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Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan



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Note: All dollar amounts are in U.S. dollars, unless otherwise indicated.

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Executive Summary

The theft of public assets from developing countries is a huge and serious problem:

- The cross-border flow of the global proceeds from criminal activities, corruption, and tax evasion is estimated at between \$1 trillion and \$1.6 trillion per year.
- Corrupt money associated with bribes received by public officials from developing and transition countries is estimated at \$20 billion to \$40 billion per year—a figure equivalent to 20 to 40 percent of flows of official development assistance (ODA).

These estimates, while imprecise, give an idea of the large magnitude of the problem and the need for concerted action to address it. Indeed, the coming into force in 2005 of the landmark UN Convention Against Corruption (UNCAC), which devotes a chapter to asset recovery, signals the growing global consensus for urgent action.

Assets stolen by corrupt leaders at the country-level are frequently of staggering magnitude. The true cost of corruption far exceeds the value of assets stolen by the leaders of countries. This would include the degradation of public institutions, especially those involved in public financial management and financial sector governance, the weakening if not destruction of the private investment climate, and the corruption of social service delivery mechanisms for basic health and education programs, with a particularly adverse impact on the poor. This “collateral damage” in terms of foregone growth and poverty alleviation will be proportional to the duration of the tenure of the corrupt leader.

While the traditional focus of the international development community has been on addressing corruption and weak governance within the developing countries themselves, this approach ignores the “other side of the equation”: stolen assets are often hidden in the financial centers of developed countries; bribes to public officials from developing countries often originate from multinational corporations; and the intermediary services provided by lawyers, accountants, and company formation agents, which could be used to launder or hide the proceeds of asset theft by developing country rulers, are often located in developed country financial centers.

Addressing the problem of stolen assets is an immense challenge. Even though countries as diverse as Nigeria, Peru, and the Philippines have enjoyed some success in asset recovery, the process has been time-consuming and costly.

- Generalizing from the experience of these countries, developing countries are likely to encounter serious obstacles in recovering stolen assets.
- Even where the political will to pursue stolen assets exists, limited legal, investigative, and judicial capacity and inadequate financial resources could hamper the process.
- Jurisdictions where stolen assets are hidden, often developed countries, may not be responsive to requests for legal assistance.

The Stolen Asset Recovery (StAR) initiative is being launched jointly by the UN Office on Drugs and Crime (UNODC) and the World Bank Group (WBG) to respond to this problem. Given the nature of the problem, success will depend critically upon forging and strengthening partnerships among developed and developing countries, as well as other bilateral and multilateral agencies with an interest in the problem.

The development pay-off to the StAR initiative is expected to be significant. Even a portion of recovered assets could provide much-needed funding for social programs or badly needed infrastructure. Every \$100 million recovered could fund full immunizations for 4 million children or provide water connections for some 250,000 households. The total benefit would far exceed that associated with the asset restitution itself, assuming that the released funds are well spent. First, a StAR program that transmits the signal that there is no safe haven for stolen assets will embody a powerful deterrent effect. Second, over the long run, one would expect significant and lasting benefits, assuming the asset recovery effort is accompanied by institutional reform and better governance. Indeed, without improvements in governance, a StAR initiative will not have lasting benefits.

The UNODC-WBG StAR initiative is an integral part of the World Bank Group's recently approved Governance and Anti-Corruption Strategy, which recognizes the need to help developing countries recover stolen assets. The international legal framework underpinning StAR is provided by the UN Convention Against Corruption, the first global anticorruption agreement, which entered into force in December 2005. UNODC is both the custodian and the lead agency supporting the implementation of UNCAC, as well as the Secretariat to the Conference of State Parties.

The Action Plan presented in this report responds to feedback received from consultations with developed and developing countries, as well as lessons from the experience of Nigeria, Peru, and the Philippines:

- Theft of public assets is facilitated by a lack of transparency and public accountability.
- Developing countries need to strengthen their legal, financial, and public financial management systems.
- Even when political will exists in victim countries, legal differences across jurisdictions or the unwillingness of developed countries to help can derail asset recovery.

A fundamental premise of the Action Plan is that a successful effort on stolen asset recovery calls for global action:

- Political will and legal reform are also needed in developed countries, not just in developing countries. Both sets of countries need to ratify and implement the UN Convention Against Corruption (UNCAC).
- Time is of the essence. Prolonging the process of asset recovery will take a toll on the credibility of the victim country. A prompt response is needed from countries where stolen assets are hidden.
- Global cooperation is needed to ensure that new financial havens do not replace the existing ones and developing countries receive the legal support they need.

Examples of proposed actions include:

- Implementation of UNCAC, including developing and strengthening partnerships with multilateral and bilateral agencies in pursuit of this effort.
- Developing a pilot program aimed at helping countries recover the stock of stolen assets by providing the needed legal and technical assistance. This could include help on filing a request for mutual legal assistance and advice on experts needed. **Neither the WBG nor UNODC would get directly involved in the investigation, tracing, law enforcement, prosecution, confiscation, and repatriation of stolen assets—activities that may be best suited for government-to-government assistance or private sector assistance, working with the relevant government authorities.**
- Offering countries alternatives for monitoring recovered assets, within an overall framework of public financial management reform, to ensure transparency and effective use of those assets. Such monitoring would be on a voluntary basis, with the agreement of all the countries concerned, in keeping with the fundamental principle of the return of stolen assets as embodied in UNCAC.
- Building global partnerships on StAR.

At the 2007 IMF-World Bank Spring Meetings, during a side-event introducing the StAR Initiative, representatives of developed and developing countries and multilateral development banks expressed strong support for the Initiative. The consensus was that StAR is an idea whose time has come and that every country or international agency must do its part to make it succeed. Indeed, a collective global effort is essential for success and unequivocally transmitting the signal that corruption does not pay. In this sense, StAR was described as the “missing link” in an effective anti-corruption effort. By putting corrupt leaders on notice that stolen assets will be traced, seized, confiscated, and returned to the victim country, StAR would constitute a formidable deterrent to corruption. Working in close partnership with the international development community, UNODC and the WBG hope to make a positive difference to developing countries through the StAR Initiative.

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1

Why StAR? • Why Now?

In recent years, countries as far-flung and diverse as Nigeria, Peru, and the Philippines have enjoyed some success in securing the repatriation of assets stolen by their corrupt former leaders. Success, however, has been neither easy nor quick. Consider the Philippines. In 1986, the Republic of the Philippines filed a request for mutual assistance with the Swiss authorities in connection with the repatriation of Marcos deposits in Swiss banks. Twelve years elapsed before these deposits were transferred to escrow accounts in the Philippine National Bank (PNB) and another six years passed before the concerned \$624 million was transferred to the Philippine Treasury. In between, several major legal hurdles had to be crossed, including presenting evidence that the monies were the product of embezzlement, diversion of public property, and plundering of the public treasury. Only after the Philippine government won a ruling that the monies could be moved out of Switzerland without a final conviction of Mrs. Marcos under article 74A of the International Mutual Assistance on Criminal Matters Act (IMAC) was the money moved to the Philippine National Bank in 1998. It was released to the Philippine Treasury in 2004 following a Philippine Supreme Court decision ordering the forfeiture of the Marcos Swiss deposits in July 2003.¹

Quite apart from the hurdles faced by developing countries in asset recovery, at least three other sets of events have shone a spotlight on the problem of assets stolen by corrupt leaders. First, starting in 1997, several important pieces of international legislation against corruption, bribery, and transnational organized crime have been adopted. The landmark UN Convention Against Corruption (UNCAC), which came into force in December 2005, includes a chapter exclusively devoted to asset recovery, attesting to the need to address this problem urgently. Second, the 9/11 terrorist attack of the United States in 2001 has intensified the campaign against the financing of terrorism and money laundering. The main financial centers of the world, in being seen as a safe haven for the stolen assets of corrupt leaders, criminals, and terrorists, face a higher reputational risk today than they did 10 years ago. Third, developing countries themselves are gearing up to recover stolen assets and use the proceeds to fund development programs and facilitate the achievement of the Millennium Development Goals (MDGs). Consider the 2001 Nyanga Declaration on the recovery and repatriation of Africa's wealth by the representatives of

1. Drawn from a December 12, 2006 statement by the Philippines' Ombudsman to the first meeting of the State Parties to the UN Convention Against Corruption (UNCAC) in Amman, Jordan.

Transparency International in 11 African countries, which explicitly refers to "...Nigeria's President Olusegun Obasanjo's address to the UN General Assembly in September 1999 calling for the creation of an international convention for the repatriation of Africa's wealth illicitly appropriated and kept abroad."² This support was more broadly manifested during the first session of the Ad hoc Committee negotiating UNCAC, when developing countries from all regions decided to make asset recovery a high priority of the Convention.

While there is clearly positive momentum and support for recovery of stolen assets, the challenges are immense. Differences in legal systems across jurisdictions where the theft occurs and money is laundered and parked present a formidable impediment to asset recovery. So far, countries have largely pursued their cases on a bilateral basis and with great difficulty. And while the entering into force of UNCAC is a big step forward, half the G-8 countries have yet to ratify it. Moreover, there is the issue of building capacity in developing countries hoping to invoke UNCAC. The following are likely to be impediments:

- Countries that seek the recovery of stolen assets may not have a domestic regime to deal with money laundering and the forfeiture of stolen assets. These countries usually lack the capacity in their criminal justice system to produce adequate and appropriate requests for international legal assistance.
- Death, the fugitive status, and immunity of persons engaged in looting assets could impede the process, as could the continuing political influence and power of former corrupt officials.

Even when the conditions are right for pursuing asset recovery, some developed countries may not cooperate because they do not trust the requesting country or lack confidence in their rule of law or for political reasons.³

Against this background of positive momentum yet immense challenge, the World Bank Group (WBG), in partnership with the United Nations Office of Drugs and Crime (UNODC), is launching the Stolen Asset Recovery (StAR) initiative. The roles of these institutions will be framed by their respective mandates: in the case of UNODC by its responsibility as the custodian of UNCAC and Secretariat to the Conference of State Parties; and in the case of the WBG, by the recently approved Governance and Anti-Corruption (GAC) strategy, which recognizes the need for global action on stolen asset recovery.⁴

The objective of the UNODC-WBG partnership is three-fold:

- Use both institutions' convening power to enhance cooperation between developed and developing countries on StAR and persuade all countries to ratify and implement UNCAC. This agenda will be pursued in close partnership with other agencies working on related topics.

2. See http://www.transparency.org/pressreleases_archive/2001/nyanga_declaration.html

3. The term "requesting" or "sending" country in the context of stolen asset recovery typically refers to developing countries from which assets were stolen and "sent" to developed country havens ("receiving countries"). The former then request the latter to return the stolen assets.

4. The World Bank Group's Board unanimously endorsed the Governance and Anti-Corruption strategy paper on March 20, 2007. See World Bank (2007).

