



Stolen Asset Recovery Initiative

The World Bank • UNODC

Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets



Philosophy

- *All truth passes through three stages. First, it is ridiculed. Second, it is violently opposed. Third, it is accepted as being self-evident."*
- *-Arthur Schopenhauer*

UNCAC, Article 53 on direct recovery

- Each State party to :
- permit another to initiate civil actions to establish ownership of stolen assets
- permit courts to order compensation or damages for Party harmed by convention offences

- Why civil actions? Limitations of other avenues

- For criminal confiscation, the State must:
 - obtain a criminal conviction (beyond reasonable doubt);
 - link assets to the crime (except for value confiscation);
 - use MLA (for investigations and enforcement of orders);
 - potential problems in case of death or absence of defendant.
 - potential political interference or inefficient prosecution offices
- Non Conviction Based Confiscation is not always available or enforceable
- Administrative Confiscation may not be recognized in foreign jurisdictions.
- See figure 3-10 of StAR-OECD publication “Few and Far”: in 2010-2012, 19,1 Millions of dollars recovered using criminal confiscation, and 16 Millions using private lawsuits.

Advantages of direct civil actions

- Lower standard of proof (often preponderance of evidence)
- A claim for damages is specifically useful to overcome problems where the link between the asset and the misconduct is weak.
- Civil Recovery specifically addresses the financial consequences of corruption
- “Deeper pockets” to sue (and more of them): extend the scope of potential defendants and liabilities to intermediaries and enablers
- Civil recovery is well adapted in jurisdictions where criminal liability does not extend to corporations and only individuals are subject to criminal prosecutions.

New StAR publication : Public wrongs, Private Lawsuits “

- Provide guidance to practitioners and policy makers on how to use civil remedies and private lawsuits to recover stolen assets in the context of UNCAC offences.
- Identify challenges and best practices,
- Step by Step approach
- Case examples show that it is a credible and effective avenue (ex: Maluf case, Tunisia..)

Steps to contemplate for a Civil Action

- Determine who may sue and be sued (the corrupt official and/or the facilitators)
- Decide where to file a case (often where assets are located)
- Select and pay lawyers (international organizations can help)
- See what legal actions or claims are available (ownership, damages, contracts)
- Collect evidence and secure assets if needed by using international instruments
- Estimate amounts to recover
- Enforce and collect judgments in another country
- Consider insolvency and receivership processes to trace and recover assets

Steps for a civil action: Examples of Challenges and practices

- Which defendant to sue: the corrupt actor as well as those who assisted him, corporate vehicles, intermediaries and enablers.
- Selection and compensation of private practitioners in lengthy multijurisdictional proceedings (Ex: Tunisia, ‘Ben Ali’ cases)
- Collecting evidence and freeze assets : pre-trial disclosure, searches, seizure, freezing orders can be used in civil procedures
- Ownership claim: not only on stolen or embezzled assets, but also on bribes paid to an official (Theory of “constructive trust” (See Attorney General of Hong Kong), with specific considerations for funds in bank accounts.
- Compensation for damages is not necessarily based on specific assets, but often on the amount of damages caused by corrupt activities.
- Invalidity of contracts and contractual remedies are sometimes a good alternative: to claiming ownership or damages.

Thank you

- For further information please consult:

wwwr.worldbank.org/star

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