



Stolen Asset Recovery Initiative

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Public wrongs, actions: civil lawsuits to recover stolen assets



Introduction: UNCAC, Article 53

Measures for direct recovery of property,
Each State Party:

- 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
- permits courts to recognize a claim as legitimate owner of an asset acquired through 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)
- Problems in case of death or absence of defendant

- Non Conviction Based Confiscation is not always available.

- 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)
- Specifically address the financial consequences of corruption
- A claim for damages is specifically useful to overcome problems where the link between the asset and the misconduct is weak.
- “deeper pockets” to sue (and more of them): extend the scope of potential defendants and liabilities to intermediaries and enablers
- well adapted t in jurisdictions where criminal liability does not extend to corporations and only individuals are subject to criminal prosecutions.

New StAR publication : Public wrongs, Private actions "

- 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
- Decide where to file a case
- Select and pay lawyers
- Study what kind of legal actions or claims are available?
- Collect evidence and secure assets
- Use 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 in stealing, concealing or laundering the proceeds of the corrupt acts, and intermediaries and enablers as well.
- 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 claims and quantification of damages in bribery cases: compensation for damages is not necessarily based on specific assets, but often on the amount of damages and the consequences, the harm, cause by of 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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