- Build partnerships aimed at enhancing legislative, investigative, judicial, and enforcement capacity in developing countries to enable them to successfully recover the stock of stolen assets kept either in the home country or secreted abroad, while deterring the new flow.
- Help concerned developing countries—when voluntarily agreed within the legal framework of UNCAC—monitor the use of recovered assets, as was done in Nigeria (discussed in section 5).

While UNCAC is clear that recovered assets should be returned, in some cases recovery efforts could be enhanced by voluntary agreements on monitoring to ensure that recovered assets are used transparently for developmental purposes. The WBG's experience with public expenditure tracking can be put to use in helping monitor the use of recovered assets, at the election of the country in question.⁵ A StAR role for the WBG would thus be an integral part of its Governance and Anti-Corruption (GAC) Strategy, with its focus on financial sector governance, transparent and sound public financial management, global collective action, and the deterrence of corruption by public officials.

5. This is discussed further in section 5.

2

Estimates of the Size of the Problem and Potential Benefits from Tackling High-level Corruption

This section presents global and country-level estimates of theft by corrupt leaders. The theft of public assets involves two key steps: stealing assets, and then laundering the proceeds—either at home or abroad—to avoid detection and make them appear legitimate. Global estimates are derived from estimates of sums of money laundered worldwide. Country-level estimates linked to the names of specific rulers are obtained from Transparency International, which has compiled the data from various sources.⁶

Given the nature of the activity, accurate measurement of the amount of illegal monies involved at either the global or country-level may not be feasible. Another source of ambiguity stems from differing definitions of corruption and the scope of the activities included in the various estimates of illegal monies, not all of which involve cross-border flows. Thus the theft of public assets by corrupt leaders—the focus of this paper—which is usually referred to as *grand corruption*, may simply be the tip of the iceberg. For example, the billions looted by the corrupt leader of an oil exporting developing country, while visible and significant enough to warrant action in its own right, may be only one part of an extensive network of corruption that infects the whole economy, creating a pyramid of corruption. This could include public sector companies, the financial system, and petty corruption associated with policemen and factory inspectors. These various interpretations of the scope of corruption need to be kept in mind when reviewing estimates of the sums of money involved in illegal activity.

Before proceeding to estimates of the sums of illegal and corrupt monies, it is worth stressing that the true cost of corruption far exceeds the value of assets stolen by the leaders of countries. This would include the degradation of public institutions, especially those involved in public financial management and financial sector governance, the weakening if not destruction of the private investment climate, and the corruption of social service delivery mechanisms for basic

6. See Transparency International's 2004 Global Corruption Report, chapter 1, p. 13. Introduction available at http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2004

health and education programs with a particularly adverse impact on the poor. This “collateral damage” in terms of growth and poverty alleviation will be proportional to the duration of the tenure of the corrupt leader.

2.1 GLOBAL ESTIMATES

Numerous studies have attempted to estimate the sums of money being laundered worldwide. Besides suffering from serious flaws in estimation techniques, attempts to derive complete estimates are hampered by the fact that the volume of laundered money is not restricted to assets corruptly acquired by country leaders. Money laundering (ML) services could also be demanded by those evading taxes or involved in the trade of illegal arms or narcotics. The estimates available, therefore, need to be taken as, at best, rough approximations. Several estimates provide the upper or lower bounds, ranging from:

- 2 to 5 percent of global GDP (Camdessus 1998), which amounts to \$800 billion to \$2 trillion in current U.S. dollars, as an estimate of the total funds involved in various illegal activities.⁷
- \$3.4 trillion as an upper bound (cited in Reuter and Truman 2004). This number is based on estimates of the unobserved economy, which is a broad definition of illegal and legal activities excluded from GDP in 21 OECD countries, based on Schneider and Enste (2000) and Schneider (2002).
- \$20 billion to \$40 billion (2001 Nyanga Declaration). This is an estimated stock of assets acquired by corrupt leaders of poor countries, mostly in Africa, and stashed overseas.
- \$500 billion in criminal activities, \$20 billion to \$40 billion in corrupt money, and \$500 billion in tax evasion per year (Baker and others 2003; Baker 2005). This adds up to roughly \$1 trillion, with half coming from developing and transition economies.
- 25 percent of the GDP of African states lost to corruption every year, amounting to \$148 billion (U4 Anti-Corruption Resource Centre 2007). This estimate is likely to encompass the full range of corrupt actions, from petty bribe-taking done by low level government officials to inflated public procurement contracts, kickbacks, and raiding the public treasury as part of public asset theft by political leaders.

Of the above numbers, all are annual flows, except those cited in the 2001 Nyanga Declaration by the representatives of Transparency International in 11 African countries. It notes that \$20 billion to \$40 billion “...has over the decades been illegally and corruptly acquired from some of the world’s poorest countries, most of them in Africa, by politicians, soldiers, businesspersons and other leaders, and kept abroad in the form of cash, stocks and bonds, real estate and other assets.”⁸ This stock figure is much lower than what one might expect, given the flow of 25 percent of African GDP often cited as being lost in total corruption, which amounts to \$148 billion per year in current dollars.⁹

7. This figure has been widely quoted in the literature; however, a documented basis for it could not be found. IMF (2001, p. 10) quotes an FATF estimate of flows associated with drug trafficking at 2 percent of global GDP, so by assumption, 2 to 5 percent is likely to be referring to total flows.

8. http://www1.transparency.org/pressreleases_archive/2001/nyanga_declaration.html

9. However, neither a precise source nor an underlying methodology for this number could be pinned down. It appears to have become a “fact” as a result of being repeatedly cited.

Baker (2005) presents global estimates of annual money laundering based on a “bottom up” approach. The funds needing money laundering are divided into the three components: *criminal*, including drugs, counterfeit goods and money, human trafficking, illegal arms trade, and unrecorded oil sales; *corrupt*, essentially accruing to Politically Exposed Persons (PEPs), the focus of this paper, from illegal activities like bribery, extortion, fraud, and embezzlement from national treasury; and proceeds linked to *tax evasion*.¹⁰ Baker estimates the sums involved from these three components at a global level of between \$1 and \$1.6 trillion annually, with roughly half coming from developing and transitional economies.¹¹

While the numbers are alarming, one should guard against cloaking them with an aura of scientific precision in view of the weaknesses in the estimation methods used. Reuter and Truman (2004, p. 16) acknowledge that “At best, the various estimates suggest that there is substantial potential demand for money-laundering services, but there is little basis for concluding whether it amounts to hundreds of billions or trillions of US dollars.” And IMF (2001, p. 12, para. 24) notes in like vein: “Measurements based on reported crimes underestimate the amount of financial system abuse, while estimates based on underground activity clearly exaggerate it.”

2.2 COUNTRY-LEVEL ESTIMATES

Directly relevant to this paper are estimates of the total stock of assets stolen by the corrupt leaders of various countries, which in an individual context, are often highly significant. Table 1, based on Transparency International (2004), focuses on 10 of the notorious cases of the past few decades. As the TI report cautions, the political leaders shown are not necessarily the 10 most corrupt leaders of the period under consideration and “...the estimates of funds allegedly embezzled are extremely approximate.” Indeed, the sources cited by TI (2004) are chiefly journalistic. The only number coming from an official country source is that for Fujimori, from the *Office of the Special State Attorney for the Montesinos/Fujimori Case, Peru*.

The third column of the table gives the estimated total stock of stolen assets, lower and upper bound, in billions of U.S. dollars, based on TI (2004). The fourth column gives average annual nominal GDP in dollars over the period the corrupt leader ruled. The final columns convert the stock of stolen assets into an equivalent annual flow, expressed as a percentage of average annual GDP, giving both the lower and upper bound for the annual rate of theft.¹² According to the numbers in table 1, Jean-Claude Duvalier allegedly stole the equivalent of 1.7 to 4.5 percent of Haitian GDP for every year he was in power. The only other two kleptocrats to come close as a percentage of GDP were Ferdinand Marcos and Sani Abacha.¹³

10. Politically Exposed Persons (PEPs) are defined in the Glossary to the Financial Action Task Force Forty Recommendations (FATF 2003, p. 14) as “individuals who are or have been entrusted with prominent public functions in a foreign country, for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.” The document is available at <http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF>

11. For details, see Baker (2005, pp. 165-73 and table 4.4, p. 172). Bottom-up or micro methods are also discussed in Reuter and Truman (2004, pp. 19-23). They note that the estimates are subject to serious flaws.

12. For example, in the case of Suharto, the number of 0.6 is obtained as $\{(15/31)/86.6\} \times 100$, where 31 is the number of years for which Suharto ruled Indonesia.

13. The term “kleptocrat” is used to describe corrupt heads of state and other politically exposed persons (PEPs).

TABLE 1. ESTIMATES OF FUNDS ALLEGEDLY EMBEZZLED FROM 9 COUNTRIES

Political leader	Country	Stolen assets (\$billion)	Average annual GDP (\$billion)	Annual theft as percent of average nominal GDP	
				Lower bound	Upper bound
Mohamed Suharto (1967-98)	Indonesia	15 to 35	86.6	0.6	1.3
Ferdinand Marcos (1972-86)	Philippines	5 to 10	23.9	1.5	4.5
Mobutu Sese Seko (1965-97)	Zaire	5	8.8	1.8	1.8
Sani Abacha (1993-98)	Nigeria	2 to 5	27.1	1.5	3.7
Slobodan Milosevic (1989-2000)	Serbia/Yugoslavia	1	12.7	0.7	0.7
Jean-Claude Duvalier (1971-86)	Haiti	0.3 to 0.8	1.2	1.7	4.5
Alberto Fujimori (1990-2000)	Peru	0.6	44.5	0.1	0.1
Pavlo Lazarenko (1996-97)	Ukraine	0.114 to 0.2	46.7	0.2	0.4
Arnoldo Alemán (1997-2002)	Nicaragua	0.1	3.4	0.6	0.6
Joseph Estrada (1998-2001)	Philippines	0.07 to 0.08	77.6	0.04	0.04
Average % of GDP				0.9	1.8

Source: TI (2004) for first three columns; World Bank staff for the rest.
 Note: The GDP calculations for Indonesia cover 1970-98, and for Zaire, 1970-97.

2.3 THE DEVELOPMENT IMPACT OF STAR

The first source of development impact or benefit from the StAR initiative would come from the asset restitution itself, by releasing much-needed funds for development. However, this benefit will accrue only if the recovered assets are used well, to support the attainment of the Millennium Development Goals (MDGs) or invest in badly needed infrastructure, for example. As the country case studies in section 5 will show, transparent and effective use of recovered assets cannot be taken for granted.

