International Centre for Asset Recovery

Development Assistance, Asset Recovery and Money Laundering: MAKING THE CONNECTION

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Basel Institute on Governance

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The Basel Institute on Governance is an independent non-profit think tank conducting research, policy development and capacity building in the areas of corporate and public governance, anti-corruption and asset tracing and recovery. Based in Basel, Switzerland, and associated with the University of Basel, the Institute co-operates with governments and non-governmental organisations from around the world. Notably, the Institute also acts as a facilitator in debates on delicate corporate governance issues. In this context it co-founded the World Economic Forum's Partnering against Corruption Initiative and was central to the creation of anti-money laundering standards of the Wolfsberg Group.

The Institute's International Centre for Asset Recovery (ICAR) founded in July 2006 assists authorities in enhancing their capacities to seize, confiscate and recover the proceeds of corruption and money laundering. For this purpose, the ICAR trains officials in theoretical and strategic case assistance and facilitates co-operation between law enforcement agencies of different jurisdictions. In support of these activities, the ICAR operates a web-based knowledge sharing and training tool, the Asset Recovery Knowledge Centre (www.assetrecovery.org).

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This booklet seeks to draw the attention to the importance of the asset recovery process and the international efforts in combating money laundering, corruption and other financial crimes. It further seeks to intersect these agendas with those of development agencies. More importantly, it aims at highlighting policy and programme possibilities in the area of asset recovery and anti-money laundering for development agencies on how these can best support projects in these areas.

ICAR would not be able to operate without critical seed funding from the Swiss Agency for Development and Co-operation (SDC), the Government of Liechtenstein and DfID. We remain grateful to our funders for their financial support which enables us to undertake a booklet of this nature, among many other projects of equal significance to the asset recovery agenda.

Daniel Thelesklaf

Basel Institute on Governance

Introduction

This booklet aims to explain how money laundering impacts on development, why it needs to be tackled as part of development assistance and how asset recovery efforts can alleviate the destructive effects of financial crime.

The traditional approach to tackling criminal activity, namely the prosecution and imprisonment of an individual, has been largely insufficient in curbing large-scale financial crime and corruption. One of the reasons is the fact that these crimes yield enormous financial profits – known as the proceeds of crime – for those individuals involved. The motivation behind such criminal activity is the profit itself. Often, the criminal would rather be imprisoned than be stripped of his unlawful assets.

The modern approach of states to tackle such criminality is to suffocate the financial flow of the criminal activity itself, leading to the concept of money laundering. Not only the offender of the so-called predicate offence (e.g. the public official that embezzled his/her country) but also those that helped the offender to conceal or move the proceeds of crime should be brought to justice. Innovative procedures that involve obtaining financial intelligence and an adequate paper trail of financial transactions are now available to assist financial investigations. Seizure and confiscation proceedings have been revisited and made more effective. Repatriation of these monies to the victim country – asset recovery – is now a reality.

Asset recovery is the process through which law enforcement and prosecutors, through successive actions, identify and trace the assets, linking them to the criminals and their criminal activity, allowing for the seizure and confiscation of the criminal proceeds as well as the prosecution of the perpetrator. It allows for the repatriation of such assets to the victim country. It also deters individuals from engaging in criminal acts by undermining the possibility of criminals to enjoy the proceeds of crime.

However, combating money laundering and enabling asset recovery are resource intensive and time consuming. Asset recovery requires sound preventive measures and policies be put in place for an adequate response from the state in the event that enforcement becomes necessary. It requires an environment in which different government agencies are able to co-operate so that information can be analysed appropriately and acted upon.

Furthermore, law enforcement must have adequate capacities across a myriad of disciplines, which range from forensic accounting to mutual legal assistance, to respond to the complexities of such investigations. More importantly, there must be a change of focus in the sense that the criminal punishment of the individual, e.g., imprisonment, is not sufficient, and that there need be an added focus on the recovery of the proceeds resulting from the criminal activity, e.g., seizure and confiscation of the proceeds of crime.

The state has sought to remove the ability of criminals to carry out their unlawful activities. This approach through asset recovery, however, is complex as the trans-border flow of the proceeds of crime requires an adequate and timely response not only from the state in which the criminal activity occurred, but also the other jurisdictions through which the proceeds transit and/or are finally placed.

