Practitioner's Handbook* (Basel- Switzerland, Institute on Governance, International Centre for Asset Recovery) (2009).

Fofack, H. (2012). *Stolen Asset Recovery: The need for a global effort*. (Edited by William Minter and Timothy Scarnecchia Special Bulletin Editors: Léonce Ndikumana and James Boyce), 29

Stephenson et al., *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C.: WB Publications, 2011), 25.

International Co-operation in the Recovery of Criminal Assets, (Last visited Feb 22, 2017)
www.unafei.or.jp/english/pdf/RS_No83/No83_07VE_Weld2.pdf

Dev Kar & Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2003-2012* (Washington, D.C.: Global Financial Integrity, 2014), 8

Emile van der Does deWillebois et al., *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (2011), available at
http://star.worldbank.org/star/sites/star/files/puppetmastersv_1.pdf

John Christensen, “*Africa’s Bane: Tax Havens, Capital Flight and the Corruption Interface (WP)*”, 2009, available at http://www.realinstitutoelcano.org/wps/portal/web/rielcano_en/contenido?WCM_GLOBAL_CO NTEXT=/elcano/elcano_in/zonas_in/DT1-2009

Frank Vogl, “*Latin America’s Real Corruption Crisis*”, *The Globalist*, March 27, 2015, <http://www.theglobalist.com/latin-americas-corruption-crisis/>

Gascoigne, Clark. “*Crime, Corruption, Tax Evasion Drained a Record US\$991.2bn in Illicit Financial Flows from Developing Economies in 2012.*” *Global Financial Integrity*, Dec 15, 2014, (Accessed February 5, 2017), <http://www.gfintegrity.org/press-release/new-study-crime-corruption-tax-evasion-drained-a-record-us991-2-billion-in-illicit-financial-flows-from-developing-economies-in-2012/>

Global Financial Integrity, “*Illicit Financial Flows*”, 2016, available at <http://www.gfintegrity.org/issue/illicit-financial-flows/>

The National staff, “*Hidden billions of fallen Arab Spring dictators remain elusive*”, (Jun 12, 2013), Available at <https://www.thenational.ae/business/hidden-billions-of-fallen-arab-spring-dictators-remain-elusive-1.656683>

OECD, “*Illicit Financial Flows from Developing Countries: Measuring OECD Responses*”, 2014, available at https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf

S. Ibi Ajayi and Léonce Ndikumana, *Capital Flight from Africa: Causes, Effects, and Policy Issues* (Oxford: Oxford University Press, 2015), 2.

E.g., Stephanie Nebehay, Swiss Hold \$ 1 Billion in Blocked Arab Spring Assets, Reuters (Oct. 16, 2012, 5:41 AM), <http://www.reuters.com/article/2012/10/16/us-swiss-mideast-funds-idUSBRE89F0J620121016> (Switzerland has blocked nearly one billion Swiss francs (\$ 1.07 billion) in stolen assets linked to dictators in four countries at the center of the Arab spring - Egypt, Libya, Syria and Tunisia - the Swiss foreign ministry said on Tuesday. Swiss authorities are cooperating with judicial authorities in Tunisia and Egypt to speed restoration of the funds, but it is expected to take years, said Valentin Zellweger, head of the international law department at the Swiss foreign ministry).

Bernd H. Klose, *Asset Tracing & Recovery: The FraudNet World Compendium* (Berlin: Erich Schmidt Verlag GmbH & Co KG, 2009), 173.

Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray *Stolen asset recovery: a good practices guide for non-conviction based asset forfeiture*. (Washington, D.C.: World Bank Publications, 2009), http://siteresources.worldbank.org/FINANCIALSECTOR/Resources/Stolen_Asset_Recovery.pdf.

Alexander Cooley & J.c. Sharman, *Blurring, the line between licit and illicit: transnational corruption networks in Central Asia and beyond*, 34 *Central Asian Survey*, 11–28 (2015), <http://dx.doi.org/10.1080/02634937.2015.1010799>

Abdelmalek Alaoui, *Three Years Later: The Arab Spring and the Hunt for Former Dictators' Assets*, *Forbes* (Jan. 9, 2014, 8:00 AM), <http://www.forbes.com/sites/kerryadolan/2014/01/09/three-years-later-the-arab-spring-and-the-hunt-for-former-dictators-assets/>

¹ UNCAC, Art. 46 (1).

Janvier D. Nkurunziza, *supra* note 1; *see also*, Transparency International, *Global Corruption Report 2007: Corruption In Judicial Systems* (Diana Rodrigues & Linda Ehrichs eds, Cambridge University Press 2007), available at https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf.

Scher, D., *Asset recovery: repatriating Africa's looted billions*, (*African Security Studies* 2014), 14 (4), 17-26

Suleiman al-Khalidi, *Arab Spring Nations Face Delayed Economic Recovery*: IMF, Reuters (May 25, 2013, 8:17 PM), <http://www.reuters.com/article/2013/05/26/us-imf-middleeast-economy-idUSBRE94P00720130526>.

Commonwealth Secretariat, *Commonwealth Heads of Government Meeting 2007* (London: Commonwealth Secretariat, 2007), 41.

M. Cherif Bassiouni, *Universal Jurisdiction for International Crimes: Historical Perspectives and Contemporary Practice*, 42 *Va. J. Int'l L.* 81, 118-19 (2001).

Office of the Attorney General of Switzerland, “*Anglo Leasing affair: Office of the Attorney General of Switzerland Requests Kenya for Mutual Legal Assistance*”, 2014, http://star.worldbank.org/corruption-cases/sites/corruption-cases/files/Anglo_Leasing_Switzerland_OAG_MLA_Request_to_Kenya_Jun_20_2014.pdf

E.g. Eric Holder, Att’y Gen., *U.S. Dep’t of Justice, Address at the Ukraine Forum on Asset Recovery* (Oct. 23, 2014), available at <http://www.humanrights.gov/dyn/attorney-general-holder-at-the-ukraine-forum-on-asset-recovery/> (Last week - at President Obama’s direction, and in order to build on the work that’s already ongoing - Vice President Biden announced that the United States is committing an additional \$ 1 million in technical assistance to aid the Ukrainian investigation for equipment and other developing needs. Among other things, these funds will place a Justice Department attorney on the ground in Kyiv to work exclusively with Ukraine and its partners on asset recovery and mutual legal assistance issues . . . this move will be critical to augmenting vital information-gathering and communications capabilities in order to enhance asset recovery in both the short and long term.).

Int'l Centre for Asset Recovery, *Guide to the Role of Civil Society Organizations in Asset Recovery* (2013) 15, available at http://star.worldbank.org/star/sites/star/files/afar_guide_to_the_role_of_csos_in_asset_recovery_english.pdf.

Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007), 34.

Michael O'Rourke, Stephen Crowley, Sanford D. Eigenbrode and J. D. Wulfhorst, *Enhancing Communication and Collaboration in Interdisciplinary Research* (Thousand Oaks: SAGE, 2014).

Roberts Kennedy, "Optimizing Asset Recovery through Deregulating Anti-Money Laundry Regime," *International Journal of Humanities and Social Science* 4, no. 11.1 (2014): 141-148

Stephen Michael Sheppard, *Bouvier Law Dictionary Asset*.

Radha Ivory, *Corruption, Asset Recovery, and the Protection of Property in Public International Law* (Cambridge: Cambridge University Press, 2014), at 27.

Financial Action Task Force (FATF), *Best Practices on Confiscation (Recommendation 4 and 38) and A Framework for Ongoing Work on Asset Recovery*. (2012), at 1.

Transparency International, "*What is Corruption?*", (accessed 29 June 2016), <http://www.transparency.org/what-is-corruption/>

Sharon Eicher, *Corruption in International Business: The Challenge of Cultural and Legal Diversity* (New York: CRC Press, 2016), 3.

Kar & Spanjers, *Illicit Financial Flows from Developing Countries: 2003-2012*, 48.

Peter Reuter, *Draining development?: Controlling Flows of Illicit Funds from Developing Countries* (Washington, D.C.: World Bank Publications, 2012), ch. 1.

Stuart Yikona, *Pirate Trails: Tracking the Illicit Financial Flows from Pirate Activities off the Horn of Africa* (Washington, D.C.: World Bank Publications, 2013), 96.

UNODC & WB, *Towards a Global Architecture for Asset Recovery*, (Publisher: StAR Aug 1, 2010), at 3, Available at: <https://star.worldbank.org/star/publication/towards-global-architecture-asset-recovery> (last visited Mar 16, 2018).

William Raabe, Gerald E. Whittenburg and Debra Sanders, *Federal Tax Research* (Mason, OH: Cengage Learning, 2008), 355.

Jane G. Gravelle, *Tax Havens: International Tax Avoidance and Evasion* (Congressional Research Service, 2015), 3.

Adam Graycar & Russell G. Smith, *Handbook of Global Research and Practice in Corruption* (Cheltenham: Edward Elgar Publishing, 2011), 364.

Jacinta Anyango Oduor, Francisca M.U. Fernando, Agustin Flah, Dorothee Gottwald & Jeanne M. Hauch, *Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery* (Washington, D.C.: WB Publications, 2013), 161.

UNODC. "Manual on Mutual Legal Assistance and Extradition." (United Nation, NY, Sep, 2012) Available at: https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf

Marie Chêne, "Mutual Legal Assistance Treaties and Money Laundering," Transparency International, 2008.

Martin S. Kenney, "The Bankrupt Empires – The Creditors Strike Back," A Conference of the Insolvency, Restructuring and Creditors' Rights Section of the International Bar Association, Salzburg, Austria, 1–3 May, 2005.