Consider these examples of the development impact that could result from restitution of stolen assets. Table 2 contains unit cost estimates of key inputs in various health programs used by the World Bank's Africa Region in its operational work, as well as infrastructure projects. The cost estimates suggest that every \$100 million restituted to a developing country could fund:

- 3.3-10 million insecticide-treated bednets, which are twice as effective as regular bednets; or
- First-line treatment for over 600,000 people for one year for HIV/AIDS; or
- 50-100 million ACT treatments for malaria; or
- Full immunizations for 4 million children; or
- Approximately 250,000 water connections for households; or
- 240 kilometers of two-lane paved road.

TABLE 2. COST ESTIMATES FOR BASIC HEALTH PROGRAMS AND INFRASTRUCTURE

Item	Estimated cost
1. Insecticide-treated bednets (ITNs)	\$10-30 per net (cost varies depending upon taxes and internal transport costs)
2. HIV/AIDS treatment	\$150 per person per year ^a
3. Malaria treatment	<ul style="list-style-type: none"> • 10 cents per full dosage where chloroquine is effective (drugs only) • \$1 to \$2 per full dosage (artemisinin combination treatment, ACT, drugs only)
4. Immunizations	<ul style="list-style-type: none"> • \$0.50 DPT (diphtheria, pertussis, and tetanus; three doses of vaccine) • \$1.50 (vaccines for a fully immunized child, including DPT; BCG, against a form of TB; tetanus; and measles. Total cost approx. \$25, including health service delivery)
5. Water	\$400 per connected household
6. Roads	\$410,000 per kilometer of two-lane paved road

Source: Items 1-4: Africa Region, the World Bank, drawn from estimates used in operational work. Items 5-6: Fay and Yepes (2003, table 6).

Note: These cost estimates are subject to high variance.

a. First-line anti-retroviral treatment, ART. Cost in rich countries is \$1,000. Donor assistance factored in. Second-line treatment is much more expensive.

The total benefit would far exceed that associated with the asset restitution itself, assuming that the released funds are well spent. First, a StAR program that transmits the signal that there is no safe haven for stolen assets will embody a powerful deterrent effect. Second, over the long run, one would expect significant and lasting benefits, assuming the asset recovery effort is accompanied by institutional reform.

The potential benefit from institutional reform is illustrated by the case of the Philippines. Former President Marcos is estimated to have siphoned off between \$5 billion and \$10 billion by the time he was forced out in 1986; he ruled the country as a dictator for the last 14 of the 21 years he was in power. Even taking the lower end of the range and assuming a modest nominal interest of 5 percent, the \$5 billion would have accumulated to over \$13 billion by today, amounting to approximately 22 percent of the country's external debt at the end of 2006. The channels whereby the money was allegedly stolen were diverse, including the takeover of private companies; creation of monopolies for sugar, coconuts, shipping, construction, and the media; fraudulent government loans; bribes from companies; and skimming off foreign loans and raiding the public treasury. These channels suggest that the total costs in all likelihood far exceeded the \$5 billion to \$10 billion estimate. These costs would include the degradation of public institutions, including public financial management, the judiciary and financial sector supervision, a poor investment climate, macroeconomic uncertainty, and a tainted and unstable financial system—all of which are inimical to growth and poverty reduction and a stimulus to capital flight. This example highlights the need to embed StAR in a broader strategy to improve public governance, as envisaged in the WBG's Governance and Anti-Corruption Strategy.

3

How Stolen Money is Hidden

Stolen assets can be hidden either at home or abroad. The focus of this paper is on the cross-border component of public assets stolen from developing countries. Such assets are often hidden in banks located in the financial centers of developed countries, although financial havens have begun to appear in emerging market countries as well. Further, multinational corporations from developed countries are often the source of bribes paid to public officials in developing countries. The crimes of bribery, corruption, and money laundering are inextricably linked; indeed, money laundering (ML), understood as hiding or obscuring the source, ownership, control, and movement of assets, could be seen as the last link in a long chain of corrupt acts. Money laundering seeks to lower the chances of detecting stolen funds, as well as breaking the direct link between the kleptocrat or politically exposed person (PEP) and the stolen assets by disguising ownership.

Money laundering is a diverse activity that can range from simple wire transactions to complex mechanisms that rely on shell banks, undisclosed trusts, and hedge funds, often set up with advisers from developed countries. The money laundering process is usually described as involving three main stages: placement, layering, and integration.

- *Placement* is the process of separating the illicit funds from their illegal source and placing them into one or more financial institutions, domestically or internationally.
- *Layering* is the process of separating criminal proceeds from their source by using layers of financial transactions designed to hide the audit trail and provide anonymity.
- *Integration* schemes place the laundered proceeds back into the legitimate economy in such a way that they appear to be normal business funds.

Figure 1 illustrates the money laundering process (see p. 14).

The FATF's annual typologies reports describe in detail the variety and "creativity" behind ML mechanisms.¹⁴ An interesting feature is that different types of crime tend to rely on different

¹⁴. Given the speed with which mechanisms for ML evolve, the FATF has a Typologies Working Group, which brings together experts from law enforcement and the regulatory authorities of FATF members to share information on the latest trends in ML and terrorist financing and the effectiveness of counter-measures.

types of laundering mechanisms. Using reports from the FATF and the Egmont Group, Reuter and Truman (2004) tabulate the laundering mechanism employed by each particular type of crime.¹⁵ They find that out of 580 cases analyzed, nearly 25 percent of them used wire transfers as the laundering mechanism and 13 percent used front companies. They also find that, while drug trafficking tends to use the full spectrum of alternatives, bribery and corruption rely heavily on wire transfers and use significantly fewer typologies of laundering mechanisms. These differences indicate that in order to reduce the frequency of crimes like bribery and corruption, special attention should be given to wire transfers.¹⁶

FIGURE 1. **THE MONEY LAUNDERING PROCESS**



Source: Levi, Dakolias, and Greenberg (2007, Part III).

15. The Egmont Group is an informal international gathering of financial intelligence units.

16. Although new mechanisms are likely to arise in response to counter-measures!

4. Legal Framework: The UN Convention Against Corruption (UNCAC)

The preceding description of money laundering brings out the critical importance of cooperation between developed countries, especially the financial center jurisdictions (which often serve as havens for assets stolen by PEPs) and the developing countries from which assets are stolen. A recurring and serious impediment to cooperation has been the difference in legal systems between these two sets of countries.

In recent years, some progress has been made in terms of adopting new international instruments governing proceeds of corruption and corrupt behavior on the part of legal entities (companies) and individuals that pay the bribes:¹⁷

- Organization of American States Inter-American Convention Against Corruption (OAS Convention), entered into force in 1997
- OECD Convention on Combating Bribery of Foreign Public Officials, entered into force in 1999
- Council of Europe's Criminal Law Convention on Corruption, entered into force in 2002, and the Civil Law Convention on Corruption, entered into force in 2003
- Convention of the European Union on the Fight Against Corruption, involving officials of the European Communities or officials of member states, various protocols adopted in 1995, 1997, 1998, and 2003 (focused more narrowly on EU interests)
- African Union Convention on Preventing and Combating Corruption, adopted in Mozambique in 2003. As of November 2004, only 4 of the 53 states had ratified the convention; it requires 15 ratifications to come into force.
- UN Convention Against Transnational Organized Crime, entered into force in 2003. So far, 147 countries have signed, with 126 ratifications/acceptances/approvals/accessions (UN Web site)
- FATF noncooperation list, to put pressure on countries to fight money laundering.¹⁸

In what is seen as a watershed, the UN Convention Against Corruption, UNCAC, entered into force in December 2005 as the first legally binding global anti-corruption agreement. As of November 2006, 140 countries had signed the Convention and 92 had ratified it. This Convention

17. See Webb (2005).

18. See http://www.fatf-gafi.org/document/4/0,2340,en_32250379_32236992_33916420_1_1_1,00.html

is a strong affirmation that urgent, global action is needed on the problem of stolen assets; in fact, a whole chapter is dedicated to asset recovery. Looking forward, UNCAC provides a state-of-the-art unifying legal framework for StAR across developed and developing countries. UNCAC contains 71 Articles (see box 1). Its legal architecture includes:¹⁹

- **Prevention:** This embraces wide-ranging measures directed at both the public and private sectors, including the establishment of anti-corruption bodies and enhanced transparency in the financing of elections, citizens' rights, and the involvement of civil society in raising public awareness of corruption and what can be done about it. It includes mandatory consideration of establishing Financial Intelligence Units (FIUs) responsible for analyzing suspicious financial transaction reports filed by financial institutions.
- **Criminalization:** The Convention requires countries to criminalize a wide range of acts, including bribery, embezzlement of public funds, money laundering, and obstruction of justice. It also recommends that other acts be criminalized, such as trading in influence.
- **International cooperation:** UNCAC promotes cooperation between law enforcement agencies, the protection of witnesses, and the removal of bank secrecy as a barrier for prosecution. It also provides for mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries are also required to help trace, freeze, and confiscate the proceeds of corruption.
- **Asset recovery:** "The return of assets...is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard."

Box 1 summarizes key articles of UNCAC, as well as the impediments developing countries are likely to face in availing of its provisions.

¹⁹ The Convention, along with a list of countries that have signed or ratified it, is available at http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf.

BOX 1. KEY ARTICLES OF UNCAC

Article 8 mandates that states parties shall promote integrity among their public officials, inter alia, by considering the establishment of codes or standards of conduct.

Article 8, paragraph 5 obliges each state party to endeavor, in order to prevent the embezzlement of public funds, to establish measures requiring public officials to declare their assets, benefits, and outside activities from which a conflict of interest may result with respect to their functions.

Article 9 provides that states parties shall establish transparent, competitive, and objective systems of procurement and shall promote transparency and accountability in the management of public finances.

Article 12 requires states parties to take measures to prevent corruption and to enhance accounting and auditing standards in the private sector.

Article 14 mandates the establishment of domestic regulatory and supervisory regimes for banks and nonbank financial institutions in order to combat money laundering, including through international cooperation, and recommends measures to monitor the cross-border movement of cash and monetary instruments in order to prevent the transfer of illicit assets abroad.

Article 23 mandates the criminalization of the laundering of proceeds of crime.

Article 26 requires states parties to establish the criminal, civil, or administrative liability of legal persons for participation in the offences established in accordance with the Convention.

Article 31 mandates the establishment of a basic regime for domestic freezing and confiscation of assets as a prerequisite for international cooperation and the return of assets.

Article 40 requires states parties to ensure that their bank secrecy laws do not obstruct domestic criminal investigations of offences established in accordance with the Convention.

Article 43 obligates states parties to extend the widest possible cooperation to one another in the investigation and prosecution of offences defined in the Convention. Thus the Convention requires that when requested, states parties must take measures to identify, trace, and freeze or seize proceeds of crime, property, equipment, or other instrumentalities.

Article 46 provides that states parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions, and judicial proceedings, including for the purpose of the return of assets.

Article 51 states: "The return of assets [derived from corruption] is a fundamental principle of [UNCAC] and State Parties shall afford one another the widest measure of cooperation and assistance in this regard."