Thus, unless the recipient state of the proceeds of crime (often a financial centre) also has in place all the asset recovery mechanisms to assist the country where the crime originated from, the latter can do little to effectively react to this type of criminal activity. Willingness to allocate resources for asset recovery is also affected. Therefore, the international community has now set standards seeking to facilitate such co-ordination between states on the combating of money laundering and its predicate offences.

Consequently, there exists a great need for technical assistance designed to develop and to improve the capacity of investigators and prosecutors in the asset recovery processes and its techniques. Technical assistance in also needed for putting in place a suitable framework and capacities to manage successful asset recovery. Furthermore, adequate preventive policies must be put in place to prevent money laundering and to allow for an adequate response from law enforcement if need be. Technical assistance in such processes can help to build an international network of asset recovery specialists in both victim and recipient countries that can aid in the fight against corruption and money laundering. This will ultimately contribute to establishing trust in the legal system and the rule of law.

This booklet seeks to set out and explain the basic principles of what money laundering and asset recovery are, and their significance for development. There are important ways in which development programmes can assist developing countries in setting up their own preventive and enforcement processes within the asset recovery context. This booklet also seeks to draw attention to the fact that development agencies can themselves fall victim of corruption and money laundering and must themselves have mechanisms in place to avoid them.

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Money Laundering and Asset Recovery

- **Money Laundering:** the process by which a person conceals or disguises the identity or origin of illegally obtained proceeds so that they appear to have originated from legitimate sources.
- **Predicate Offences:** the underlying criminal action that generates illegitimate proceeds which need to be 'laundered'.
- **Asset Recovery:** includes all the processes involved in the tracing, freezing, confiscating, and returning of funds obtained through illegal activities.

What is Money Laundering?

Individuals and criminal organisations involved in corruption and other criminal acts have strong incentives to conceal the proceeds of their crime. They wish to simultaneously remain inconspicuous to law enforcement while being able to carry on with their criminal activities and enjoy the profits afforded to them by those activities. Money laundering offers them this opportunity. It protects their unlawful gains from potential seizure by law enforcement while simultaneously attempting to hide the trail of evidence which links them to those gains and their corrupt or other criminal activity.

A fuller definition of money laundering is dependent upon each country's legislation and legal tradition. However, it can generally be defined as the process by which criminals (including those involved in corruption) seek to conceal, disguise or hide the true origin, nature or ownership of property derived from, or involved in corruption or other criminal activity. The definition also generally includes the act of acquiring, possessing or using assets known or suspected to have derived through unlawful means.

Illicit financial flows dwarf the total net ODA (Official Development Assistance)

As a tool which allows criminals to operate and advance their criminal ventures, money laundering leads to serious social and economic consequences. It lowers overall perceptions of governance and the rule of law, raises the risk of corrupt activities from public officials and national and international private corporations, and slows economic growth while impairing long-term economic development. Thus, incentives must be put in place in order to ensure that criminals do not profit from their criminal activity, while securing incentives which favour lawful and productive activities.

The United Nations Office on Drugs and Crime (UNODC) estimates illicit financial flows at 2-5% of the global GDP annually.[1] This represented in 2009, USD 1.4 to 3.51 trillion (GBP 909 billion to 2.27 trillion, EUR 996 billion to 2.49 trillion). Of greater concern, studies indicate that from the overall total of illicit financial flows, USD 500 to 800 billion (GBP 324.65 to 514.44 billion, EUR 356 to 569 billion) a year come from developing and transitional economies (Schneider, 2010).

1 www.unodc.org/unodc/en/money-laundering/globalization.html.

