**ASSET RECOVERY AND MANAGEMNT, AND CSOs ENTRY POINTS OF ENGAGEMENT— *Being a presentation by Timothy Adewale at the Multi Stakeholder Workshop on the UNCAC and its Review Mechanism Saly, Senegal, 8-11 May, 2018***

**INTRODUCTION**

Grand corruption comes at a staggering cost to the developing world, and this burden disproportionately falls on the poor. An estimated $20 billion to $40 billion is stolen each year from developing countries. However, the cost of corruption far exceeds its monetary value. The collateral damage in terms of truncated opportunities and poverty is incalculable.

A successful asset recovery process resulting in the forfeiture and return of stolen public funds is a powerful victory in this fight against corruption. First, it sends a strong signal that corruption does not pay and that consequences will follow those who steal from the poor. Second, it allows the stolen funds to be used to the benefit of the people.

The wealth or resources of the state should be used in the best interest of the people.

The aim of this paper is to recommend entry points for CSOs in engaging with Government.

**Overview of Government Policies on Asset Recovery and Management**

Resolution 6/3 of COSP to UNCAC on “fostering effective asset recovery” encourages state parties to continue to build knowledge on the management and use and to identify good practices with a view to contributing to sustainable development. There is need for asset recovery to translate positively in the socio economic lives of Nigerians.

Planning for the return of stolen assets raises a series of policy questions that the authorities recovering stolen assets will need to consider carefully. ***How to use the funds most effectively to support the country’s development goals? How to keep the public informed about the decisions taken? How to reassure citizens that the returned assets will be used for development and poverty reduction purposes?*** These are important questions that will likely receive considerable media attention and public scrutiny.

**Asset recovery is a vital means of fighting corruption and promoting development in developing countries.** However, using recovered assets to fund anti-poverty projects, and to promote development requires better oversight mechanisms. Where there are no such mechanisms, recovered assets end up financing activities that are not pro-poor or may be corruptly repossessed by those entrusted with the management of such funds. Having oversight mechanisms is not the end in itself. There is a need for continuous monitoring to prevent re-looting and Civil Society plays a very crucial role in this.

Once the hurdles to recovering these funds have been overcome, the greatest challenge is to ensure that they are used properly and efficiently towards achieving national and international development targets. If the quality of life of people in developing countries is to improve, repatriated funds should not be misused a second time, but spent on poverty alleviation.

Drawing from World Bank report on recovering stolen assets, basic principles that need to be followed in managing repatriated resources include:

Public recording of receipt of the asset (amount, value, date of receipt, and date of availability for use) and safeguarding of those assets once received, Public 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) through the approved budget, Public or official reporting of actual expenditures (amount, object of expenditure, and date) and results achieved- Timely auditing of financial statements and results to verify the accuracy of reporting, to identify weaknesses, and to assure that appropriate processes were followed (procurement, hiring, accounting, etc.)

There is no doubt that the above principles are also in line with the intention of article 13 of UNCAC and SGD 16

**ASSET RECOVERY AND**

**CSO’S ENTRY POINTS OF ENGAGEMENT**

A good consideration relates to the importance of ensuring access to information, particularly access to information for the general public. Countries that have embraced a policy of openness and transparency have benefitted from this approach.

**CSOs can be involved in Planning Asset Return**

The management of asset return is complex and requires forward planning. *It is important to ensure that the assets are properly inventoried, valued and the arrangements are made* for their disposal in a transparent manner following established procedures so as to maximize the returns.

**CSOs in the Allocation of Returned Assets**

The decision to allocate the returned assets to a specific purpose helps manage expectations and facilitates the tracking of the funds.

When determining the appropriate allocation of returned assets, it is important to bear in mind

Results should be clearly identified in terms of measurable and, ideally, visible outputs(for instance, school materials, schools, roads, hospitals, hospital equipments) and the outcomes that they are expected to deliver in terms of improvements in the quality of life.

This is particularly important when responding to public expectations, since the public will not be able to verify how funds are spent, but it will be able to see if the outputs that were originally promised were delivered or not.

**Principles of sound public financial management require that public funds be usedtransparently, so that public is kept informed regarding the money entrusted to thestate; efficiently and effectively, with due regard to value for money in achieving the intendedobjectives; and with clear lines of accountability, to ensure that public funds areused only for the purposes intended.**

Lack of information tends to lead to lack of confidence. Access to quality information is particularly important in the context of high-profile asset returns. This will entail the timely publication of the information about allocation decisions, the application of funds, and the results of audit and performance reports. This information will be particularly useful to civil society organizations monitoring the use of returned assets.

**CSOs in Monitoring Performance**

Monitoring provides a means of verifying information gathered through administrative channels. It helps identify strengths and weaknesses in the management arrangements that are in place and point to possible improvements. It helps build confidence in the systems and can serve to strengthen the engagement of key stakeholders.

The most basic level of monitoring is to verify that the outputs are delivered as originally planned.

Procurements can be tracked: The objective of procurement is to ensure a transparent, competitive process which delivers value for money.