Article 52 requires states to take reasonable steps to determine the identity of the beneficial owners of funds deposited into high value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates (essentially, due diligence with regard to PEPs).

Article 55 requires a state party to enforce a confiscation order from another state party or begin its own proceedings to obtain a domestic order of confiscation and, if granted, give effect to it.

Article 57 requires the return of confiscated property to a requesting state party—in cases of public fund embezzlement or laundering of embezzled funds—on the basis of final judgment in the requesting state; however, this condition can be waived by the requested state.

Article 57 also requires the return of confiscated property to a requested state in cases of other offences (including money laundering) covered by the Convention when confiscation was properly executed on the basis of a final judgment—which may be waived—and upon reasonable establishment of prior ownership by the requesting state or recognition of damage by the requested state (Art. 57, para. 3b).

Article 57, paragraph 5 provides that states parties may give special consideration to bilateral agreements on a case-by-case basis to address the final disposal of confiscated property.

Source: UN Convention Against Corruption, adopted by General Assembly resolution 58/4 of October 31, 2003. It came into force on December 14, 2005.

5. Findings from Country Case Studies

Three country case studies on Nigeria, Peru, and the Philippines were prepared on stolen asset recovery as part of the background for this report. Drawing upon these case studies, this section summarizes the key findings and challenges related to StAR. The reason for selecting these countries from the several that have suffered the consequences of grand corruption is two-fold: the relatively easy availability of documentation, and some success in recovering stolen assets. The section starts by providing a synopsis of each country's experience. It then presents the main findings organized around three topics: theft and spiriting away of assets; asset recovery efforts; and monitoring use of recovered assets. The section concludes by defining the challenges flowing from the findings.

5.1 SYNOPSIS OF COUNTRY CASE STUDIES

5.1.a Nigeria²⁰

General Sani Abacha, who had governed Nigeria for five years from 1993 to 1998, died on June 8, 1998 of a reported heart attack. He is estimated to have looted from \$3 billion to \$5 billion over the five years of his rule.²¹ His death prompted the opening of investigations, first by General Abdusalami Abubakar and then by President Olusegun Obasanjo, into Abacha's criminal dealings, culminating in campaigns to recover the assets stolen by him and his associates and hidden both within and especially outside the country.

Abacha is alleged to have used four methods for plundering public assets: outright theft from the public treasury through the central bank; inflation of the value of public contracts; extortion of bribes from contractors; and fraudulent transactions. The corruptly acquired proceeds were laundered through a complex web of banks and front companies in several countries and localities, but principally Nigeria, the UK, Switzerland, Luxembourg, Liechtenstein, Jersey, and the Bahamas.

20. Based on a case study by Ngozi Okonjo-Iweala, commissioned as an analytical background paper in support of the StAR Initiative.
21. Table 1, based on TI (2004), lists the range as \$2 billion to \$5 billion.

The chronology of events leading to eventual repatriation was as follows:

- In 1998 a Special Police Investigation was launched to investigate Abacha's theft.
- On May 26, 1999, General Abubakar issued Decree No. 53, which facilitated the domestic recovery of \$800 million in cash and assets from the Abacha family and associates.
- President Obasanjo, who assumed office in May 1999, redoubled the effort to find more of the stolen assets. In September 1999, the Nigerian government engaged a Swiss legal firm, Monfrini and Partners, to assist with tracing and recovering of monies held abroad.
- Swiss authorities accepted a request for Mutual Legal Assistance on December 1999, leading to the issuance of a general freezing order.
- Before the funds could be repatriated, however, Swiss law required Nigeria to present the Swiss authorities with a final forfeiture judgment reached in the Nigerian courts. This proved legally and politically daunting. In a landmark ruling rendered in 2004, Monfrini and Partners got around this hurdle by arguing successfully that, since there was adequate proof of the criminal origin of the Abacha funds, Swiss authorities could waive the final forfeiture requirement.
- It took Nigeria five years to obtain a repatriation decision from the Swiss authorities due to numerous appeals brought by the Abachas, who employed large numbers of lawyers to block or slow down the case.
- After a series of negotiations, which led to the selection of the World Bank as a bona fide third party for the monitoring of recovered assets, repatriation finally took place in September and November 2005 and early 2006, for a total of \$505.5 million.
- With a grant from the Swiss government, the World Bank mobilized Nigerian civil society organizations to participate in the review and analysis of the use of the looted funds. The review found that the funds had generally been used to increase budget spending in support of the MDG areas, as promised.

5.1.b Peru²²

During the 10 years President Alberto Fujimori was in office (1990-2000), the intelligence police chief, Vladimiro Montesinos, methodically bribed judges, politicians, and the news media. On September 14 2000, cable Channel N broadcast a video showing Montesinos bribing Congressman Alex Kuori with \$15,000. This event was followed by investigations that led to Fujimori's resignation and uncovered a network of corruption that had taken control of the country, undermining the institutional governance systems that existed in the country (the Constitution, elections, rule of law, free press, independent judiciary). During Fujimori's administration, more than \$2 billion was allegedly stolen from the state.²³ After his resignation, the interim government led by President Valentín Paniagua redesigned the legal and institutional framework. A new Anti-corruption System was put in place, which included the creation of prosecution agencies and anti-corruption courts, as well as a series of innovations to the judicial system: the establishment of a negotiated justice system (plea bargaining), special criminal proceedings, and procedural instruments.

22. Based on a case study by Victor A. Dumas, commissioned as an analytical background paper in support of the STAR Initiative.

23. Table 1, based on TI (2004), suggests \$600 million as being looted by Fujimori, citing as its source the Office of the Special State Attorney for the Montesinos/Fujimori case, Peru.

The main source of theft by Montesinos and his cronies was through the extortion of bribes in awarding national defense procurement contracts. These bribes were hidden from the public based on a legal provision that allowed the executive to deny disclosure of the bidding process on the grounds of "national security." For laundering their proceeds, Montesinos and his cronies used shell companies based in tax haven jurisdictions that were managed by trustees.

The main events during the Peruvian asset recovery experience were as follows:

- In November 2000, two months after the scandal broke and with Montesinos on the loose, Swiss authorities froze \$48 million linked to him and his cronies.
- That same month, Fujimori appointed a Special Prosecutor to investigate the Montesinos affair. Fujimori then proceeded to leave the country and seek asylum in Japan.
- Between December 2000 and January 2001, the Peruvian government introduced the aforementioned legislative and judicial reforms, which proved fundamental to the advancement of investigations, the dismantling of the prevailing corruption network, and the repatriation of part of the stolen assets.
- In March 2001, the Cayman Islands froze nearly \$33 million, which was repatriated to Peru in August 2001.
- In June 2001, Montesinos was captured in Caracas and extradited to Peru.
- In August 2002, after almost two years of investigation and litigation, Swiss authorities returned \$77.5 million to the Peruvian government.
- In January 2004, after the signature of a bilateral agreement, the United States repatriated to Peru \$20 million in funds that it forfeited from Montesinos and one of his associates.
- All the repatriated assets went into a special fund called FEDADOI, which was managed by a board of five members appointed from different government ministries.
- Although guidelines and detailed procedures were defined to ensure the transparent use of the nearly \$185 million in recovered assets, these resources ended up mainly supplementing the budgets of the institutions that had a member on the FEDADOI board.

5.1.c The Philippines²⁴

Ferdinand Marcos started accumulating his ill-gotten wealth in 1965, when he was first elected president. He was reelected four years later but declared Martial Law in September 1972, before his second term was completed. The Martial Law regime continued until February 1986, when Marcos was toppled by the so-called peaceful "People Power Revolution". He is estimated to have siphoned off between \$5 and \$10 billion.

This ill-gotten wealth was accumulated through six channels: outright takeover of large private enterprises; creation of state-owned monopolies in vital sectors of the economy; awarding government loans to private individuals acting as fronts for Marcos or his cronies; direct raiding of the public treasury and government financial institutions; kickbacks and commissions from

24. Based on a case study by Leonor Briones, commissioned as an analytical background paper in support of the StAR Initiative.

firms working in the Philippines; and skimming off foreign aid and other forms of international assistance. The proceeds of corruption were laundered through the use of shell corporations, which invested the funds in real estate inside the United States, or by depositing the funds in various domestic and offshore banks under pseudonyms, in numbered accounts or accounts with code names.

The asset recovery efforts of the Philippines extended over 18 years before achieving some success. The following were the landmark events:²⁵

- February 28, 1986–The Presidential Commission on Good Government (PCGG) was launched and made responsible for recovering assets stolen by Marcos. Informal representations were made to the U.S. and Swiss courts to freeze Marcos assets abroad.
- March 25, 1986–Swiss authorities froze Marcos assets in Switzerland.
- April 7, 1986–PCGG filed a request for mutual assistance with the Swiss Federal Police Department under the provisions of the International Mutual Assistance on Criminal Matters Act (IMAC). This was not accepted, on the grounds of being “indeterminate and generic.”
- December 21, 1990–The Swiss Federal Supreme Court authorized the transfer of Swiss banking documents on Marcos deposits in Geneva, Zurich, and Fribourg to the Philippine government. It gave the Philippine government one year in which to file a case for the forfeiture of the deposits in Philippine courts, failing which the freeze would be lifted.
- December 17, 1991–PCGG filed civil case 141 in Sandiganbayan,²⁶ seeking to recover the Marcos assets.
- August 10, 1995–PCGG filed with the District Attorney in Zurich a Petition for Additional Request for Mutual Assistance asking for asset repatriation even before the rendering of a final judgment in the Philippines. It also showed that the Marcos assets in Switzerland were a product of embezzlement, fraud, and the plunder of the public treasury.
- August 21, 1995–Examining Magistrate Peter Cosandey granted the request and ordered all Marcos-related securities and accounts transferred to an escrow account with the Philippine National Bank (PNB). However, the Zurich Superior Court of Appeals denied the Order.
- December 10, 1997–The Swiss Federal Supreme Court upheld Cosandey’s Order. In April 1998, the Swiss deposits were transferred to an escrow account in PNB.
- July 15, 2003–The Philippine Supreme Court issued a forfeiture decision in respect of the Marcos Swiss deposits.
- February 4, 2004–PCGG remitted to the Bureau of the Treasury the amount of \$624 million pertaining to the deposits.

25. Drawing upon Marcelo (2005) and the statement by the Ombudsman of the Republic of the Philippines delivered on December 12, 2006 to the first meeting of the State Parties to UNCAC in Amman, Jordan.

26. This is a special court in the Philippines that has jurisdiction over criminal and civil cases involving graft, corrupt practices, and other offenses committed by public officers and employees.

5.2 ASSET THEFT FACILITATED BY LACK OF TRANSPARENCY AND LOW PUBLIC ACCOUNTABILITY

Six main findings are presented in this section. These are supported by the evidence provided by the background country case studies.