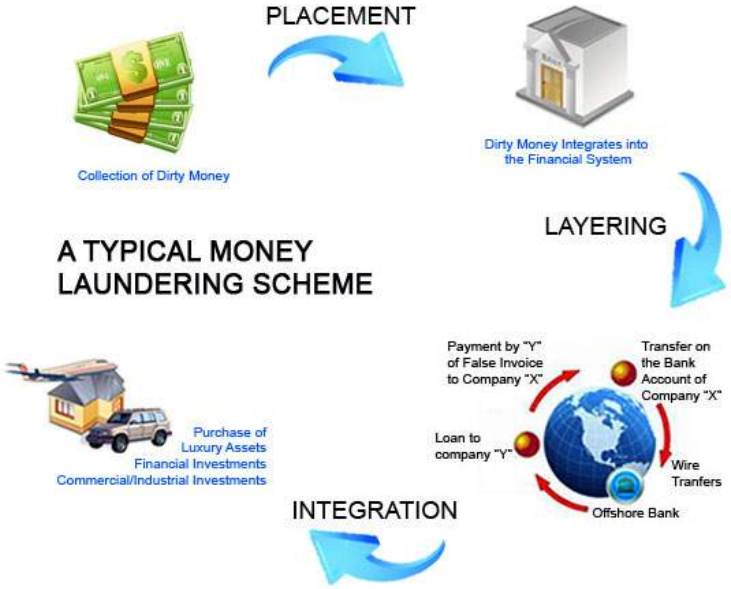
By comparison, illicit financial flows dwarfed the total net Official Development Assistance (ODA) from members of the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD), which was at USD 119.6 billion (GBP 77.65 billion, EUR 85.16 billion) during the same period.

These projections and estimates paint a bleak picture for development agencies. Such a scale of financial loss may impact not only on overall prospects for economic development, but also how effectively public resources can be used by government, and overall governance practices in recipient countries.

If money laundering is a tool used by individuals to hide the profits derived from corruption or other criminal activity, there must be the commission of an underlying criminal action prior to the money laundering which provides them with some illegal financial gain. These criminal actions that precede, but are linked to money laundering, are known as predicate offences. There is no one list of predicate offences, and countries generally classify them in one of three ways in their money laundering legislation:

1. **Applying a threshold test.** Predicate offences under this approach are generally those categorised as 'serious offences' under each country's legal system. The definition of 'serious offence' is usually either crimes that have a maximum punishment above one-year imprisonment or a minimum punishment of more than six months imprisonment. This is the model chosen in Germany and Switzerland.
2. **List of predicate offences.** Under this approach, countries choose to draft a list of predicate offences to money laundering. This approach is justified on the basis that a threshold test would result in the scope of predicate offences being too broad. This is the model chosen in the United States and Liechtenstein.
3. **Comprehensive approach.** Under this approach, countries refer to predicate offences as any action which would amount to a criminal offence in that country – even if the criminal offence had not occurred there. This is the model required by the international standard and implemented in most jurisdictions across the globe.

Regardless of the approach taken by the legislator of a country, the international community has throughout the years prescribed in international treaties actions that must be criminalised as predicate offences. These include corruption (active and passive bribery, embezzlement), bribery of foreign officials, organised crime and trafficking in drugs, persons, migrants and arms.



Source: FINTRAC – Financial Transactions and Reports Analysis of Canada

Common Methods of Money Laundering

There are numerous methods of laundering money. Identifying them, however, is difficult due to the secretive nature of money laundering. The Financial Action Task Force (FATF)[2], an inter-governmental body that helps tackle money laundering and terrorist financing, conducts periodic studies on the typologies of money laundering that include a wide range of different styles and techniques to disguise the true origin, nature and ownership of the illicit funds.

Many of these methods and their techniques overlap with other elements and form an infinite number of unique schemes. The method used will depend on the corrupt or other criminal activity and on the specific institutional arrangements in the country where the money laundering occurs (Schneider, 2010).

Some of the common techniques that have been adopted are explained below.

Alternative Remittance System. One common technique, which is popular among developing countries, is the use of Alternative Remittance Systems. They are an informal banking system, through which money is 'transferred' from location A to location B through a network of brokers operating outside the financial system. While different systems vary greatly according to size and complexity, the simplest form is set out as such:

> *An individual wishes to convert an illegitimately acquired sum of US dollars to Pakistani Rupees and transfer it from New York to his friend in Islamabad. He approaches a Hawala broker in New York who agrees to assist for a fee. Rather than sending the money through financial channels, the Hawala broker keeps the money and simply contacts an associate broker in Pakistan who delivers the agreed physical sum of Rupees from his own cash reserves to the friend.*
>
> *The Pakistani broker may agree to deliver the sum from his own cash reserves on the basis of the honor system, in that he trusts the New York broker to compensate him at a later date (perhaps under a business partnership agreement), or even on the basis that he owes the New York broker money and is simply making good on the existing debt.*

2 www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html.