**CSOs can encourage and identify good practice in asset return.**

Civil Society has a key role to play in exposing corruption and providing information that could lead to a formal investigation; in bringing proceedings where there are domestic constraints in doing so; in monitoring returned assets; and in generating and maintaining domestic political will to pursue investigations and conclude prosecutions. To ensure that CSOs can play this role to the full, governments must commit to protecting the legislative and political space for CSOs to work on grand corruption and asset recovery and to ensuring that CSOs working in this area are not subject to harassment or restrictions; allowing prominent public-spirited citizens or organisations to bring public interest claims, initiate criminal proceedings or join as parties to criminal proceedingsin relation to acts of grand corruption and the recovery of proceeds of corruption.***Assets recovered should be used for repairing the harm caused by grand corruption***

**WHY SHOULD CSOs BE INVOLVED-The Nigerian example**

**Past Experience—The Abacha loot in Nigeria**

General Sani Abacha was president of Nigeria from 1993 to 1998. Investigations carried out after his sudden death in June 1998 revealed that he looted between USD 3 billion and USD 5 billion of public money.

Following long negotiations, Nigeria and Switzerland agreed in 2004 that the USD505.5 million should go into pro-poor projects, under the watchful eye of a third party entity. The World Bank was then identified as a neutral party to review the utilisation of the resources, and was supposed to be part of an ongoing programme to improve public finance management in Nigeria.

The greatest challenge encountered in following up on the allocation and expenditure of the Abacha loot related to the appropriation and tracking of the funds in the national budget. There were also several cases in which projects that had been completed prior to the repatriation of the funds were subsequently paid for using the Abacha loot.

The other challenge had to do with maintaining good quality of the work financed or completed using repatriated funds. Lack of good faith and corruption prevented funds from being translated into infrastructure development benefiting communities.

For instance, the review process reported that several projects lagged behind schedules or were virtually abandoned. Some of the completed projects manifested poor workmanship, outputs requiring major refurbishment shortly after the completion of construction. The civil society

report enumerated several factors that bordered on ‘lack of good faith’, lack of political will, and also ghost projects (projects, and even local government areas, that never existed).

Further, the review process was partial in the sense that a full physical inspection of projects was not possible given that a comprehensive list of the projects funded by the repatriated funds was not made available by the government.

**SERAP’s (a Nigerian NGO) example of monitoring and interventions that could be emulated by other CSOs:**

SERAP obtained a Freedom of Information Judgement against the Nigerian Government in July 2017 delivered by Justice Rabiu Shagari of the Federal High Court, Lagos. SERAP sued the government to make transparent the names of those who looted the public money and have returned same through plea bargaining by law enforcement agents. The Judgment stated amongst others that

**“by virtue of the provision of the FOI Act 2011, the Defendants are under a binding legal obligation to provide the plaintiff with up to date information relating to the following:**

**Information about the names of High Ranking Public Officials from whom Public funds were recovered since May 2015.**

**2.Serap v. Accountant general of the Federationand another**

This case has to do with accountable and transparent asset return and management. Wherein, the sums of money ever recovered by the government had never come to public knowledge. Therefore SERAP demands an account of all these returned assets and their usage. SERAP obtained a positive judgment delivered by Justice Idris of the Federal High Court, Lagos

**The judgement entered as follows:**

**“Non disclosure of the funds since 1999 and its use** amounts to a breach of the fundamental principles of transparency and accountability and violates articles 9, 21, and 22 of the African charter on human and peoples’ rights (ratification and enforcement act)

An order of mandamus was made directing and or compelling the defendants to provide the plaintiff with up to date information on recovered stolen funds since 1999, including:

1. Detailed information on the total amount of recovered stolen public assets that have so far been recovered by Nigeria.
2. The amount that has been spent from the recovered stolen assets and the objects of such spending.
3. Details of projects on which recovered stolen public assets were spent.

**3.World Bank information request**

Following an information request to the World Bank – the first in Nigeria using the Bank’s Access to Information Policy – SERAP obtained 700 pages of documents related to the spending of recovered stolen assets. However, the information raises more questions than it answers and so the documents are currently under investigation by the Economic and Financial Crimes Commission.

**Collaborations with government**

**4.Nigerian government working together with CSOs** (e.g Nigeria OGP commitment has asset recovery transparency a commitment. CSOs were included as part of Delegates to Addis Ababa in February 2017 for Asset Recovery Conference

**6. SWISS MOU AGREEMENT: CSOs** participated in the agreement and the processes. The MOU contains clauses involving the participation of Civil Society in the use and management of the fund

**7. 2nd Cycle review: CSOs as observer** and participated in inspection of recovered assets and properties.

The above example thus showed that Civil Society cannot just fold its hands and allow governments to do things the way they like but must recognize that It is good practice to involve Civil society in the use of returned asset especially for sustainable development and in the best interest of the people. In doing so the basic accountable asset return principles must be adhered to which includes:

1. Like the Nigerian example,any agreement must be made on the nature of the return/mechanisms for accountability and involvement of civil society.
2. As far as it is possible, recognition in the mutual interest that assets returned are not misappropriated and that both governments have a duty to provide that assurance to their citizens.
3. Recognition of the importance of ensuring the highest possible standards of transparency and accountability.
4. Acknowledgement that the fundamental purpose of asset return is to enable the funds to be used for the purposes from which they were diverted or to something similar.

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