Finding 1: Lack of transparency and low public accountability facilitate the looting of public assets. Typically, adherence to principles of open, accountable government tends to be weak, with deficiencies in the system of checks and balances and key public institutions, limited freedom of civil society organizations to monitor public activity, and low respect for—or outright flouting of—the rule of law.

It is not a coincidence that at the height of the looting, all three countries had governmental systems in place that lacked transparency and public accountability. This first finding stresses the importance of promoting open, accountable government, building institutional capacity, and implementing a system of checks and balances in developing countries.

Finding 2: Despite high levels of corruption, small steps toward accountability and transparency may significantly reduce the theft of public assets.

Table 1 (page 11) shows that while Marcos looted between 1.5 and 4.5 percent of annual GDP, and while Abacha stole between 1.5 and 3.7 percent, Fujimori/Montesinos were able to steal only about 0.1 percent of GDP for every year in power.²⁷ A closer look at how assets were stolen reveals important differences between Marcos and Abacha, on the one hand, and Montesinos/Fujimori on the other. Marcos and Abacha unabashedly raided the public treasury by having truckloads of foreign currency stolen from the central bank. They also had a significantly smaller network of cronies than did Montesinos/Fujimori, mainly because the complete lack of accountability reduced the need to get others “on board” in order to accomplish their criminal purposes. The Peru case shows how large amounts had to be “invested” by Montesinos and Fujimori in bribing judges and media sources, in order to accomplish their looting.²⁸ The Peru case study also shows that the processes used by Montesinos/Fujimori to spirit away assets were far more sophisticated than moving truckloads of cash or wiring funds out of the central bank. In Peru, most of the theft was made through the extortion of bribes from public contractors, particularly regarding the purchase of materiel for the armed forces and police. This stealing pattern was made possible by classifying such purchases as a state secret; this made it difficult for Congress or any other public institution to exercise oversight.

27. The magnitude of the theft from the Philippines shows that grand corruption, while more likely in countries rich in natural resources, is by no means confined to such countries.

28. This raises the question of whether the \$600 million allegedly looted by Fujimori was net of bribes paid to others. There is no information on this. If net, then actual theft would have been higher.

In short, established processes of open and accountable government, a system of checks and balances, public accountability, and strong institutional capacity can keep corrupt leaders in check and should be the first line of defense against asset theft.

Finding 3: The main techniques used to launder the proceeds of corruption include wire transfers, the use of shell corporations in bank secrecy jurisdictions, and direct deposits in the form of cash or bearer instruments.

This narrow spectrum of laundering techniques, as opposed to the broader one employed in other illegal activities like drug trafficking, suggests that concentrating efforts on monitoring a specific set of transactions and related institutions might have a significant deterrent effect on corrupt leaders.²⁹

5.3 DOMESTIC POLITICAL WILL AND INTERNATIONAL COOPERATION KEY TO ASSET RECOVERY

Any successful asset recovery effort must have its origin in the domestic political will to go after the stolen assets as an integral part of a process of basic governance reform.

Finding 4: Strong domestic political will to embark on the long and winding road to asset recovery is fundamental to successful asset recovery. The willingness and ability to introduce legislative reforms and prosecute former corrupt officials, despite the power and influence they might still wield, are unambiguous signals that the government is serious about asset recovery.

The three case studies analyzed were selected because they are to some extent success stories on stolen asset recovery. It would be interesting to compare their experience with that of countries that suffered a different fate (such as Kenya's so far unsuccessful effort to recover funds allegedly embezzled by Daniel Arap Moi).³⁰ The Government of the Philippines sustained an effort over 18 years to recover part of Marcos's loot. The case studies on Abacha and Fujimori/Montesinos stress the importance of introducing domestic reforms that can boost domestic asset recovery and/or provide overseas investigators with a minimum critical amount of information to launch the process of asset repatriation. The introduction of judicial reforms in Peru like the Negotiated Justice System, and General Abubakar's Decree No. 53 of 1999 in Nigeria that led to the domestic confiscation of nearly \$800 million in assets stolen by Abacha and his cronies, underline this important point.³¹

29. However, new techniques are constantly evolving in response to counter-measures and as financial technology becomes more sophisticated.

30. Scher (2005) highlights the lack of domestic political will as one of the reasons for Kenya's unsuccessful attempt to recover assets allegedly stolen by Moi.

31. To the extent that such measures are ad hoc, they should be seen only as the first step in more basic institutional and legal reform.

Finding 5: Little can be achieved without the effective cooperation and goodwill of countries where proceeds of corruption are hidden.

The importance of international cooperation becomes evident when contrasting the eighteen-year Philippine saga in recovering Marcos's loot with the three to five years it took Peru and Nigeria to recover assets stolen by Montesinos and Abacha, respectively. The fact that Swiss authorities issued a general freezing order against Abacha with only a limited amount of initial evidence, and their decision to investigate Montesinos and freeze \$48 million on November 3, 2000, even before Peru formally requested it, illustrates a positive shift in the attitude toward international cooperation in stolen asset restitution.

5.4 MONITORING USE OF RECOVERED ASSETS IMPEDED BY WEAK SYSTEMS AND FUNGIBILITY

The three country case studies exhibit mixed results in monitoring the use of recovered assets. Box 2 highlights some of the features of each country's monitoring framework.

In Nigeria, monitoring followed sound practice but experienced difficulties in the presence of constraints. Recovered assets in the Philippines were suspected of being poorly used. In Peru, while the spending superficially adhered to standard budgetary procedures, the allocation was decided not by Congress, but by a five-member board susceptible to special interests.

The experiences of these three countries illustrate one major point:

Finding 6: To varying degree, the monitoring program in each case study country fell short, either because sound international practice in public financial management was not followed or systems were weak.

Adhering to sound practice in public financial management is complicated because resources are fungible and systems tend to be weak; but above all because tracking systems tend to be perceived as intrusive and therefore require political will to implement.

Monitoring the use of recovered assets in the context of StAR and UNCAC can take place only on a voluntary basis; the unilateral imposition of measures regarding the monitoring of funds would be a violation of UNCAC. The international legal framework, as well as the technical and political difficulties inherent in public financial management, is likely to make the monitoring of the use of funds in the context of StAR a difficult challenge.

BOX 2. MONITORING THE USE OF RECOVERED ASSETS: EXPERIENCE OF NIGERIA, PERU, AND THE PHILIPPINES**Nigeria**

Nigeria received some \$500 million in 2005 from Switzerland as part of the restitution of assets stolen by Sani Abacha and kept in Swiss banks. The stated purpose for the money was for incremental funding of MDG-related activities in the budget (such as health, education, and rural infrastructure programs) within the context of the government's new National Economic Empowerment and Development strategy (NEEDs). Nigeria followed good practice principles in using these resources as general revenues, and expending them through its usual public financial processes. However, the funds were originally expected to be received in 2004 and were therefore included in the 2004 budget. With the delay in restitution, the incremental 2004 spending was eventually financed through new debt; the monies were received only in 2005. This caused complications in tracking spending. Weaknesses of the Nigerian public financial management system also made tracking of spending difficult, including shortcomings in Nigeria's public audit system that should itself have monitored fund use. Nevertheless, a World Bank Public Expenditure Review found that the funds had generally been used in accordance with stated policy. Nigeria has since adopted a virtual poverty fund approach for monitoring the use of funds resulting from debt relief in support of the MDGs, where existing budget classification systems are used to identify the specific activities receiving additional funds. This enables total spending on those activities, from all sources, to be monitored.

Peru

Peru recovered approximately \$180 million over a five-year period beginning in 2001. On October 28, 2001, the government set up the Fund for Special Administration of Money Obtained Illicitly to the Detriment of the State (FEDADOI). The goal of the fund was to provide a framework that would allow the appropriate and transparent management of the proceeds of corruption recovered by the state. While money from the fund went through normal budgetary channels, the specific allocations were determined by board members of FEDADOI. Spending items were not clearly set out in advance and the funds were used to supplement the annual fiscal budget of agencies that had an appointed member on the FEDADOI board. Questionable spending allocations resulted. For example, the Interior Ministry received over \$9 million in 2004 that were used for the payment of vacations for both active and retired police personnel outstanding from fiscal years 1995 and 1996.

The Philippines

The largest single cash remittance from looted Marcos funds was made in February 2004, when \$624 million was taken out of escrow and remitted to the Philippines Treasury. All receipts from assets recovered went through an off-budget fund called the "Agrarian Reform Fund," to be spent on agrarian reform programs. In October 2006, the Commission on Audit noted that a significant portion of the recovered assets were used to finance excessive, unnecessary expenses unlikely to benefit the agrarian reform beneficiaries. Monies were also found to have been used to procure items at inflated prices, while many spending items were not among the approved priority projects.

5.5 CHALLENGES AHEAD

This section outlines the challenges related to the above findings. The first challenge is based on Findings 1 and 2, on the importance of open and accountable public processes and strong public institutions.

Challenge 1: Developing countries seeking to recover stolen assets need to strengthen their public institutions and promote a system of checks and balances that increases accountability and transparency. The international donor community should assist these countries in the development of open and accountable government.

While responding to this challenge is primarily the responsibility of the developing countries themselves, the international community could play an important role in helping countries that genuinely want to get out of the corruption trap. The WBG's GAC platform and UNODC's global efforts fit squarely into this agenda.

It stands to reason that stolen assets are most vulnerable to detection during the initial placement overseas as part of the laundering process (see figure 1). This assumption, combined with Finding 3 on the favored techniques for laundering stolen assets, suggests that financial centers in developed countries need to speed up the implementation of guidelines that would increase the chances of detection during this initial stage *and* in applying sanctions when these guidelines are not followed. This leads to the second challenge:

Challenge 2: Jurisdictions need to implement requirements on due diligence (including “know your customer” norms) and should comply with the FATF 40 +9 Recommendations on Anti-Money Laundering and Combating the Financing of Terrorism, particularly in the case of Politically Exposed Persons (PEPs), as well as transactions involving wire transfers.³²

Domestic political will, while necessary for success in StAR, may not suffice. Countries that suffer from widespread corruption and the looting of assets are also likely to be less able to respond rapidly when such crimes are detected because of the weakening of public institutions. The lack of resources and institutional capacity to conduct investigations, file requests for mutual legal assistance in receiving countries, and pay the onerous fees of international law firms erect barriers to asset recovery. The next challenge focuses on developing assistance programs for such countries.

32. The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF Standards are comprised of the Forty Recommendations on Money Laundering and the Nine Special Recommendations on Terrorist Financing. For more information see http://www.fatf-gafi.org/pages/0,3417,en_32250379_32235720_1_1_1_1,00.html

Challenge 3: Effective and efficient mechanisms are needed that will enable developing countries to quickly respond to asset theft and provide them with the necessary technical assistance in this complex process.