Gerald E. Caiden, *Corruption and Democracy, in Where Corruption Lives*, (Gerald E. Caiden, O.P. Dwivedi & Joseph Jabbra eds., 2001), at 227.

Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (1999), at 179-80.

Bjørn Lomborg, *Global Crises, Global Solutions* (Cambridge: Cambridge University Press, 2004), at 338.

UNODC *Compendium of Int'l Legal Instruments on Corruption* (2005), <http://www.unodc.org/documents/corruption/corruption-compendium-en.pdf>.

Hassane Cisse, Sam Muller, Chantal Thomas and Wang Chenguang, *The World Bank Legal Review: Legal Innovation and Empowerment for Development* (Washington, D.C.: World Bank Publications, 2012), 264.

ARTICLE: CHANGE OR THE ILLUSION OF CHANGE: THE WAR AGAINST OFFICIAL CORRUPTION IN AFRICA, 38 Geo. Wash. Int'l L. Rev.

Benjamin A. Olken and Rohini Pande, "Corruption in Developing Countries," *Annual Review of Economics* 4 (2012): 479-509; see also, Gerald E. Caiden, *supra* note 81.

Dev Kar and Sarah Freitas, *Illicit Financial Flows from Developing Countries over the Decade Ending 2009* (Global Financial Integrity, 2011), at 3.

Michael Johnston, *Syndromes of Corruption: Wealth, Power and Democracy* (2005).

“*The Scale of Corruption in Africa*,” *The Economist*, (Feb. 3, 2015),
<http://www.economist.com/news/middle-east-and-africa/21679473-gloomy-news-transparency-international-scale-corruption-africa>

U.N. Office on Drugs & Crime, *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes* 127 (2011), available at
http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

generally, Robert E. Kennedy & Rafael M. Di Tella, *Corruption in International Business (A)*, (HARV. BUS. SCHOOL Case 9-701-128) at 1 (2001).

e.g., *Transparency Int'l, Corruption Perceptions Index XLSX dataset (2017)*, available at
https://files.transparency.org/content/download/2172/13704/file/CPI2017_FullDataSet.xlsx;

e.g., In 2007, Transparency International's Report every year on Corruption Perception Index result that the 10 lowest scores countries were: Somalia, Myanmar, Iraq, Haiti, Uzbekistan, Tonga, Sudan, Chad, Afghanistan, and Laos. *See Corruption Perception Index Report, TI* available at http://www.transparency.org/policy_research/surveys_indices/cpi/2007

Transparency International, *Global Corruption Barometer 2010*, Available at:
https://www.transparency.de/fileadmin/pdfs/Wissen/Korruptionsindices/GCB_2010.pdf

Corruption Perceptions Index 2010 Results, Transparency Int'l,
http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results (last visited Dec. 26, 2016).

Transparency International, *People and Corruption: Africa Survey 2015* (Berlin, 2015).

REPORT OF THE COMMISSION FOR AFRICA, reprinted in *Getting Systems Right: Governance and Capacity-Building*, 3 INT'L J. CIV. SOC'Y L. 20, 38 (2005).

Transparency International UK, “*Corruption Statistics*,” (Jun 29, 2016), Available at:
<http://www.transparency.org.uk/corruption/corruption-statistics/>

Bahgat Korany, *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment* (New York: I.B.Tauris, 2014), at 106

M. Shahid Alam, *Anatomy of Corruption: An Approach to the Political Economy of Underdevelopment*, 48 AM. J. ECON. & SOC. 441, 442-43 (1989)

33 Ariz. J. Int'l & Comp. Law 661.

V. Bhargava, “*Curing the Cancer of Corruption*”, p.1, [2006], Available at:
<http://siteresources.worldbank.org/EXTABOUTUS/Resources/Ch18.pdf>

OECD Glossaries, “*Corruption*”, *A Glossary of International Standards in Criminal Law*, (OECD Publishing 2008).

E.V., Transparency International. - *The Global Anti-Corruption Coalition*, Available at: <http://www.transparency.org/whatwedo?gclid=CI34t8yS4LICFaTJtAodRS0A2g>

Ahmad M. Mashal, “*Corruption and Resource Allocation Distortion for “ESCWA” Countries,*” *International Journal of Economics and Management Sciences* 1, no. 4 (2011): 71-83.

Gedeon M. Mudacumura & Göktuğ Morçöl, *Challenges to Democratic Governance in Developing Countries* (New York: Springer Science & Business Media, 2014), 172.

See, e.g., U.N. Convention Against Corruption, G.A. Res. 58/4 (XV), U.N. Doc. A/RES/58/4 (Oct. 31, 2003). The treaty makes reference to public officials seeking undue advantage by virtue of accepting a bribe: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally...”

Transparency International, Report, “*Business Principles for Countering Bribery*”, December 17, 2013

OECD Anti-Bribery Convention, Art. 1 (1).

UNCAC, Ch. 3, Art. 21.

IACAC, Transnational Bribery, Art. 7.

UNCAC, Ch. 3, Art. 17

an interesting discussion on the behavior behind embezzlement, see David O. Friedrichs, *Trusted Criminals: White Collar Crime in Contemporary Society* 203-05 (3d ed. 2007).

UNCAC, Ch. 3, Art. 20.

IACAC, Illicit Enrichment, Art. 8.

AUCPCC, Definitions, Art.1.

UNCAC, Ch. 3, Art. 19.

For an interesting explanation see M. M. Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Edward Elgar: London, 2005) 19

OECD. *Glossary of Statistical Terms*. (Paris: Organization for Economic Co-operation and Development, 2008).

Financial Action Task Force (FATF), *Money Laundering*. (Apr 27, 2017). Available at: <http://www.fatf-gafi.org/faq/moneylaundering/>

Schott, Paul Allan. *Reference guide to anti-money laundering and combating the financing of terrorism: supplement on special recommendation IX*. Washington, D.C. WB, 2006.

Transparency International, *What is Corruption?* <http://www.transparency.org/what-is-corruption/>; see also, generally, Cheryl W. Gray & William W. Jarosz, *Law and the Regulation of Foreign Direct Investment: The Experience from Central and Eastern Europe*, 32 Colum. J. Transnat'l L. 1, 28 (1995)

Brady Dennis & Tom Hamburger, *5 Proposed Amendments to the Foreign Corrupt Practices Act*, *Wash. Post*. (Apr 25, 2012), https://www.washingtonpost.com/business/economy/5-proposed-amendments-to-the-foreign-corrupt-practicesact/2012/04/25/gIQAXbuVhT_story.html

ARTICLE: WHY THE PRIVATE SECTOR IS LIKELY TO LEAD THE NEXT STAGE IN THE GLOBAL FIGHT AGAINST CORRUPTION, 30 FORDHAM INT'L L.J. 45

Neil Renwick, Millennium Development Goal 1: *Poverty, Hunger and Decent Work in Southeast Asia*, 32 Third World Q. 65, 66-67 (2011)

Omer Gokcekus & Kevin Bengyak, *Peculiar Dynamics of Corruption: Religion, Gender, EU Membership, and Others* (Singapore: World Scientific, 2014), 112.

Neil Nadpara, "An Empirical Examination of the Effect of Corruption on Health Outcomes," *The College of New Jersey*, 2015, <https://business.tcnj.edu/files/2015/07/Nadpara-Thesis-2015-revised.pdf>

James W. Williams & Margaret E. Beare, *The Business of Bribery: Globalization, Economic Liberalization, and the 'Problem' of Corruption*, in *Critical Reflections on Transnational Organized Crime, Money Laundry, and Corruption* 88, 117 n.3 (2003).

Mohamed Dridi, "Corruption and Education: Empirical Evidence," *International Journal of Economics and Financial Issues* 4, no. 3 (2014), 476-493.

J. A. Seniwoliba and B. E. Boahene, "Manifestation of Corruption in Higher Education: The Role of the University Administrator," *Research Journal of Educational Studies and Review* 1, no. 3 (2105): 78-88.

Marc Cools, Marleen Easton, Paul Ponsaers, Lieven Pauwels, and Brice De Ruyver, *EU Criminal Justice, Financial & Economic Crime: New Perspectives* (Antwerp: Maklu, 2011), 211

Bo Rothstein & Daniel Eek, "Political Corruption and Social Trust: An Experimental Approach," *Rationality and Society* 21, no. 1 (2009): 81-112

See generally Claes Sandgren, *Combating Corruption: The Misunderstood Role of Law*, Stockholm University Vol. 39, no 3, (2005), at 717-731

Clare Fletcher and Daniela Herrmann, *The Internationalisation of Corruption: Scale, Impact and Countermeasures* (New York: Routledge, 2016), 44

Susan Rose-Ackerman & Henry R. Luce, *International handbook on the economics of corruption*, (Law and Political Science), Yale University, (2006).

Gil Avnimelech, Yaron Zelekha and Eyal Sarabi, "The Effect of Corruption on Entrepreneurship," *DRUID Society*, 2011,
http://druid8.sit.aau.dk/acc_papers/1944qlhkqrqpn5gmkf4yvuy4m2.pdf

David Osterfeld, *Prosperity Versus Planning: How Government Stifles Economic Growth* (1992)

Nazar Mustapha, "The Impact of Corruption on GDP per capita," *Journal of Eastern European and Central Asian Research* 1, no. 2 (2014): 1-5.

Naved Ahmad and Salman Arjumand, "Impact of Corruption on GDP Per Capita through International Migration: An Empirical Investigation," *Quality & Quantity* 50, no. 4 (2016): 1633-1643.