Having an adequate methodology in place and research carried out independently would assist both local authorities and donor agencies in understanding the money laundering methodologies and patterns in the recipient country.

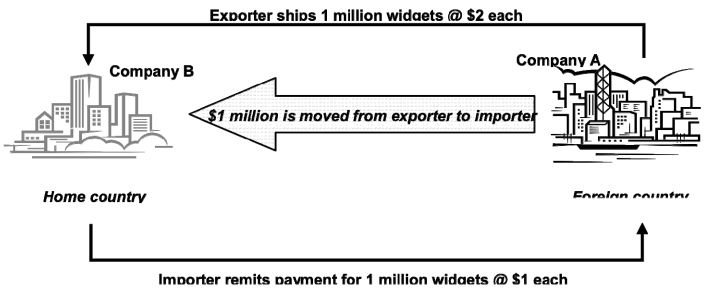
The system is advantageous in that it bypasses the barriers of formal financial institutions, and is a cheap, fast and reliable form of transfer that rarely leaves a paper trail, as it can operate in cash-based economies or in economies that do not have a strong banking sector. This technique is generally not illegal (so long as the broker has authorisation from Government). However, countries in the Middle East have recorded its wide use for the laundering of assets associated with gold smuggling, extortion, drug revenues and terrorism. For example, in mid-1997, several people were convicted of laundering the proceeds of the sale of Pakistani heroin and opium through a combination of the legitimate foreign exchange business sector (including Frankfurt-based *MGM Marwex Geldwechsel*, and its U.S. branch, *MGM Marwex International*) and an alternative remittance network spanning several countries.

Trade Based Money Laundering Systems are those systems which exploit the wide range of vulnerabilities in the international trade system. According to Global Financial Integrity, illicit financial flows resulting from trade mispricing in developing countries accounted for up to USD 500 billion (GBP 320 billion; EUR 380 billion) (Kar and Cartwright-Smith, 2009). They are used to disguise the illegitimate origin of assets through such techniques as:

1. **Over- and under-invoicing for shipments of goods and services** – In terms of this scheme, the offender misrepresents the price of the goods or services in order to disguise and transfer the additional value exchanged between the importer and exporter. For instance, by over-invoicing above the market value of goods, large amounts of funds are transferred into the country of the importer, or alternatively by under-invoicing, goods of a value much larger than their true worth are exported abroad.

Over- and Under-Invoicing of Goods – An Example

Company A (a foreign exporter) ships 1 million widgets worth $2 each, but invoices Company B (a colluding domestic importer) for 1 million widgets at a price of only $1 each. Company B pays Company A for the goods by sending a wire transfer for $1 million. Company B then sells the widgets on the open market for $2 million and deposits the extra $1 million (the difference between the invoiced price and the "fair market" value) into a bank account to be disbursed according to Company A's instructions.



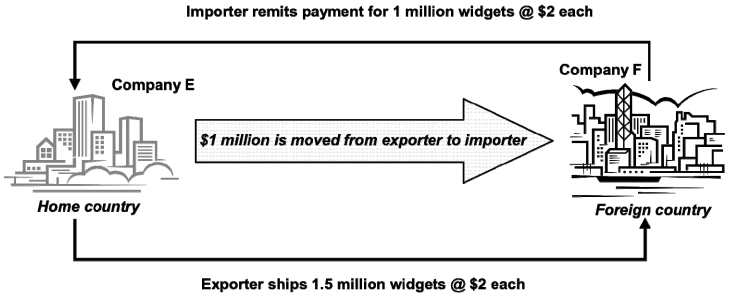
Alternatively, Company C (a domestic exporter) ships 1 million widgets worth $2 each, but invoices Company D (a colluding foreign importer) for 1 million widgets at a price of $3 each. Company D pays Company C for the goods by sending a wire transfer for $3 million. Company C then pays $2 million to its suppliers and deposits the remaining $1 million (the difference between the invoiced price and the "fair market" price) into a bank account to be disbursed according to Company D's instructions.