Many developing countries lack the capacity to prepare indictments, collect, preserve and present evidence, properly adjudicate cases and obtain convictions, as well as trace the proceeds of corruption and obtain valid freezing and confiscation orders. More broadly, an important roadblock exists because of the limited capacity of the law enforcement, prosecutorial, and judicial authorities—in short, the criminal justice system—to effectively prevent asset looting and recover stolen assets in a manner that meets internationally accepted legal standards.

The related challenge is to capitalize on the attention StAR is receiving in the international community and push for the ratification and implementation of UNCAC. Responding to this challenge will go a long way not only in recovering assets but also in deterring asset theft in the first place.

Challenge 4: All countries need to be persuaded to ratify UNCAC. State parties to the Convention need to domesticate UNCAC and monitor its implementation.

Asset recovery entails an extensive list of complications and difficulties that include completing investigations in two different jurisdictions, legal differences between common law and civil law countries, complying with confiscation procedures in the law, burden of proof and dual criminality conditions, to name just a few. UNCAC is a big step forward in addressing many of these issues. If countries adhere to UNCAC and domesticate its provisions while also funding agencies in charge of prosecuting and investigating asset recovery cases, then corrupt leaders are much less likely to find a safe haven for the proceeds of their theft.

Half the G-8 countries have not yet ratified the Convention, nor have some of the most important financial centers. Further, UNCAC does not yet have a monitoring mechanism; the Conference of State Parties held in Amman in December 2006 agreed on a self-assessment mechanism that is nonintrusive, does not produce any form of ranking, and complements other existing international and regional review mechanisms. This review method is less stringent than those established in other multilateral agreements like the Council of Europe Criminal Law Convention on Corruption or those included in the OECD Convention against Bribery.

Challenge 5: A framework needs to be developed for monitoring the use of recovered assets that adheres to sound principles of public financial management, conforms to UNCAC, and offers countries a menu of options tailored to their specific institutional constraints and/or any terms set down in the treaties between the restituting and recipient countries.

The following basic principles would need to be reflected in formulating a framework:³³

- All public expenditures need to be monitored, not just expenditures financed with recovered assets. Budget resources are fungible, so in practice it may be difficult to show that recovered assets have been used for additional spending in the areas laid out in a government's medium-term spending plan.³⁴ Measuring only the spending resulting from recovered assets will not, therefore, provide insights into the government's efforts to redirect spending into priority areas as a result of repatriating assets. In order to achieve the enduring value of a more transparent, robust public finance system, the focus of improvements in the public financial management system should be comprehensive, extending beyond recovered assets.
- Ring-fencing of recovered funds to separate these from regular budgetary operations may not be effective, and such parallel public finance systems could weaken mainstream systems. The Paris Declaration on Aid Effectiveness, for example, recognizes the importance of strengthening overall country public financial management (PFM) systems, not simply those handling donor funds. Strengthening a country's overall PFM system helps assure that all public funds are used as intended, regardless of source. Strengthening country PFM systems will help prevent, detect, and deter the theft of public assets, in addition to tracking public expenditures.

If country public financial management systems are weak, the decision should not be to go with a parallel system but to instead use some combination of country and parallel systems. Over time, this combination will improve country systems. This would be consistent with the concept of using country systems for donor funds. The challenge is to identify specific weaknesses and then develop supplemental measures that strengthen country systems and provide some assurance of proper functioning. In cases where budget systems are particularly weak, short-term adaptations to existing budget systems may be made to produce the requisite data on the spending items desired for use by recovered assets. A virtual poverty fund is an example of such a short-term bridging mechanism (such as in Nigeria). The existing budget system is used to tag and track spending items without setting up of separate institutional arrangements.³⁵ Appendix A provides options for supplementing PFM systems where specific aspects are deemed weak. Box 3 details the steps involved in monitoring public assets.

33. See also Veglio and Siegenthaler (2007).

34. For example, the government may reduce its own spending in the areas identified as uses for recovered assets.

35. Other examples of bridging mechanisms include controlling the use of cash releases for certain spending items rather than providing global allocations to ministries, and simply improving coverage of what is being currently reported in the budget.

BOX 3. STEPS IN MONITORING PUBLIC ASSETS

There are some basic principles that should be followed for ALL assets, including looted assets. These are:

- Officially (publicly) recording receipt of the asset (amount, value, date of receipt, date of availability for use)
- Safeguarding of the asset once received
- Official declaration of intended use of the asset (specific uses, amounts, time period of availability, entity responsible for executing the activity and expending the asset and accountable for results), customarily through the approved budget
- Official recording of actual expenditure (amount, object of expenditure, date)
- Official reporting of actual expenditure (amount, object of expenditure, date) and results achieved
- Official audit of financial statements and results to verify accuracy of reporting, identify weaknesses, and assure that appropriate processes were followed (procurement, hiring, accounting, and the like)
- Official response to material weaknesses identified in audit findings (corrective actions to be taken and actually taken).

Source: Authors.

6 • An Action Plan

Preliminary consultations with high-ranking officials in the finance and development ministries of developed countries, including the G-8, have indicated strong support for the StAR initiative. African countries have been concerned about the restitution of stolen assets at least since 1999, when Nigeria's President Obasanjo's address to the UN General Assembly included a plea for an international convention for the repatriation of Africa's wealth illicitly appropriated and kept abroad.³⁶ At the 2007 IMF-World Bank Spring meetings, during a side-event introducing the StAR initiative, representatives of developed and developing countries and multilateral development banks present there expressed unanimous support for the initiative. The consensus was that StAR is an idea whose time has come and that every country or international agency has to play its part in ensuring the initiative's success; indeed, a collective global effort is essential for success and unequivocally transmitting the signal that corruption does not pay. In this sense, StAR was described as the "missing link" in an effective anti-corruption effort. By putting corrupt leaders on notice that stolen assets will be traced, seized, confiscated, and returned to the victim country, StAR would constitute a formidable deterrent to corruption.

The Action Plan presented next reflects feedback from various stakeholders on the essential ingredients for a successful effort, which to a large extent overlap with the insights and challenges emerging from the country case studies presented above:

- Political will, legal reform, and enhancement of investigative capacity are needed in *developed* countries, not just the *developing* countries. The former should see stolen asset recovery as a development issue (because it is a signal against corruption while also providing a source of development funds).
- Time is of the essence. For most developing countries, prolonging the process of asset recovery will take a toll on credibility and give kleptocrats an excuse to claim victimization. A prompt, proactive response is needed from countries where stolen assets are stashed.

36. Cited in the 2001 Nyanga Declaration mentioned above.

- A global partnership must be formed to ensure that new financial havens do not replace the existing ones and that developing countries receive the legal support they need.
- Civil society and the media in developing countries should be brought into the process of monitoring the use of recovered assets, where feasible.

6.1 ACTION PLAN MATRIX

At the simplest level, there are two ways to help developing countries recover stolen assets. One is to lower the hurdles they face when seeking the return of assets located in other jurisdictions. The second is to strengthen laws and institutions governing asset recovery in these countries. Thus actions can be grouped under two headings: reducing barriers in developed countries to recover stolen assets; and strengthening the ability of developing countries to recover them. In addition, to ensure transparency, monitoring the use of recovered assets on a voluntary basis, with the agreement of all the countries concerned, is likely to be needed. Table 3 presents a matrix of recommended relevant actions under the two headings that could be taken by developed (G-8 and OECD) and developing countries, other stakeholders, and UNODC and the WBG. It reflects feedback from various consultations and the challenges emerging from the country case studies outlined above.

The following points are worth noting about the Action Plan: first, a successful StAR effort requires that the G-8 and OECD lead by example, which would include ratification of UNCAC by those countries that have not already done so and actively facilitating requests for mutual legal assistance from developing countries regarding stolen asset recovery. Second, given UNCAC's position as the state-of-the-art international legal framework underpinning asset recovery (see section 4), ratification and implementation of UNCAC by all countries is given special prominence. Third, the critical need for concerted global action by all countries and relevant agencies is emphasized by including a role for financial system regulators and the nonfinancial sector. Fourth, the last row of the table focuses on joint actions by UNODC and the WBG, which fall into three parts: assistance for individual country-level efforts; using their convening power to advocate for stolen assets recovery; and sponsoring a forum for sharing experiences among developing countries in stolen asset recovery.

In addition to what is presented in the table, there are several multilateral and bilateral agencies that are already playing an important role directly or indirectly in stolen asset recovery. The next section discusses specific actions that the UNODC and WBG need to take in order to benefit from the work and expertise of these agencies, including actively involving them in the effort. The next section also discusses specific actions—such as on monitoring the use of recovered funds—that may draw upon the comparative advantage of one of these institutions: the WBG, in this particular case.

TABLE 3. ACTION PLAN MATRIX

	Reduce barriers in developed countries	Strengthen capacity of developing countries
G-8 and OECD	<ul style="list-style-type: none"> • Lead by example and play strong advocacy role in the global arena • Ratify and implement UNCAC • Monitor progress on 2004 G-8 Justice and Home Affairs Ministers' Declaration on recovering proceeds of corruption • Proactively assist developing countries in recovering stolen assets in whatever form (including bank accounts, stocks, and real estate) • Comply with all FATF recommendations, especially those on politically exposed persons (PEPs) and Know Your Customer (KYC) norms • Put pressure on emerging market countries serving as havens for stolen assets to ratify and implement UNCAC. • Consider adopting measures to permit non-conviction based confiscation, enforcement of foreign confiscation judgments and other effective mechanisms to assist in asset recovery 	<ul style="list-style-type: none"> • Fund programs or directly provide developing countries with technical assistance that would enhance the capacity of the criminal justice system—law enforcement, prosecutorial, and judicial authorities—to effectively prevent asset looting and recover the proceeds of corruption in accordance with internationally accepted legal standards.
Developing countries		<ul style="list-style-type: none"> • Ensure complete ratification and implementation of UNCAC • Fund, staff, and ensure independence of Financial Intelligence Units (FIUs) • Comply with all FATF recommendations, especially those on politically exposed persons (PEPs) and Know Your Customer (KYC) norms • Strengthen FIUs and capacity to thwart money laundering • Develop capacity to respond to and file international mutual legal assistance requests • Adopt and implement effective confiscation measures, including non-conviction based confiscation legislation • Enhance transparency and accountability of public financial management (PFM) systems • Create and strengthen national anti-corruption agencies
Financial system regulating agencies	<ul style="list-style-type: none"> • Enforce penalties for financial institutions doing business with corrupt individuals and PEPs without due diligence • Comply with FATF 40+9 recommendations • Establish clear guidelines, regarding the treatment of PEPs • Strengthen anti-money laundering regimes by enforcing KYC, record keeping, and reporting requirements, especially in relation to PEPs. 	
Nonfinancial private sector and NGOs		<ul style="list-style-type: none"> • Provide training for specialized units in developing countries in asset recovery • Engage civil society and media to help in monitoring use of recovered assets.
UNODC and World Bank Group	<ul style="list-style-type: none"> • Form <i>Friends of StAR</i> group composed of influential individuals from developed and developing countries to monitor progress and advise on the StAR initiative • Sponsor forum for sharing worldwide experience in stolen asset recovery • Provide technical assistance to five to six developing countries on implementing UNCAC • Encourage receiving countries to incorporate civil society and media in monitoring. 	