Ali Al-Sadig, "The Effects of Corruption on FDI Inflows," *Cato Journal* 29, no. 2 (2009): 267-294.

e.g., Cheryl W. Gray & William W. Jarosz, *supra* note 130, ("Charges of bribery and corruption can easily erode popular support for economic reform in general, and foreign investment in particular.")

Rahim Quazi, Vijay Vemuri & Mostafa Soliman, "*Impact of Corruption on Foreign Direct Investment in Africa*," *International Business Research* 7, no. 4 (2014): 1-10.

"*Secretary-General's message on International Anti-Corruption Day Secretary-General.*" *United Nations*. (Accessed Apr 28, 2017).
<https://www.un.org/sg/en/content/sg/statement/2016-12-09/secretary-generals-message-international-anti-corruption-day-scroll>

e.g., Ali M. Ali, U.S. \$ 450 Million Abacha Loot 'Can't Be Traced' (May 21, 2009),
<http://allafrica.com/stories/200905210132.html> ("UNODC declared in Abuja yesterday that about \$450 million out of the over \$3 billion alleged to have been stolen by the late Head of State, Gen Sani Abacha could not be traced")

e.g., Press Release, *U.S. Dep't of Justice, U.S. Restrains More than \$ 3 Million in Corruption Proceeds Related to Former Nigerian Governor (Jul 23, 2012)*, <http://www.justice.gov/opa/pr/2012/July/12-crt-906.html>. ("Through an application to register and enforce two orders from United Kingdom courts, the Department of Justice has secured a restraining order against more than \$3 million in corruption proceeds located in the United States related to James Onanefe Ibori, the former governor of Nigeria's oil-rich Delta State, announced Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division and U.S. Immigration and Customs Enforcement (ICE) Director John Morton.")

e.g., Press Release, *U.S. Dep't of Justice, U.S. Forfeits \$ 2.1 Million Worth of Property Purchased with Alleged Bribes Paid to the Family of the Former President of Taiwan (Nov 14, 2012)*, <http://www.justice.gov/opa/pr/2012/November/12-crm-1359.html>. ("The Department of Justice has forfeited a Manhattan condominium and a Virginia residence – with a combined value of approximately \$ 2.1 million – purchased with the proceeds of alleged bribes paid to the family of the former President of Taiwan, Shui-Bian Chen, as part of the department's Kleptocracy Asset Recovery Initiative. Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division announced the forfeiture today with U.S. Immigration and Customs Enforcement (ICE) Director John Morton."); *see also*, e.g., David Holmes, *Ex-MAN Trucks Chief Admits Guilt in Bribery Probe*, REUTERS (Sept. 19, 2012, 7:55 AM), <http://www.reuters.com/article/2012/09/19/us-germany-man-bribery/idUSBRE88I0MS20120919>. ("A German regional court sentenced the former head of MAN SE's Truck & Bus division to a 10-month suspended jail sentence on Wednesday for aiding and abetting bribery in connection with the sale of commercial vehicles in Slovenia.")

"We are all affected." *Corruption Watch*. (Accessed May 26, 2017), <http://www.corruptionwatch.org.za/learn-about-corruption/what-is-corruption/we-are-all-affected/>

SYMPOSIUM FIGHTING INTERNATIONAL CORRUPTION & BRIBERY IN THE 21ST CENTURY: A Delicate Balance: Legislation, Institutional Change, and Transnational Bribery, 33 *Cornell Int'l L.J.* 657

Independent Evaluation Group of the WB under the auspices of the OECD/DAC Network on Development Evaluation. "*Sourcebook for Evaluating Global and Regional Partnership Programs Sourcebook for Evaluating*." [Http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/sourcebook.pdf](http://siteresources.worldbank.org/EXTGLOREGPARPROG/Resources/sourcebook.pdf) Accessed (Jun 30, 2017), Pages 71.

IFAD. "*Good Governance*" *Executive Board – Sixty-Seventh Session, September 9, 1999, (1-3)*, http://www.ipa.government.bg/sites/default/files/pregled-dobro_upravljenie.pdf

Búrca, G. De, and Joanne Scott. "*Law and new governance in the EU and the US*". Oxford: Hart, 2006.

Evan, Andrew. "*A Bank's Guide to Freezing Orders*" *Fieldfisher*, (Mar 14, 2017) Available at: <http://www.fieldfisher.com/publications/2017/03/a-banks-guide-to-freezing-orders#sthash.n5byOn2T.dpbs>

WB Group “*Asset Recovery under German Law*” Pointers for Practitioners, Available at: <https://star.worldbank.org/star/sites/star/files/asset-recovery-in-german-law-english.pdf>

OECD & WB, “Tracking Anti Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action”, Paris: OECD; Washington, DC: WB 2011.

UNCAC, Ch. 3, Art. 31.

Richard E. Cascarino, *Corporate Fraud and Internal Control: A Framework for Prevention* (Hoboken, NJ: John Wiley & Sons, 2012), n.p;

ARTICLE: THE ANTI-CORRUPTION PRINCIPLE, 94 Cornell L. Rev. 341

UNODC & World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (The International Bank for Reconstruction and Development/The World Bank 2007), at 5, Available at: <http://www.unodc.org/documents/corruption/StAR-Sept07-full.pdf>

International Law Office, "Bank Confidentiality: Duty and Exceptions." (Sep13, 2007), <http://www.internationallawoffice.com/Newsletters/Offshore-Services/Jersey/Mourant-du-Feu-Jeune/Bank-Confidentiality-Duty-and-Exceptions>

Dáil Éireann, Private Members' Business-Organised Crime (*Restraint and Disposal of Illicit Assets*), Bill, Second Stage, (July 2, 1996).

Interview with Jack D. Smith, President, Repatriation Group International (June 9, 2009).

Eyal Benvenisti & Moshe Hirsch, *The Impact of International Law on International Cooperation* (Cambridge Univ. Press 2004).

House of Commons, *Sixty-Third Report of Session 2010-12* (London: The Stationery Office, 2012), 3

The Criminal Law Convention on Corruption of the Council of Europe (CLCC), which adopted on 27 January 1999. Mentioned provisions that call on Parties to adopt legislation in order to "*trace, freeze, and seize instrumentalities and proceeds of corruption,*"

Fritz Heimann & Gillian Dell, *Recommendations for Review Mechanism for UN Convention Against Corruption*, (Aug 15, 2007), available at www.coalitionforintegrity.org/archive/what/.../TIREcsUNCACReview.22.8.07.pdf

Bruce Zagaris, *International White Collar Crime: Cases and Materials* (Cambridge: Cambridge University Press, 2015), at 96

Neil Boister, *An Introduction to Transnational Criminal Law* (Oxford: Oxford University Press, 2012), at 247

The Criminal Law Convention on Corruption of the Council of Europe (CLCC 01/07/2002), Available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>

UNODC & UNACA: *Resource Guide on Good Practices in the Protection of Reporting Persons* (UNITED NATIONS New York, 2015) Available at: https://www.unodc.org/documents/corruption/.../15-04741_Person_Guide_eBook.pdf

Wolfgang Amann et al., *Anti-Corruption: Implementing Curriculum Change in Management Education* (Greenleaf Publishing, 2015), at 19.

Cisse et al., *The WB Legal Review*, 253.

The G20ACWG 2010, focus on CBO/ asset recovery in its Anti-Corruption Action Plan. Government of Canada, Foreign Affairs and International Trade, The G20 Seoul Summit Leader's Declaration (Nov. 22, 2010), Available at: http://www.canadainternational.gc.ca/g20/summitsommet/2010/g20_seoul_declaration.aspx?lang=eng&menu_id=41&menu=L&view=d.

Jan Wouters, Alberto Ninio, Teresa Doherty & Hassane Cisse, *The WB Legal Review Volume 6 Improving Delivery in Development: The Role of Voice, Social Contract, and Accountability* (Washington, DC: WB Publications, 2015), at 263.

International Monetary Fund, *Summary Proceeding: Of the Sixty-first Annual Meeting of the Board of Governors*, Oct 22, 2007, (Washington, D.C.: International Monetary Fund, 2008), at 16.

Article: International Legal Mechanisms for Combating Transnational Organized Crime: The Need for a Multilateral Convention, 18 Berkeley J. Int'l L. 53.

ARTICLE: The Role of Non-Governmental Organizations (NGOs) in Combating Corruption: Theory and Practice, 44 Suffolk U. L. Rev. 615

NOTE: THE FIGHT AGAINST CORRUPTION BY INTERNATIONAL ORGANIZATIONS, 39 Geo. Wash. Int'l L. Rev. 165.

NOTE: Fifteen Minutes of Shame: The Growing Notoriety of Grand Corruption, 31 Hastings Int'l & Comp. L. Rev. 807

Implementation Review Group of the U.N. Convention against Corruption, Resumed Third Session (Vienna, 14-16 November 2012), UNODC, <http://www.unodc.org/unodc/en/treaties/CAC/IRG-session3-resumed.html> (Feb 19, 2018).

UNCAC, (Oct 31, 2003), 2349 U.N.T.S. 41.

Bo Rothstein & Daniel Eek, *supra* note 140, at 177-78, e.g., "[p]roperty confiscated by a State Party pursuant to Article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law."

J. Edgardo Campos and Sanjay Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level* (Washington, D. C.: WB Publications, 2007), at 397

Home Office, *HM Government: Serious Organised Crime Strategy* (London: The Stationery Office, 2013), at 36.