Source: OECD/FATF Trade Based Money Laundering, 2006.

2. **Over- and under-shipping goods and services** – Similar to above, except the offender either over- or under-states the quantity of goods shipped, depending on whether funds need to be exported or imported. Alternatively, goods are not even shipped at all, and customs documents are created to process these 'phantom shipments'.

Over- and Under-Shipment of Goods – An Example

Company E (a domestic exporter) sells 1 million widgets to Company F (a colluding foreign importer) at a price of $2 each, but ships 1.5 million widgets. Company F pays Company E for the goods by sending a wire transfer for $2 million. Company F then sells the widgets on the open market for $3 million and deposits the extra $1 million (the difference between the invoiced quantity and the actual quantity) into a bank account to be disbursed according to Company E's instructions.



Alternatively, Company G (a foreign exporter) sells 1 million widgets to Company H (a colluding domestic importer) at a price of $2 each, but only ships 500,000 widgets. Company H pays Company G for the goods by sending a wire transfer for $2 million. Company G then pays $1 million to its suppliers and deposits the remaining $1 million (the difference between the invoiced quantity and the actual quantity) into a bank account to be disbursed according to Company H's instructions.

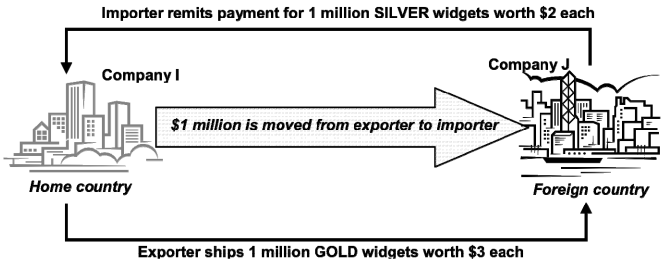
Source: OECD/FATF Trade Based Money Laundering, 2006.

3. **Multiple invoicing of single quantities of goods and services** – In terms of this scheme, the offender issues more than one invoice for a single transaction of goods and services, and accepts multiple payments.

4. **Falsely describing goods and services** – The offender misrepresents the quality or type of goods or services as either more or less valuable, depending on whether they wish to receive more or less money in exchange.

Falsely Described Goods – An Example

Company I (a domestic exporter) ships 1 million gold widgets worth $3 each to Company J (a colluding foreign importer), but invoices Company J for 1 million silver widgets worth $2 each. Company J pays Company I for the goods by sending a wire transfer for $2 million. Company J then sells the gold widgets on the open market for $3 million and deposits the extra $1 million (the difference between the invoice value and the actual value) into a bank account to be disbursed according to Company I's instructions.



Alternatively, Company K (a foreign exporter) ships 1 million bronze widgets worth $1 each to Company L (a colluding domestic importer), but invoices Company L for 1 million silver widgets worth $2 each. Company L pays Company K for the goods by sending a wire transfer of $2 million. Company K then pays $1 million to its suppliers and deposits the remaining $1 million (the difference between the invoiced value and the actual value) into a bank account to be disbursed according to Company L's instructions.

Source: OECD/FATF Trade Based Money Laundering, 2006.

An important element to assist recipient countries is the need for independent research in the field of money laundering methods utilised locally. Having an adequate methodology in place and research carried out independently would assist both local authorities – such as trade regulators, and customs and port authorities – and donor

agencies in understanding the money laundering methodologies and patterns in the recipient country. This knowledge would assist in the allocation of resources and the prioritisation of action on these specific money laundering trends.

The Asset Recovery Process

Combating money laundering is important in order to deprive people committing corruption and other financial crime of the proceeds of their crime and to cut the financial flows from criminal organisations. To achieve this goal, law enforcement and prosecutors must overcome several phases to remove these unlawful assets from criminal hands and ensure due process and the rule of law. The asset recovery process includes the identification, tracing, seizing/freezing, confiscating and returning the assets to the victim jurisdiction.