6.2 UNODC-WBG JOINT PROGRAM

The UNODC and WBG are working to formulate a joint effort on stolen asset recovery within the framework of global collective action envisaged in the above matrix. The WBG role would be defined by its mandate under the Governance and Anti-Corruption strategy approved by the Board in March 2007. Likewise, the UNODC role would be defined by its designation as the custodian for UNCAC and the Secretariat for the Conference of State Parties to UNCAC. The UNODC and WBG would not be involved directly in the investigation, tracing, law enforcement, prosecution, confiscation, and repatriation of stolen assets: the experience of countries such as Nigeria suggests that these activities may be best suited for government-to-government assistance or private sector assistance, working with the relevant government authorities.

The discussion below examines in more detail three sets of important actions from the above matrix: building global partnerships on StAR; building institutional capacity at the country level; and implementing and monitoring UNCAC.

6.2.a Building Global Partnerships on StAR

UNODC and the WBG have established a joint working group to take the StAR initiative forward. An important objective is to include other institutions with an interest in asset recovery; a concerted, global effort is vital for success. Appendix B briefly describes what other official, multicountry agencies are doing in this field. An immediate action that could be pursued in this context is to convene a meeting of experts on confiscation and asset recovery, along with representatives from selected developing countries, to share experiences and identify good practices that can be shared more broadly.

A broader partnership will also be needed to implement coordinated, international requests to freeze assets in relation to a specific Politically Exposed Person (PEP). One of the biggest challenges facing developing countries is in getting other countries to freeze stolen assets. These requests are usually made before criminal or civil investigations have been initiated, often without knowing bank account transaction information and sometimes while the government official is still covered by some form of domestic immunity. The problem is that a PEP could easily move funds from one jurisdiction to another in order to escape detection and freezing. UNODC and WBG, in partnership with other agencies and individual governments, could seek to establish a uniform request methodology for victim governments to use in making simultaneous international requests for assistance in freezing stolen assets.

A related initiative involves the creation of a StAR Focal Point List, to help sending countries to know whom to contact in receiving countries for immediate assistance in the case of an emergency. The speed of electronic communications (including wire transfers) and the perishability of evidence require real-time assistance. The G-8 and others have established 24-hour contact systems to handle terrorism, computer crime, and other issues. There is no list or system for contacting

designated national officials who can act as focal points to help countries handle stolen asset cases, especially those involving PEPs, other government officials, and those who might have bribed public officials. The UNODC and WBG can work with other agencies to establish a 24-hour, seven-day Focal Point List of officials in countries who can respond to emergency requests for assistance. Appendix C contains a draft questionnaire that can be used to help identify focal points and the information needed to provide responses. The StAR Focal Points can serve as a channel for international PEP freeze requests.

Another initiative pertains to the formation of a Friends of StAR Group (FSTAR). The cooperation of the international community is needed to ensure that financial centers meet certain minimum levels of transparency and agree to cooperate with law enforcement authorities from other jurisdictions. FSTAR would be an advisory group consisting of distinguished and influential individuals from countries with a special interest or expertise in stolen asset recovery, with the following terms of reference:

- Serve as a forum to understand the problems faced by countries in the areas of confiscation, asset recovery, and international cooperation in anti-money laundering and stolen asset recovery, and develop recommendations to solve these problems.
- Advocate for ratification and implementation of UNCAC, particularly in developed (receiving) countries.

6.2.b Building Institutional Capacity and Providing Technical Assistance at the Country Level

First, at the individual country level, the UNODC-WBG effort would follow a two-track approach consisting of short-run immediate actions and longer-run institution building interventions. Defining what is needed would depend upon the specific country context and the dimensions of the stolen asset problem. Immediate actions are likely to include technical assistance to the country on filing a request for mutual legal assistance, how to approach receiving countries, and advising on contracts with lawyers and forensic accountants working with the relevant country authorities.

UNODC and WBG would identify five to six countries for targeted technical assistance on implementing UNCAC and enhancing the capacity of the criminal justice system to effectively prevent asset looting and approach asset recovery consistent with internationally accepted legal standards. This technical assistance will also target the recommended actions for developing countries in table 3:

- Bring about complete ratification and implementation of UNCAC (see p. 37)
- Fund, staff, and ensure independence of Financial Intelligence Units
- Strengthen FIUs and anti-money laundering capacity
- Develop capacity to respond to and file international mutual legal assistance requests
- Enhance transparency and accountability of public financial management systems
- Create and strengthen domestic anti-corruption agencies.

Second, lasting benefits from a StAR program—including ensuring that recovered assets are used well—requires developing countries to strengthen public institutions and promote checks and balances in order to enhance public accountability and transparency. In particular, the focus needs to be on public financial management and financial sector governance. There are many ongoing efforts in this regard on which the StAR effort can piggyback, such as the WBG's GAC Platform. Financial sector governance is of particular interest. This involves strengthening financial intelligence units (FIUs) and other institutions working on Anti-Money Laundering and the Combating the Financing of Terrorism (AML/CFT). The World Bank Group's Financial Market Integrity Department, FPDFI, is currently working on enhancing the capacity of institutions responsible for transparency in the financial sector, especially financial intelligence units, and exploring the free exchange of expertise and information between Anti-Corruption Agencies and Anti-Money Laundering authorities. This work is being done in collaboration with other agencies.

Third, actions are being explored to make it easier for countries to recover stolen assets, such as:

- Identifying components of a standard financial investigation training program to combat money laundering and assist asset recovery
- Developing an investigative template for government officials to follow in exigent circumstances.
- Developing an international network of 24-hour StAR Focal Point contact persons in capitals, who can respond to emergency requests for legal assistance, as discussed above.

Fourth, once the assets are repatriated, the WBG would offer its services to help monitor the use of the funds, based on its experience in expenditure tracking systems. Such involvement in monitoring would be purely voluntary, in keeping with the fundamental principle of the return of stolen assets as embodied in UNCAC. The WBG is likely to have a comparative advantage in such monitoring. In the context of UNCAC, the WBG could offer a menu of alternatives to countries willing to pursue the monitoring of recovered assets in conjunction with the broad reform of their public financial management (PFM) system. Based on accumulated experience with countries, the overall goal should be to continue to strengthen country PFM systems directly, both as a preventive measure against asset theft and misuse and assurance that additional resources from any source (including asset recovery) are well used. Lessons learned from successful, sustained public financial management reform emphasizes country ownership and a harmonized and coordinated approach to reform.³⁷ The involvement of other donors is critical to the process. Moreover, the experience of Nigeria and the Philippines makes a strong case for involving civil society and the media in monitoring the use of recovered stolen assets, where feasible.

37. See IMF-World Bank (2005), "Update on the Assessments and Implementation of Action Plans to Strengthen Capacity of HIPC's to Track Poverty-Reducing Public Spending."

6.2.c Implementation and Monitoring of UNCAC

As noted above, UNODC is the custodian and lead implementation agency for UNCAC. Actions being considered as part of the UNODC-WBG partnership in the area of UNCAC implementation are as follows:

- WBG assistance in the 2007 Conference of States Parties to be hosted by Indonesia
- WBG participation in the UNODC/UNCAC working groups on technical assistance, implementation, and asset recovery
- UNODC and WBG joint technical assistance on adapting domestic legal frameworks for consistency with UNCAC.

APPENDIXES

APPENDIX A.

Options to Improve Public Financial Management

APPENDIX B.

What Other Agencies are Doing

APPENDIX C.

Focal Point Questionnaire

APPENDIX A.

Options to Improve Public Financial Management

Function	Parallel	Supplemented country system	"Enhanced" country system	"Pure" country system
Budgeting	Parallel project budgets, in many cases not included in the country's budget.	Regular national budget procedures, supplemented by more detailed or reclassified "project budgets."	Using existing budget classification system, selected items of expenditure might be "tagged" as beneficiaries of additional funds and tracked more closely. A combination of program, administrative, economic, geographic, and functional classifications might be used for tracking specific policy objectives.	Expenditures and financing included in national budget and approved as part of regular budget procedures. Where national procedures allow for earmarking of multi-year funds and carry-forward to future years, these might be used to attain project objectives more easily.
Banking	Funds retained in commercial banks or outside country.	--	A subaccount might be created within the Treasury Single Account to notionally prevent co-mingling of project funds with general funds.	Treasury Single Account, commonly in central bank.
Payment	Project Implementation Unit (PIU) payment processing, parallel to country process.	Contracting with private or nonprofit entity to act as fiscal intermediary, processing payments (such as the UN) but operating within the treasury system. Or, using country system with continuous auditing.	Use of treasury system, with technical assistance, training, new hardware or software; or additional strengthened procedures.	Use of treasury system to process payments.
Program management	PIU, embedded with ministry or program, typically with higher salaries. PIU staff/consultants are project managers and/or managers of functions such as procurement, financial management.	Contract with third party to manage project on behalf of government.	Consultants or "term staff" reporting to program managers and line ministry staff hired for project period to provide additional capacity.	

Function	Parallel	Supplemented country system	"Enhanced" country system	"Pure" country system
Internal controls	Special project procedures and manuals developed and used.	National rules, procedures, and manuals, supplemented by additional rules or procedures in areas where these are considered weak (such as additional internal control audits, additional physical audits).	Use of additional staff or consultants to ensure adherence to/compliance with national rules, procedures, and manuals.	National rules, procedures, and manuals.
Accounting	Using World Bank-supplied chart of accounts or other international standard. Separate, project-only financial management information system operational.	Use national system of classification and account. Supplement it with additional classification system and if needed, accounting system (essentially this means operating two systems simultaneously); or contract with third party to support government accounting. (In practice, it is highly problematic to manage two separate sets of books through one system. Local capacity might be overwhelmed.)	Using existing national chart of accounts and budget classification, possibly with project-related spending "tagged" in treasury for easier reporting and tracking. Some investment in classification improvements, training, software, or hardware might be needed.	Using existing national chart of accounts and budget classification, and accounting system.
Financial reporting	Reporting formats, information requirements, and report frequency to meet World Bank requirements; sometimes multiple requirements such as for financial oversight, disbursement, and project management.	Operate two reporting systems simultaneously: national reporting formats, and World Bank-defined reporting formats and information requirements.	National reporting formats, possibly with enhancements applicable to all funds (formats, training, hardware/software).	National reporting formats, frequency, and content.