Alex Davies, *Workplace Law Handbook 2011: Employment Law and Human Resources* (Cambridge, UK: Workplace Law Group, 2011), at 338.

SADS Agreement (2001), AUCPCC Convention (2003)

43 I.L.M. 5 TREATIES AND OTHER AGREEMENTS AFRICAN UNION (AU): CONVENTION ON PREVENTING AND COMBATING CORRUPTION, The AU Convention has principles that had been developed to protect the integrity and to combat corruption in the African Union. These principles include: "1. Respect for democratic principles and institutions, popular participation, the rule of law and good governance. 2. Respect for human and peoples' rights in accordance with the African Charter on Human and Peoples Rights and other relevant human rights instruments. 3. Transparency and accountability in the management of public affairs. 4. Promotion of social justice to ensure balanced socioeconomic development. 5. Condemnation and rejection of acts of corruption, related offenses, and impunity."

Organization of American States, Inter-American Convention Against Corruption, B-58 (Mar 29, 1996), <https://www.oas.org/juridico/english/treaties/b-58.html>.

Giorleny D. Altamirano, "The Impact of the Inter-American Convention Against Corruption." *The University of Miami Inter-American Law Review* 38, no. 3 (2007): at 487-547; *see also*, E.g., The Organization of American States, *Inter-American Convention Against Corruption*, Article II Purposes, "The purposes of this Convention are: 1. To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and 2. To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance." <https://www.oas.org/juridico/english/treaties/b-58.html>.

Mark Ungar, "The rot within: Security and corruption in Latin America." *Social Research: An International Quarterly* 80, no. 4 (2013): 1187-1212

ARTICLE: COMBATING CORRUPTION UNDER INTERNATIONAL LAW, 10 *Duke J. Comp. & Int'l L.* 345

See Generally, Juan Montes, *Mexico's Anticorruption Efforts Stall*, *The Wall Street Journal* (Jul 19, 2017).

Weilert A. Katarina, "United Nations Convention against Corruption (UNCAC)—After Ten Years of Being in Force." *Max Planck Yearbook of United Nations Law Online* 19, no. 1 (2016): at 216-240.

g.e, *Organization of American States, Inter-American Convention Against Corruption*, Mar. 29, 1996, 35 I.L.M. 724, S. Treaty Doc. No. 105-39 (providing OAS members with resources to combat local corruption).

The expression "Mutual Legal Assistance Treaty" and its acronym, MLAT(s), are recognized terms which are used by courts to refer to a category of treaties -bilateral between two countries- E.g., the United States, and the kingdom of Saudi Arabia has agreed to cooperate with each other in the use of each other's legal processes to investigate and prosecute criminal matters

Validity, Construction, and Application of Mutual Legal Assistance Treaties (MLATs), 79 A.L.R. Fed. 2d 375.

Europol, "Investigators Meet in Guernsey to Discuss International Cooperation on Asset Recovery," 2015, https://www.europol.europa.eu/latest_news/investigators-meet-guernsey-discuss-international-cooperation-asset-recovery

ARTICLE: Sharing Criminal Records: The United States, the European Union and Interpol Compared, 30 *Loy. L.A. Int'l & Comp. L. Rev.* 125.

Mark Pieth, *Recovering Stolen Assets* (Bern: Peter Lang, 2008), at 192; *see also*, FATF, *40 Recommendations, at Recommendation 10*, (published October 2004), <http://www.fatfgafi.org/publications/fatfrecommendations/documents/the40recommendationspublishedoctober2004.html>

Webb, Philippa, *The United Nations Convention Against Corruption: Global Achievement or Missed Opportunity?* *JOURNAL OF INTERNATIONAL ECONOMIC LAW*, 2005, (Vol. 8, No. 1), at 191-229

ARTICLE: ASSESSING THE RELEVANCY AND EFFICACY OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION: A COMPARATIVE ANALYSIS, 2 *Notre Dame J. Int'l & Comp. L.* 101

UNODC, *Model treaty on mutual assistance in criminal matters* Vienna: United Nations Office for Drug Control and Crime Prevention, Centre for International Crime Prevention 1998, www.unodc.org/pdf/model_treaty_mutual_assistance_criminal_matters.pdf

NOTE: Nigeria's Crisis of Corruption - Can the U.N. Global Programme Hope to Resolve this Dilemma? 36 *Vand. J. Transnat'l L.* 997

StAR, “*Ferdinand and Imelda Marcos (Switzerland)*,” 2016, <http://star.worldbank.org/corruption-cases/node/18497>.

'Lex Duvalier' Enables Switzerland to Confiscate and Repatriate Illicit Dictator Assets, MERCOPRESS (Feb. 2, 2011), <http://en.mercopress.com/201/02/02/lex-duvalier-enables-switzerland-to-confiscate-and-repatriate-illicit-dictator-assets>.

StAR, “*Vladimiro Montesinos / Victor Alberto Venero Garrido*,” 2016, <http://star.worldbank.org/corruption-cases/node/18596>.

Another example of The U.S. collaborated with Peruvian and Venezuelan authorities to debilitating transnational organized crime, See Bruce Zagaris, Symposium: U.S. International Cooperation Against Transnational Organized Crime: XVI International Congress of Penal Law: Report Submitted by the American National Section, AIDP: Topic IV: International Criminal Law, 44 Wayne L. Rev. 1401, 1417 (1998).

In 2017, Transparency International's yearly Corruption Perception Index Report evaluated that Haiti ranked (157 out of 180 countries) which consider being low ranked, See Corruption Perception Index Report, TRANSPARENCY INT'L https://www.transparency.org/news/feature/corruption_perceptions_index_2017 (last visited Mar. 2, 2018).

See generally Indira Carr & Miriam Goldby, *Recovering the Proceeds of Corruption: UNCAC and Anti-Money Laundering Standards*, 2011 J. Bus. L. 170

Topo Santoso et al., *A Guide to Investigation and Indictment Using an Integrated Approach to Law Enforcement* (Bogor Barat, Indonesia: CIFOR, 2011), at 79

Jesper Johnsen & Nils Taxell, *Cost of corruption in developing countries: how effectively is aid being spent?* (European Parliament 2015).

Visoot Tuvayanond, “*Problems in Trans-Boundary Recovery and Return of Assets or Proceeds of Corruption from the Perspective of Thailand*,” 2010, <https://www.nacc.go.th/images/journal/visoot.pdf>

United Nations: General Assembly Resolution on a Model Treaty on Extradition, G.A. Res. 45/116, U.N. GAOR, 45th Sess., Supp. No. 49A, U.N. Doc A/45/49 (1991).

Bettina Knoetzel & Philip Marsch, “*Challenges of Asset Tracing/Recovery*,” *Law Business Research*, (Oct 2012), <http://whoswholegal.com/news/features/article/30067/challenges-asset-tracingrecovery>.

SYMPOSIUM: Is There a Right to Be Free from Corruption?, 49 U.C. Davis L. Rev. 703

Rick Stapenhurst, Niall Johnston, & Riccardo Pelizzo, *The Role of Parliament in Curbing Corruption* (Washington, D.C.: WB Publications, 2006), at 230

ARTICLE: COMBATING CORRUPTION UNDER INTERNATIONAL LAW, 10 Duke J. Comp. & Int'l L. 345

ARTICLE: Bioethical Malpractice: Risk and Responsibility in Human Research, 7 J. Health Care L. & Pol'y 175

Article: 'We're All Socio-Legal Now?' Legal Education, Scholarship and the Global Knowledge Economy' -- Reflections on the UK Experience, 26 Sydney L. Rev. 503.

Kevin Mole and Monder Ram, *Perspectives on Entrepreneurship: A Critical Approach* (London: Palgrave Macmillan, 2011), at 42.

Andrew Pollard, *Readings for Reflective Teaching* (Bloomsbury: A&C Black, 2002), at 38; *see also*, SYMPOSIUM: DURKHEIMIAN EPIPHANIES: THE IMPORTANCE OF ENGAGED SOCIAL SCIENCE IN LEGAL STUDIES, 18 Fla. St. U.L. Rev. 91

Richard Boateng, *Research Made Easy* (China: Pearl Richards Foundation, 2014), at 133.

Renata Tesch, *Qualitative Research: Analysis Types and Software* (New York: Routledge, 2013), at 44.

ARTICLE: THE ACADEMIC EQUIVALENCE OF SCIENCE AND LAW: NORMATIVE LEGAL SCHOLARSHIP IN THE QUANTITATIVE DOMAIN OF SOCIAL SCIENCE, 23 T.M. Cooley L. Rev. 157

Dawn Watkins & Mandy Burton, *Research Methods in Law* (New York: Routledge, 2013), at 35.

International Journal of Law in Context, 12, 1 pp. 81-97 (2016)

Article: Why the Study of International Law Needs Experiments, 52 Colum. J. Transnat'l L. 173

Mark S. Glynn, *Business-to-Business Brand Management: Theory, Research and Executive Case Study Exercises* (Somerville: Emerald Group Publishing, 2009), at 41

ARTICLE: Why Law and Economics' Perfect Rationality Should Not Be Traded for Behavioral Law and Economics' Equal Incompetence, 91 Geo. L.J. 67.

Kecia Hayes, Shirley R. Steinberg and Kenneth Tobin, *Key Works in Critical Pedagogy* (Berlin: Springer Science & Business Media, 2011), at 184.

Wing Hong Chui, *Research Methods for Law* (Edinburgh: Edinburgh University Press, 2007), at 3

ARTICLE: Authority Without Borders: The World Wide Web and the Delegalization* of Law, * The term "delegalization" was coined by Frederick Schauer and Virginia Wise in their article, Nonlegal Information and the Delegalization of Law, 29 J. Legal Stud. 495 (2000)., 41 Seton Hall L. Rev. 909.

Caroline Hunter, *Integrating Socio-Legal Studies into the Law Curriculum* (London: Palgrave Macmillan, 2012) at 43

For an interesting discussion about the international relations and international law, and how to distinguish the differences between them in all aspects including researches, see generally, Engaging the Writing of Martti Koskeniemi: *Interdisciplinary Approaches to International Law: Is International Relations Corrosive of International Law?* A Reply to Martti Koskeniemi, 27 Temp. Int'l & Comp. L.J. 339

SYMPOSIUM: Critical Cultural Translation: A Socio-Legal Framework for Regulatory Orders, 21 Ind. J. Global Leg. Stud. 79

For an interesting paper surveys recent aims in the development of the sociology of law in Denmark, see International Journal of Law in Context, 10, 3 pp. 397-415 (2014).

Valentina Vadi, *Analogies in International Investment Law and Arbitration* (Cambridge: Cambridge University Press, 2015), at 254.

ARTICLE: Compliance Through Collegiality: Peer Review in International Law, 37 Loy. L.A. Int'l & Comp. L. Rev. 275.

UN Convention Against Corruption, New York, 14 December 2005, United Nations Treaty Series, vol. 2349, p. 41; Doc. A/58/422. Available from: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en

CRITIQUE AND COMMENT: DEVELOPING LEGAL RESEARCH SKILLS: EXPANDING THE PARADIGM, 32 Melbourne U. L.R. 1065

61 Okla. L. Rev. 503.

ARTICLE: Searching Through Systems: Research Guide for UN Criminal Tribunals, 40 Int'l J. Legal Info. 516

ARTICLE: From International Law to Law and Globalization, 43 Colum. J. Transnat'l L. 485.

Karin Klenke, *Qualitative Research in the Study of Leadership* (Somerville: Emerald Group Publishing, 2008), at 136

Special Issue: The Future of The Law School: Artical: Qualitative Research on Leagl Education: Studying Outstanding Law Teachers, 51 Alberta L. Rev. 925.

OJLS 2001.21(1)

ARTICLE: WHERE ARE WE NOW AND WHERE SHOULD WE HEAD FOR? A REFLECTION ON THE PLACE OF EAST ASIA ON THE MAP OF SOCIO-LEGAL STUDIES, 22 Pac. Rim L. & Pol'y J. 113

Sally Thorne, Sheryl Reimer Kirkham and Katherine O'Flynn-Magee, "*The Analytic Challenge in Interpretive Description.*" International Journal of Qualitative Methods 3(1) (2004): at 11

ARTICLE: LEGAL RESEARCH TRAINING: PREPARING STUDENTS FOR A RAPIDLY CHANGING RESEARCH ENVIRONMENT, 13 Legal Writing 241

GENERAL ARTICLE: Better Search Engines for Law, 92 Law Libr. J. 399

ARTICLE: ACCESS BARRIERS TO BIG DATA, 59 Ariz. L. Rev. 339.

ARTICLE: PARADOXES IN LEGAL THOUGHT., 85 Colum. L. Rev. 1263

ESSAY: EMPIRICAL LEGAL SCHOLARSHIP AS SCIENTIFIC DIALOGUE, 83 N.C.L. Rev. 167.

ARTICLE: BEYOND THE COMMON RULE: ETHICAL STRUCTURES FOR DATA RESEARCH IN NON-ACADEMIC SETTINGS, 13 Colo. Tech. L.J. 333

Pirkko Markula & Michael Silk, *Qualitative Research for Physical Culture* (Basingstoke: Palgrave Macmillan, 2011), at 205

William A. Pitney and Jenny Parker, *Qualitative Research in Physical Activity and the Health Professions* (Champaign: Human Kinetics, 2009), at 63.

Donald Ary & others, eds, *Introduction to Research in Education* (Boston: Cengage Learning, 2013), at 534-535.

E. Stringer, *Action Research in Education* (Upper Saddle River: Pearson, 2004), at 59

ARTICLE: BEYOND "BINGO!": EDUCATING LEGAL RESEARCHERS AS PROBLEM SOLVERS, 26 Wm. Mitchell L. Rev. 179.

J Law Biosci (July 2016) 3 (2): 257-280.

David Bowie & Francis Buttle, *Hospitality Marketing* (London: Taylor & Francis, 2013), at 51.

ARTICLE: INSTITUTIONAL CORRUPTION: A FIDUCIARY THEORY, 23 Cornell J. L. & Pub. Pol'y 553

FIN Money Laundering, *Asset Forfeiture and Compliance* FIN-IV (2018).

ARTICLE: Combating Corruption Through International Law in Africa: A Comparative Analysis, 40 Cornell Int'l L.J. 691

ARTICLE: Reforming Surveillance Law: The Swiss Model, 28 Berkeley Tech. L.J. 1259.

ARTICLE: Secrets and Lies? Swiss Banks and International Human Rights, 31 Vand. J. Transnat'l L. 325

Colin Alfred Arthur Nicholls and others, eds. *Corruption and Misuse of Public Office* (Oxford: Oxford University Press, 2011), at 277

ARTICLE: Colonial Rapacity and Political Corruption: Roots of African Underdevelopment and Misery, 3 JICL 4

COLLOQUIUM: WHAT DOES IT MEAN TO PRACTICE LAW "IN THE INTERESTS OF JUSTICE" IN THE TWENTY-FIRST CENTURY?: ETHICAL LAWYERING AND THE POSSIBILITY OF INTEGRITY, 70 Fordham L. Rev. 1629

OECD, Conflict and Fragility Resource Flows to Fragile and Conflict-Affected States (Paris: OECD Publishing, 2010), at 137.

SYMPOSIUM COMMENTARY: Judicial Corruption in Haiti: The Need for Discipline and Civil Society Participation, 39 Hastings Int'l & Comp. L. Rev. 183

ARTICLE: DEFINING THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CORRUPTION, 31 U. Pa. J. Int'l L. 125

Gretta Fenner Zinkernagel, Pedro Gomes Pereira and Francesco De Simone, "The Role of Donors in the Recovery of Stolen Assets." *Anti-Corruption Resource Center* 4, no. 8 (2014): at 1.

OECD, Tracking Anti-Corruption and Asset Recovery Commitments: A Progress and Recommendations for Action (Paris: OECD Publishing, 2011), at 5.

R. B. Jain, *Corruption-Free Sustainable Development: Challenges and Strategies for Good Governance* (New Delhi: Mittal Publications, 2004), 57; see also, Radha Ivory, *supra* note 55, at 28.

NOTE: Transnational Bribery of Foreign Officials: A New Threat to the Future of Democracy, 31 Vand. J. Transnat'l L. 1273

Mark Robinson, *Corruption and Development* (New York: Routledge, 2012); *see also*, generally, NOTE: Going from Bad to Good: Combating Corporate Corruption on World Bank-Funded Infrastructure Projects, 14 Yale H.R. & Dev. L.J. 231

Todd Lipscomb, *Re-Made in the USA: How We Can Restore Jobs, Retool Manufacturing, and Compete with the World* (Hoboken: John Wiley & Sons, 2011), at 142

Article: Buying Our Way Out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats, 12 Yale H.R. & Dev. L.J. 160

For interesting reading about the Anti-Corruption effort of the World Bank, which adopted by a lot of developed countries, ARTICLE: The Effectiveness of the World Bank's Anti-Corruption Efforts: Current Legal and Structural Obstacles and Uncertainties, 32 Denv. J. Int'l L. & Pol'y 315

NOTE: "To Return the Funds at All": Global Anticorruption, Forfeiture, and Legal Frameworks for Asset Return, 47 U. Mem. L. Rev. 291.

US Government, *U. S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation* (Washington: Department of State, Department of Justice, Department of Homeland Security, 2012), at 10.

ARTICLE: THE MEXICO-U.S. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATY: ANOTHER STEP TOWARD THE HARMONIZATION OF INTERNATIONAL LAW ENFORCEMENT, 14 Ariz. J. Int'l & Comp. Law 1

ARTICLE: Chasing Bits across Borders, 2001 U Chi Legal F 35

Susan Rose-Ackerman, "Governance and Corruption" in *Global Crises, Global Solutions*, ed. Bjorn Lomborg (Cambridge: Cambridge University Press, 2004), at 338

ARTICLE: SUBVERTING THE SCOURGE OF CORRUPTION IN NIGERIA: A REFORM PROSPECTUS, 34 N.Y.U. J. Int'l L. & Pol. 397

OECD, *Aid Effectiveness 2011: Progress in Implementing the Paris Declaration* (Paris: OECD Publishing, 2012), at 77

ARTICLE: CORRUPTION, DEVELOPMENT AND GOOD GOVERNANCE: CHALLENGES FOR PROMOTING ACCESS TO JUSTICE IN ASIA , 16 Mich. St. J. Int'l L. 475

ARTICLE: Moving Money: International Financial Flows, Taxes, and Money Laundering, 37 Hastings Int'l & Comp. L. Rev. 1

The World Bank, *Global Economic Prospectus and the Developing Countries* (Washington: The World Bank Publications, 2000), at 50

ARTICLE: CHANGE OR THE ILLUSION OF CHANGE..., *supra* note 87.