Function	Parallel	Supplemented country system	"Enhanced" country system	"Pure" country system
Record-keeping	PIU record-keeping.	Third-party maintenance of records (contracted by the World Bank or government).	National record keeping, using government staff, with training, system improvements.	Existing country record-keeping arrangements.
Audit (internal and external)	Private audit firm contracted to conduct audits.	Parallel audit supplementing national audit procedures.	National audit system (internal and external) twinned with private firm or with another country's Supreme Audit Institution. Training, system improvements might be needed as part of enhancements.	National audit procedures.
Procurement	Bank procurement procedures.	Contracting with private or nonprofit entity to act as procuring agent on behalf of government for project implementation, or twinning with national procurement agents, but using national procurement procedures.	National procurement system, with additional training in good practices, perhaps twinned with private or nonprofit agents for training, but primarily using national procedures.	National procurement procedures.
Oversight	Special or no oversight arrangements by ministry or parliament over project expenditures. Oversight done primarily by donor agencies.	Government oversight, with parallel donor oversight arrangements.	Funds subject to national oversight procedures by line ministry, MoF, and parliament, supplemented by additional oversight (such as additional transparency requirements, Project Oversight committee).	Project funds subject to national oversight procedures by line ministry, MoF, and parliament.

APPENDIX B.

What Other Agencies are Doing

Several organizations, official and private, are gearing up to play a role at the international level in StAR. The following are selected examples of the work being done by official, multicountry agencies. The list is in alphabetical order and is by no means exhaustive.

Camden Assets Recovery Inter-Agency Network (CARIN)

CARIN is an informal government forfeiture organization. Its primary purpose is to build an informal international network for law enforcement and prosecutorial/judicial officers who are asset forfeiture practitioners. CARIN currently has 33 member-states, covering most of Europe, including two members that are European Union-wide police and judicial assistance organizations (Europol and Eurojust). CARIN has set up a secure Web site, accessible only to law enforcement agencies, to list forfeiture laws. CARIN's objectives include:

- Establishing centralized yet informal points of contact for forfeiture assistance in every member country, both within the law enforcement and the prosecutorial or quasi-judicial arms of government, depending upon the system.
- Promoting the exchange of information and good practices between CARIN members
- Focusing upon and promoting the forfeiture of all assets that are currently within the scope of existing ratified international agreements
- Facilitating training in forfeiting the proceeds and instrumentalities of crime
- Encouraging members to establish national asset recovery offices within their jurisdictions.

Commission for Africa

The Commission for Africa's central purpose is to generate new ideas and action for a strong and prosperous Africa. The Commission, in a 2005 report, notes that the basis for securing progress in stolen asset recovery is to be found in taking action in four linked areas:

- Introducing measures to prevent the theft of assets at source
- Improving systems to identify funds that have been acquired illicitly
- Facilitating the power of relevant national authorities to freeze and confiscate assets
- Creating instruments to hand back funds to the jurisdiction from which they were looted.

Council of Europe Framework Decision, 2006/783/HA, October 6, 2006

This is an important step because it provides a mechanism for the mutual recognition of confiscation orders within the European Union. It applies to corruption, money laundering, participation in a criminal organization, and other crimes. It sets out the rules under which a member state shall recognize and execute in its territory a confiscation order issued by a court competent in criminal matters of another member state. Execution under the Framework requires a confiscation order, together with a standardized certificate to be used by all member states.

Financial Action Task Force (FATF)

In June 2003, as part of the revision of its Forty Recommendations on Money Laundering (FATF 2003), FATF added corruption and bribery as necessary predicate offenses for anti-money laundering regimes (Recommendation 1). This requires countries to provide for the availability of provisional measures and confiscation in corruption and bribery money laundering cases (Recommendation 3), while also enlarging the areas of international judicial and administrative cooperation available under the Recommendations.

While the UN Conventions against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and Transnational Organized Crime are referenced in FATF's June 2003 Recommendations, UNCAC was not included, as it was not yet in force. In June 2006, FATF amended the Joint Assessment Methodology to require assessors to look at the general framework in a country, including whether there are appropriate measures to prevent and combat corruption and their participation in UNCAC, as well as in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Group of States against Corruption (GRECO), the African Union Convention on Preventing and Combating Corruption, and the Inter-American Convention against Corruption.³⁸

G-8 Efforts

A useful summary of G-8 efforts in the area of stolen assets recovery is contained in the "Statement On Fighting High-Level Corruption," issued in St Petersburg, July 16, 2006.³⁹ This statement starts with an expression of renewal of commitment by the Leaders of the G-8 to fight corruption and improve transparency and accountability. Corruption is seen as a threat to the agenda on global security and stability, open markets and free trade, economic prosperity, and the rule of law.

Transparency in public financial management and accountability have been pursued by the G-8 through, among other channels, the 2004 Sea Island commitment to launch four compacts, and the 2005 Gleneagles commitment to increase support for the Extractive Industries Transparency Initiative (EITI) and countries implementing it. The G-8 have committed to seek, when appropriate and in accordance with national laws, to deny entry and safe haven to public officials found guilty of corruption, enforce anti-bribery laws rigorously, and establish procedures and controls to conduct enhanced due diligence on accounts of "politically exposed persons."

38. For more information on FATF see their Web site at: http://www.fatf-gafi.org/pages/0,2966,en_32250379_32236836_1_1_1_1,00.html. See also their "Handbook for Countries and Assessors," which addresses assessing and making recommendations on forfeiture of proceeds from crimes (<http://www.fatf-gafi.org/dataoecd/3/26/36254892.pdf>).

39. Much of what follows in this subsection is based on verbatim excerpts from the July 2006 G-8 Statement.

The G-8 Justice and Home Affairs Ministers have undertaken to advance recovery of the proceeds of high-level, large-scale corruption, taking into account final disposal of confiscated property, where appropriate, including through holding G-8 regional asset recovery workshops and the creation of best practices for modalities of disposition and return of recovered assets. The G-8 commitment to implement and promote the FATF recommendations, the UN Convention on Transnational Organized Crime, and the UN Convention Against Corruption was emphasized. In the statement, the G-8 leaders committed to:

- Continue to investigate and prosecute corrupt public officials and those who bribe them
- Work with all the international financial centers and G-8 private sectors to deny safe haven to assets illicitly acquired by individuals engaged in high-level corruption by pressing all financial centers to attain and implement the highest international standards of transparency and exchange of information
- Implement fully the commitment to seek, when appropriate and in accordance with national laws, to deny entry and safe haven, to public officials found guilty of corruption
- Support the global ratification and implementation of the UNCAC and call upon those states that have not already ratified the UNCAC to do so at the earliest date possible. Ensure vigorous implementation of the OECD Anti-bribery Convention by parties to the Convention, including through ensuring that domestic law adopted in this framework is effectively implemented and through further effective peer review evaluation. Fight vigorously against money laundering, including by prosecuting money laundering offences and by implementing the revised recommendations of the FATF-related customer due diligence, transparency of legal persons, and arrangements that are essential to tackling corruption.

The Organisation for Economic Co-operation and Development (OECD)

The OECD's assistance on asset recovery issues has focused largely in the areas of training/knowledge-product and research, as part of its larger anti-corruption activities.⁴⁰ OECD produced a joint report with the Asian Development Bank that specifically addresses asset recovery and is entitled, "Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific."⁴¹ This report was produced as part of the Anti-Corruption Action Plan for Asia and the Pacific, a joint initiative with the Asian Development Bank.⁴² The OECD has also examined the issue of asset recovery as part of its Development Assistance Committee (DAC), in the context of learning events that it has organized on improving donor effectiveness in combating corruption.⁴³

40. More information on OECD's anti-corruption activities can be found at: http://www.oecd.org/topic/0,2686,en_2649_37447_1_1_1_1_37447,00.html

41. This report is available at: www.oecd.org/corruption/asiapacific; http://www.oecd.org/document/9/0,2340,en_34982156_34982460_37892041_1_1_1_1,00.html. Another report, "Denying Safe Haven to the Corrupt and the Proceeds of Corruption," is also available.

42. More information on this initiative can be found at its Web site: http://www.oecd.org/pages/0,2966,en_34982156_34982385_1_1_1_1,00.html

43. See, for example, <http://www.oecd.org/dataoecd/41/32/34098324.PDF>, for a paper on recovery of assets presented at a conference organized by OECD-DAC with Transparency International. The final report of this conference is available at this site: <http://www.oecd.org/dataoecd/34/10/34542653.pdf>.

Work on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (ratified by 30 countries) is carried out by the Investment Committee, Working Group on Bribery (experts from 36 member countries). The Working Group can be an important vehicle for raising political awareness regarding asset recovery of member countries and for providing cooperation to World Bank members through OECD Regional Dialogues.

Organization for Security and Co-operation in Europe (OSCE)

The Organization for Security and Co-operation in Europe (OSCE) has also addressed the issue of asset recovery to a limited extent as part of a knowledge product on anti-corruption (“Best Practices in Combating Corruption”).⁴⁴

44. Full text of this manual is available at: http://www.osce.org/publications/eea/2004/05/13568_67_en.pdf

APPENDIX C.

Focal Point Questionnaire

Questionnaire for Designating Focal Points and Obtaining Information Regarding Legal Tools and Procedures to Identify, Trace, and Seize Corruption Proceeds

1. Has your country ratified the United Nations Convention against Corruption? Did your country take any reservations?
2. What type of information does your government need from a requesting government in order to successfully assist in the identification, tracing, or seizure of stolen assets?
3. Does your government require the initiation of a formal investigation or proceeding by the requesting state in order to provide assistance?
4. How is a formal request for assistance initiated?
5. What type of assistance is available in response to a formal request?
6. What are your government's internal procedures for responding to a formal request?
7. Can a foreign government make a request directly to an individual agency without going through a central point of contact?
8. What evidence is necessary for your government to open its own criminal investigation or initiate a civil action regarding stolen or embezzled assets?
9. Do foreign governments have the ability to directly bring civil actions in your domestic courts?
10. Please identify all offices or agencies within your government that may become involved in an investigation relating to the repatriation of stolen foreign assets, and describe their authorities and potential activities in this area. Please identify those agencies that can respond directly to foreign requests, and describe the required circumstances and procedures for such assistance.

11. *Please identify a government-wide focal point that foreign governments can contact on a 24-hour, 7-day basis for technical and legal assistance in stole and embezzled asset matters. Please identify telephone and fax numbers as well as e-mail addresses.*
12. Please identify points of contact for each of the agencies discussed in Question 10, including telephone numbers, fax numbers, and e-mail addresses.
13. In order to repatriate assets to a foreign government, it is generally necessary to first come into possession or control of those assets. Please describe in detail the process by which your government can sufficiently attain possession or control of assets so they can be repatriated.
14. Please explain in detail the authority of your government to repatriate stolen assets, once those assets are in your custody or control.
15. Does your country have the authority to enforce foreign forfeiture judgments?
16. Please indicate whether your country can extradite persons who participated in foreign corruption offenses.

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