Peter Calvert and Susan Calvert, *Politics and Society in the Developing World* (New York: Routledge, 2014), 331-333

ARTICLE: Moment of Truth: Development in Sub-Saharan Africa and Critical Alterations Needed in Application of the Foreign Corrupt Practices Act and Other Anti-corruption Initiatives, 26 Am. U. Int'l L. Rev. 315

ARTICLE: The International Dimension of Africa's Struggle Against Corruption, 10 Asper Rev. Int'l Bus. & Trade L. 35

International Journal of Law in Context, *Corruption, legal solutions and limits of law* 3, 3 pp. 227-255 (2007)

World Bank, "Fighting "Dirty Money" and Illicit Flows to reduce Poverty: Helping Countries Establish Transparent Financial Systems and Robust Mechanisms for Asset Recovery." World Bank Public Release, (May 23, 2012), at 1-4

ARTICLE: ESTABLISHING AN INTERNATIONAL CRIMINAL COURT: WILL IT DO JUSTICE?, 20 Md. J. Int'l L. & Trade 199

OECD, *Accra Agenda for Action*, (Paris: OECD Publishing, 2008), at 1

the report of the 3rd High-Level Forum on Aid Effectiveness, Accra Agenda for Action, available at <http://www.oecd.org/dataoecd/58/16/41202012.pdf> In P 13(c) of the Accra Agenda for Action, donor and partner countries undertook to "ensure that their respective development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability."

J Int Economic Law (2005) 8 (1): 191.

FATF, MENA. *Mutual Evaluation Report of the Kingdom of Saudi Arabia*. (MENA FATF Publications, 2010), 14.

"Nazaha's Second International Conference." *Official Website for Nazaha International Conference*, http://conf2.nazaha.gov.sa/?page_id=200

Gan Integrity, "Saudi Arabia Corruption Report.", GANBACP. <http://www.business-anti-corruption.com/country-profiles/saudi-arabia>

United Nations, *Forum on Crime and Society* (New York: United Nations Publications, 2002), at 154

U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation, <https://www.state.gov/documents/organization/276387.pdf>

UNCAC, Ch. 3-4, Art. 15-44 (providing for the criminalization of acts of corruption and necessary law enforcement mechanisms).

ARTICLE: Treaties' End: The Past, Present, and Future of International Lawmaking in the United States, 117 Yale L.J. 1236

Cephas Lumina, "The Negative Impact of the Non-Repatriation of Funds of Illicit Origin on the Enjoyment of Human Rights." (25th Sess., Agenda Item 3), Mar 7, 2014, A/HRC/25/52.

Harry Leroy Jones, International Judicial Assistance: Procedural Chaos and a Program for Reform, 62 YALE L.J. 515, 516 (1953).

Article: Making Treaty Implementation More Like Statutory Implementation, 115 Mich. L. Rev. 1309

ARTICLE: COMBATING CORRUPTION IN NIGERIA: A CRITICAL APPRAISAL OF THE LAWS, INSTITUTIONS, AND THE POLITICAL WILL, 14 Ann. Surv. Int'l & Comp. L. 99

SYMPOSIUM: A CAUTIONARY TALE: TEN MAJOR FLAWS IN COMBATING CORRUPTION, 10 Sw. J.L. & Trade Am. 269

Tax Justice Network-Africa, *Tax Us If You Can: Why Africa Should Stand Up for Tax Justice* (Cape Town: Fahamu/Pambazuka, 2011), at 32.

Transparency International, Exporting Corruption Progress Report 2014: Assessing Enforcement of the OECD Convention on Combating Foreign Bribery, http://www.transparency.org/whatwedo/publication/exporting_corruption_progress_report_2014_assessing_enforcement_of_the_oecd

Transparency International, "How Do We Stop Countries from Exporting Corruption" (Oct. 23, 2014), http://www.transparency.org/news/feature/how_do_we_stop_countries_from_exporting_corruption

See generally, ARTICLE: Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention, 53 Va. J. Int'l L. 1

ARTICLE: Keynote Speech: Global Corruption and the Universal Approach of the United Nations Convention against Corruption, 53 Osgoode Hall L.J. 7

Jean B. Weld, "International Cooperation on recovery of Criminal Assets," 146th International Training Course, (Mar 20, 2017) http://www.unafei.or.jp/english/pdf/RS_No83/No83_07VE_Weld2.pdf.

E.g., MLA in Europe has The Camden Assets Recovery Interagency Network (CARIN) which is an informal network of law enforcement and judicial authorities established to improve international asset recovery, for more information See OECD, Typology on Mutual Legal Assistance in Foreign Bribery Cases, at 89 (2012), <http://www.oecd.org/daf/anti-bribery/TypologyMLA2012.pdf>.

ADB-OECD (2017), *Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*, Available at: <https://www.oecd.org/.../ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf>

For more information regarding Europe initiative on MLA, See OECD & World Bank, *Tracking Anti-Corruption and Asset Recovery Commitments*, 40 (2011) (discussing EU Council Decision 2007/845/JHA, 6 Dec. 2007).

OECD & ADB, *Anti-Corruption Initiative for Asia and the Pacific Denying Safe Haven to the Corrupt and the Proceeds of Corruption*, (Paris: OECD Publishing, 2007), at 27

ARTICLE: GLOBAL APPROACH TO ANTI-BRIBERY AND CORRUPTION, AN OVERVIEW: MUCH DONE, BUT A LOT MORE TO DO . . ., 37 T. Marshall L. Rev. 303.

Dual Criminality is possible only in criminal cases wherein both countries an offensive is illegal and punishable under their laws, for more information, See, Test of "dual criminality" where extradition to or from foreign nation is sought, 132 A.L.R. Fed. 525

John Hatchard, *Combating Transnational Crime in Africa: Problems and Perspectives*, Journal of African Law, 50, 2 (Nov 14, 2006), at 145-160.

See generally, Article: Dual Illegality and Geoambiguous Law: A New Rule for Extraterritorial Application of U.S. Law, 95 Minn. L. Rev. 110

UNCAC, Ch. 4, Art. 43-49.

Mutual Assistance in Criminal Matters, Jan. 23, 1977, U.S.-Switz., 27 U.S.T. 2019

ARTICLE: Channeling Unilateralism, 56 Harv. Int'l L.J. 297.

ARTICLE: Foreign Affairs and Enforcement of the Foreign Corrupt Practices Act, 11 J. Empirical Legal Stud. 409

James I.K. Knapp, *Mutual Legal Assistance Treaties as a Way To Pierce Bank Secrecy*, 20 Case W. Res. J. Int'l L. 405, 405 (1988) ("[An MLAT] is a treaty which typically provides for the direct exchange of information between two 'central authorities' - the U.S. Department of Justice and its foreign counterpart, bypassing both normal diplomatic channels and the involvement of a U.S., though not always a foreign, court in the making of a request.")

"Typical MLAT provisions include execution of requests regarding penal matters; taking testimony or statements; production of documents; service of writs, summonses, or other judicial documents; locating persons; and providing judicial records, evidence, and information." See Barry Kellman & David S. Gualtieri, *Barricading the Nuclear Window - A Legal Regime to Curtail Nuclear Smuggling*, 1996 U. Ill. L. Rev. 667, 671 (1996), at 727.

"There are informal means of obtaining evidence abroad that do not involve the use of letters rogatory, mutual legal assistance treaties, or executive agreements. 39Link to the text of the note Informal requests usually secure assistance more quickly and flexibly than formal ones" See ARTICLE: *The Mexico-US Mutual Legal Assistance in Criminal Matters Treaty Another Step Toward The Harmonization of International Law Enforcement*, 14 Ariz. J. Int'l & Comp. Law 1

StAR, "*Sani Abacha / Swiss Mutual Legal Assistance Treaty Case*," 2016, <http://star.worldbank.org/corruption-cases/node/18575>.

James Maton, *Dealing with politically exposed persons: the risks*, (2007) 11 JIBFL 636.

Newman M. K. Lam & Ian Scott, *Gaming, Governance and Public Policy in Macao*, (Hong Kong: Hong Kong University Press, 2011), at 98.

StAR, "*Ao Man Long (United Kingdom)*," 2016, <http://star.worldbank.org/corruption-cases/node/18463>.

Peter Leasure, "Asset recovery in corruption cases: Comparative analysis identifies serious flaws in US tracing procedure", *Journal of Money Laundering Control* 19, no. 1 (2016), at 4-20.

"International treaty agreements have historically been enforced through informal state-to-state mechanisms, such a reciprocity and retaliation." See, ARTICLE: *The Domestic and International Enforcement of the OECD Anti-Bribery Convention*, 15 Chi. J. Int'l L. 84; *see also*, generally, Alexander Thompson, *The Rational Enforcement of International Law: Solving the Sanctioners' Dilemma*, 1 INT'L THEORY 307 (2009).

ARTICLE: *The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law*, 31 NW. J. INT'L L. & BUS. 137

Int'l Monetary Fund, Fin. Intelligence Units: An Overview 2 (2004), available at: <http://www.imf.org/external/pubs/ft/fiu/fiu.pdf>

An Egmont Group White Paper, "The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets," 2012, <http://www.egmontgroup.org/news-and-events/news/2012/10/03/the-role-of-fius-in-fighting-corruption-and-recovering>.

Kilian Strauss, "The Situation of Financial Intelligence Units in Central and Eastern Europe and the Former Soviet Union," 2010, https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_09.pdf;

Stephen Fidler, *The Human Factor: All is Not Well in Clandestine Intelligence Collection*, *Fin. Times* (London), Jul 7, 2004, at 15.

T. Markus Funk, *Mutual Legal Assistance Treaties and Letters Rogatory: A Guide for Judges*, Federal Judicial Center International Litigation Guide (2014).

Ángeles Gutiérrez Zarza, *Exchange of Information and Data Protection in Cross-border Criminal Proceedings in Europe* (The Hague: Springer, 2014), at 110.

Deirdre Healy et al., *The Routledge Handbook of Irish Criminology* (London: Routledge, 2015), n.p.

UNCAC, Ch. 4, Art. 41 (1).

Peter Eigen, Removing a Roadblock to Development, Innovations: Tech., Governance, Globalization, Spring 2008, available at: <http://www.policyinnovations.org/ideas/policylibrary/data/01499/res/id=saFile1/INNOVATIONSEigenTI.pdf>.

Felipe Dantas Araujo, An analysis of the National Strategy Against Corruption and Money Laundering, 2 *Brazilian Journal of Public Policy* 53 (Jan/June 2012), available at <http://www.publicacoesacademicas.uniceub.br/index.php/RBPP/article/view/1649/1592>.

Colin King & Clive Walker, *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (New York: Routledge, 2016), at 39.

Basel Institute on Governance, "Capacity Building in Asset Recovery," 2011, https://www.baselgovernance.org/sites/collective.localhost/files/publications/capacity_building_in_asset_recovery.pdf

U.S. Asset Recovery Tools & Procedures: A Practical Guide for International Cooperation, available at: <https://www.state.gov/documents/organization/276387.pdf>

Pereira, Pedro Gomes, *Analytical Study on Mechanisms for Asset Recovery and Confiscation in Moldova* (Basel: Basel Institute on Governance, 2016), at 5.

Philippa Webb, *The United Nations Convention Against Corruption*, 8 *J. Int'l Econ. L.* 191, 206-12 (2005).

NOTE: THE GLOBAL FINANCIAL CRISIS AND THE TRANSNATIONAL ANTI-CORRUPTION REGIME: A CALL FOR REGULATION OF THE WORLD BANK'S LENDING PRACTICES, 45 Geo. J. Int'l L. 1293

ARTICLE: INTERNATIONAL ACTORS AND THE PROMISES AND PITFALLS OF ANTI-CORRUPTION REFORM, 34 U. Pa. J. Int'l L. 447

Yves Klein, "A Civil Perspective on Asset Recovery (With a Focus on Swiss Law)," 2014, available at: <http://whoswholegal.com/news/features/article/31670/a-civil-perspective-asset-recovery-with-focus-swiss-law>.

Ivan Pavletic, "The Political Economy of Asset Recovery Processes," 2009, (May 22, 2018) available at: https://www.baselgovernance.org/sites/collective.localhost/files/publications/biog_working_paper_07.pdf

Eurojust, "Report on Eurojust's Experience in the field of Asset Recovery, including Freezing and Confiscation," 2014, available at: <http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Report%20on%20Eurojust%20Experience%20in%20the%20field%20of%20Asset%20Recovery/Report%20on%20Eurojust%20Experience%20in%20the%20field%20of%20Asset%20Recovery.pdf>.

For more information about Vladimiro Montesinos offenses and life, See ISSUES AND POLICY: The Fall of Fujimori: A Diplomat's Perspective, 30 Fletcher F. World Aff. 191

e.g., "London police return Alamiyeseigha's £1m loot": article on the website of the Economic & Financial Crimes Commission though out MLA as the first process, available at: www.efccnigeria.org

Abdullahi Y. Shehu, "Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria," International Law Research 3, no. 1 (2014): at 186-201.

G20 Maxico 2012, "Requesting Mutual Legal Assistance in Criminal Matters From G20 Countries", available at: http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf?__blob=publicationFile&v=1

"Breaking Down The Barriers." Mutual Legal Assistance in Criminal Matters, available at: https://www.oas.org/juridico/mla/en/can/en_can_prost.en.html

ARTICLE: On A Slow Boat Towards The Rule Of Law: The Nature Of Law In The Saudi Arabian Legal System 26 Ariz. J. Int'l & Comp. Law 1

UNODC, *Requesting Mutual Legal Assistance in Criminal Matters From G8 Countries: A Step-By-Step Guide*, Working paper, Commission on Crime Prevention and Criminal Justice Twentieth session Vienna, (Apr 12, 2011), at 56-62, available at: https://www.coe.int/T/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

Validity, Construction, and Application of Mutual Legal Assistance Treaties, *supra* note 203.

III. HOW THE WORLD WILL RELATE TO THE COURT: THE COOPERATION OF STATES WITH THE INTERNATIONAL CRIMINAL COURT, 25 *Fordham Int'l L.J.* 767

Rush Mark A. & Jared A. Kephart, "*Lifting the Veil on the MLAT Process: A Guide to Understanding and A Guide to Understanding and Responding MLA Request.*" K&L Gates, Jan 20, 2017, available at: <http://m.klgates.com/files/Publication/669681d7-12d7-451e-8240-a33cf67c959f/Presentation/PublicationAttachment/ec5fc22d-3e3c-4607-bcb3->

FIFTH ANNUAL PHILIP D. REED MEMORIAL ISSUE: NOTES: International Judicial Assistance: Does 28 U.S.C. 1782 Contain An Implicit Discoverability Requirement?, 18 *Fordham Int'l L.J.* 332

SYMPOSIUM: PROSECUTING WHITE-COLLAR CRIME: The Investigation and Prosecution of White Collar Crime: International Challenges and the Legal Tools Available to Address Them, 11 *Wm. & Mary Bill of Rts. J.* 209

ARTICLE: I. INVESTIGATIONS AND POLICE PRACTICES, 43 *Geo. L.J. Ann. Rev. Crim. Proc.* 3

NOTE: PRIVACY RIGHTS IN STATE CONSTITUTIONS: MODELS FOR ILLINOIS?, 1989 *U. Ill. L. Rev.* 215

ARTICLE: ARRESTS WITHOUT PROSECUTION AND THE FOURTH AMENDMENT, 59 *Md. L. Rev.* 1

28 USCS § 2467

ARTICLES: Integrating Integrity And Procurement: The United Nation Convention Against Corruption And The Uncitral Model Procurement Law, 36 *Pub. Cont. L.J.* 307

ARTICLE: Show Me the Money: The Application of the Asset Forfeiture Provisions of the Trafficking Victims Protection Act and Suggestions for the Future, 23 *Penn St. Int'l L. Rev.* 365

ARTICLE: Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery, 10 *Nw. U. J. Int'l Hum. Rts.* 19

Jack Smith, Mark & Guillermo Jorge, *The Recovery of Stolen Assets: A Fundamental Principle of The UN Convention Against Corruption*, 2007 Basel Institute on Governance, (U4 BRIEF), available at: <http://www.u4.no/themes/uncac/asset-recovery.cfm>

SYMPOSIUM: CITIZENS UNITED: ARTICLE: THE UNSPOKEN INSTITUTIONAL BATTLE OVER ANTI-CORRUPTION: CITIZENS UNITED, HONEST SERVICES, AND THE LEGISLATIVE-JUDICIAL DIVIDE, 9 First Amend. L. Rev. 363

ARTICLE: RETOOLING LAW ENFORCEMENT TO INVESTIGATE AND PROSECUTE ENTRENCHED CORRUPTION: KEY CRIMINAL PROCEDURE REFORMS FOR INDONESIA AND OTHER NATIONS, 30 U. Pa. J. Int'l L. 183

Radha Ivory, "The Right to a Fair Trial and International Cooperation in Criminal Matters: Article 6 ECHR and the Recovery of Assets in Grand Corruption Cases," *Utrecht Law Review* 9, no. 4 (2013), at 147-164.

Mark V. Vlastic & Gregory Cooper, "Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery," *Northwestern Journal of International Human Rights* 10, no. 19 (2011), at 19-26.

UNCAC, Art. 14, 23, 31; Novriady Erman, "The Role of International Instruments in Asset Recovery: What Can We Learn so Far?" *Jurnal Opinio Juris* 11, no. 1 (2012), at 17-43.

William Minter & Timothy Scarnecchia, "*Africa's Capital Losses: What Can Be Done?*" *Concerned Africa Scholars*, 2012, available at: <http://www.ieim.uqam.ca/IMG/pdf/ACAS-Bulletin87-caploss.pdf#page=30>.

ARTICLE AND ESSAY: In Defense of the Global Regulation of a "Duty to Report Crime", 57 *Washburn L.J.* 77

UNODC, "*Digest of Asset Recovery Cases*," 2015, https://www.unodc.org/documents/corruption/Publications/2015/15-05350_Ebook.pdf.

Note: The Stop Tax Haven Abuse Act: A Unilateral Solution to a Multilateral Problem, 19 *Minn. J. Int'l L.* 241

Anthony Smellie, "Prosecutorial Challenges in Freezing and Forfeiting Proceeds of Transnational Crime and the Use of International Asset Sharing to Promote International Cooperation: The Need for global Standards," *Journal of Money Laundering Control* 8, no. 2 (2004), at 104-114.

ARTICLE: MIDNIGHT IN THE GARDEN OF NE BIS IN IDEM: THE NEW URGENCY FOR AN INTERNATIONAL ENFORCEMENT MECHANISM, 23 *Cardozo J. Int'l & Comp. L.* 485

Minter and Scarnecchia, "Africa's Capital Losses," accessed (25 Feb, 2018) <http://www.ieim.uqam.ca/IMG/pdf/ACAS-Bulletin87-caploss.pdf#page=30>.

UNODC, *State Of Implementation Of The United Nations Convention Against Corruption - Criminalization, Law Enforcement And International Cooperation* (2015), available at: https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03457_ebook.pdf

ARTICLE: Transnational Corruption: Regulation Across Borders, 47 Va. J. Int'l L. 413

ARTICLE: THE RHETORIC OF INNOCENCE, 70 Wash. L. Rev. 329

Anthony Kennedy, "Justifying the civil recovery of criminal proceeds," *Journal of Financial Crime* 12, no. 1 (2004), at 8-23.

Patricia Faraldo Cabana, "Improving the Recovery of Assets Resulting from Organised Crime," *European Journal of Crime, Criminal Law and Criminal Justice* 22 (2014), at 13-32.

Arvinder SAMBEL, *Civil Forfeiture (Confiscation in Rem): Explanatory and Impact Study* (Strasbourg: Council of Europe, 2012) at 5.

Angela V.M. LEONG, *The Disruption of International Organized Crime* (Aldershot: Ashgate, 2007) at 77.

UNCAC, Art. 54, 1 (c).

Arnar Jensson, "Crime Should not Pay: Iceland and the International Developments of Criminal Assets Recovery," University of Iceland, 2011, available at : http://skemman.is/stream/get/1946/10146/25325/1/ma_ritg_arnar_jensson_-_sept_2011.pdf.

Booz Allen Hamilton, "Comparative Evaluation of Unexplained Wealth Orders," 2012, <https://www.ncjrs.gov/pdffiles1/nij/grants/237163.pdf>.

Vladimir Kozin, "Digest of Asset Recovery Cases," Conference of the States Parties to the United Nations Convention against Corruption Fifth session, Panama City, (Nov 3013), at 25-29.

G-8 Best Practice Principles on Tracing, Freezing and Confiscation of Assets, accessed (25 Jan, 2018) http://www.justice.gov/criminal/cybercrime/g82004/G8_Best_Practices_on_Tracing.pdf

Federico Alagna, "Non-conviction Based Confiscation: Why the EU Directive is a Missed Opportunity," *European Journal on Criminal Policy and Research* 21, no. 4 (2015), at 447-461.

International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976)

Marian R. Williams, Jefferson E. Holcomb, Tomislav V. Kovandzic and Scott Bullock, "Policing for Profit: The Abuse of Civil Asset Forfeiture," Institute for Justice, 2010, http://www.ij.org/images/pdf_folder/other_pubs/assetforfeituretoemail.pdf.

Jensson, "Crime Should not Pay," 2011, http://skemman.is/stream/get/1946/10146/25325/1/ma_ritg_arnar_jensson_-_sept_2011.pdf.

A. Kennedy, 'Justifying the Civil Recovery of Criminal Proceeds' (2004) 12(1) Journal of Financial Crime 8; T. P. Farley, 'Asset Forfeiture Reform: A Law Enforcement Response' (1994) 39 New York Law School LR 149.

Wang Xue-cheng & Zhang Jian, "The Research on Mechanisms of Seizing and Confiscating the Proceeds of Crime in Transnational Corruption Cases of China," Contemporary Law Review, 2007, http://en.cnki.com.cn/Article_en/CJFDTOTAL-DDFX200703009.htm.

"The G20 is an informal intergovernmental conference, involving a regular process of ministerial meetings and leaders' summits, which is held by 20 of the world's most significant economies: Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Mexico, the Republic of Korea, Russia, Saudi Arabia, South Africa, Turkey, the United Kingdom, the United States and the European Union. Together, the G20 countries account for 85 per cent of global gross domestic product ('GDP') and two thirds of the world's population." See ARTICLE: THE GROUP OF 20: A SHORT LEGAL ANATOMY FROM THE PERSPECTIVE OF INTERNATIONAL INSTITUTIONAL LAW, 14 Melbourne J. of Int'l Law 550

Asset Forfeiture and Money Laundering Section, U.S. Dep't of Justice, (last visited Apr 8, 2018), <https://www.justice.gov/criminal-afmls>

SYMPOSIUM FIGHTING CORRUPTION IN AMERICA AND ABROAD THE "DEMAND SIDE" OF TRANSNATIONAL BRIBERY AND CORRUPTION: WHY LEVELING THE PLAYING FIELD ON THE SUPPLY SIDE ISN'T ENOUGH, 84 Fordham L. Rev. 563

ARTICLE: TRAINING THE NEXT GENERATION OF ANTI-CORRUPTION ENFORCERS: INTERNATIONAL ANTI-CORRUPTION CURRICULUM IN U.S. LAW SCHOOLS, 14 J. Int'l Bus. & L. 169

Tracing Stolen Assets, *supra* note 16; *see also*, generally, Essay: Rights-Based and Tech-Driven: Open Data, Freedom of Information, and the Future of Government Transparency, 19 Yale H.R. & Dev. L.J. 1; *see also*, ARTICLE: Sanctionable Practices at The World Bank: Interpretation and Enforcement, 18 U. Pa. J. Bus. L. 985

FATF, "Politically Exposed Persons," 2013, available at: <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>.

Theodore S. Greenberg, Larissa Gray, et al., *Stolen Asset Recovery, Politically Exposed Persons: A Policy Paper on Strengthening Preventive Measures*, (2009), available at: <http://siteresources.worldbank.org/EXTSARI/Resources/5570284-1257172052492/PEPs-ful.pdf?resourceurlname=PEPs-ful.pdf>

Transparency International, *2010 Progress Report: Enforcement of the OECD Anti-Bribery Convention*, (July 2010), available at: http://www.transparency.org/news_room/latest_news/press_releases/2010/2010_07_28_oecd_progress_report

Rita Adam, "Innovation in Asset Recovery: The Swiss Perspective," *The World Bank Legal Review*, (accessed Jul 23, 2017), available at: <https://www.eda.admin.ch/content/dam/eda/en/documents/aussenpolitik/finanzplatz-wirtschaft/Rita-Adam-Legal-Innovation-and-Empowerment-for-Development-World-Bank-Legal-Review.pdf>.

Robert Kinsman, *Your New Swiss Bank Book*, (rev. ed. 1979), at 7-41

Melanie Warner, *How to Open a Swiss Bank Account (Try It, You'll Like It)*, *Fortune*, (Mar. 31, 1997), at 166.

ARTICLE: Overcoming NGO Accountability Concerns in International Governance, 31 *Brooklyn J. Int'l L.* 139

ARTICLE: CORRUPTION IN DEVELOPING COUNTRIES: WHAT KEEPING IT IN THE FAMILY MEANS FOR EVERYONE ELSE, 53 *Osgoode Hall L.J.* 267

Article: Are Anti-Corruption Efforts Paying Off? International and National Measures in the Asia-Pacific Region and Their Impact on India and Multinational Corporations, 31 *Hawaii L. Rev.* 59

ARTICLE: WHY UN INSPECTIONS? CORRUPTION, ACCOUNTABILITY, AND THE RULE OF LAW, 11 *S.C. J. Int'l L. & Bus.* 227

NOTES AND COMMENTS; A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland, 14 *Am. U. Int'l L. Rev.* 257

ARTICLE: Redeeming Extraterritorial Bribery and Corruption Laws, 54 *Am. Bus. L.J.* 641

Illicit Financial Flows from Developing Countries: 2002-2011 (Washington: Global Financial Integrity, December 2013) at 1, available at: iff.gfinancialintegrity.org/iff2013/Illicit_Financial_Flows_from_Developing_Countries_2002-2011-HighRes.pdf

Council of the European Union, Plenary Session of the European Parliament. Asset Recovery to Arab Spring Countries in Transition, Statement by Commissioner Füle on behalf of the HR for Foreign Affairs and Security Policy, Strasbourg, (May 22, 2013), available at: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2010058%202013%20INIT>

ARTICLE, ESSAY & NOTE: A Comfortable Sofa: The Need For An Equitable Foreign Criminal Jurisdiction Agreement With Iraq, 56 Naval L. Rev. 43

From 'Institutional' to 'Structural' Corruption: Rethinking Accountability in a World of Public-Private Partnerships by Irma Sandoval-Ballesteros: SSRN, (last visited Jan 8, 2018) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2370576

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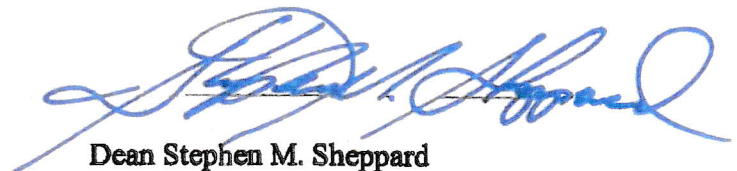
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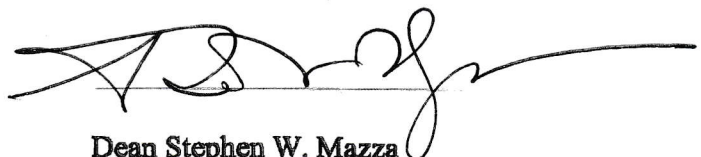
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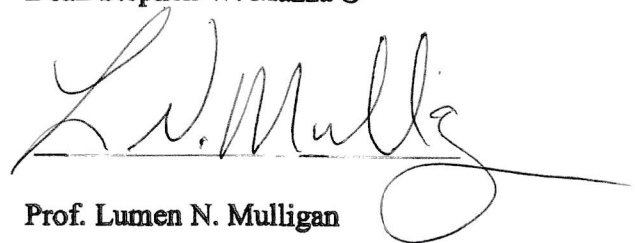
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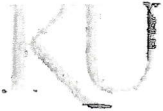


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