Both money laundering and asset recovery flow from the concept of proceeds of crime.

The return of assets is the last step of this complex process. The efforts involved in asset recovery are many and require, among other things, the capacity to use specific investigative techniques and conduct complex financial investigations. They also require the capacity to choose between different legal strategies, launch and conduct legal proceedings, co-ordinate institutions and agencies participating in the process of asset recovery, and to collaborate with the multiple jurisdictions in the necessary investigative and legal processes. Therefore, technical capacity and sufficient resources are critical to asset recovery actions.

The process for the recovery of assets can be divided into four basic phases (International Centre for Asset Recovery, 2009):

1. **Pre-Investigative Phase:** during which the investigator verifies the accuracy of the information initiating the investigation. If there are inconsistencies in the story or incorrect statements and assumptions, then the true facts must be established.
2. **Investigative Phase:** where the proceeds of crime are identified and located and evidence in respect of ownership is collated covering several areas of investigative work, e.g., mutual legal assistance requests to obtain information relating to offshore bank and other records, and witness statements is a critical element in this phase. The result of this investigation can be a temporary measure (seizure) to secure later confiscation ordered by the court.
3. **Judicial Phase:** where the accused person/defendant is convicted (or acquitted) and the decision on confiscation is final.
4. **Disposal Phase:** Where the property is actually confiscated and disposed of by the State in accordance with the law, whilst taking into account international asset sharing.

The process of recovering stolen assets is immensely intricate, time-consuming and resource intensive. Efforts are often hampered by such obstacles as the challenge of precisely identifying the stolen funds, which requires specialised knowledge on financial investigations and forensic accounting to prove the illicit nature of the assets, as well as overcoming the inconsistent legal requirements that exist across borders, the lack of legal expertise in requesting countries, the lack of political will in requesting and requested countries, and the lack of co-ordination between national and international agencies. Furthermore, even when such obstacles are overcome, other procedural limitations may come into play. Such is the case of international co-operation, which may sometimes represent an inadequate response to seizure and confiscation, due to the time needed for its execution between the involved countries *versus* the speed in which international financial transactions occur.

Another major obstacle to recovering stolen assets is the fact that the person who committed the acts of corruption or other related offences may be deceased, a fugitive from justice or enjoys some form of immunity. Furthermore, the beneficial owner of the assets may not be known due to the complexity of the methods used to hide the true ownership or nature of the assets. The criminal justice system traditionally does not allow in such cases a prosecution to be initiated or continued. To make matters more complex, a company may have committed corrupt or other criminal activities, making it impossible for some jurisdictions to criminally prosecute them.[3]

Sani Abacha of Nigeria

General Sani Abacha was the military dictator of Nigeria from 17 November 1993 until his sudden death on 8 June 1998. Listed as the fourth most corrupt dictator by Transparency International, Abacha embezzled an estimated USD 4 billion (GBP 2.6 billion, EUR 2.8 billion) in public funds and other proceeds of corruption during his period in office. 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 tangled web of banks and front companies in several countries and localities, but principally Nigeria, the UK, Switzerland, Luxembourg, Liechtenstein, Jersey, and the Bahamas.[4]

According to post-Abacha government sources, USD 3 billion (GBP 1.9 billion, EUR 2.1 billion) in foreign assets can actually be clearly traced directly to Abacha, his family, and other accomplices. Subsequent Nigerian governments have submitted requests to Liechtenstein, Luxembourg, Belgium, France, Switzerland, the UK, Jersey and the United States, and since 1999, USD 1.2 billion (GBP 780 million, EUR 850 million) have been successfully repatriated to Nigeria. Under the agreements dictating the terms of such repatriation, a great portion of these returned funds have been used by the Nigerian government to finance development projects. For instance, under an agreement for the repatriation of USD 500 million (GBP 320 million, EUR 350 million) from Switzerland in 2005, funds were allocated to the power sector (USD 168 million, GBP 109 million, EUR 120 million), health (USD 84 million, GBP 55 million, EUR 60 million), education (USD 60 million, GBP 39 million, EUR 42 million), works (USD 144 million, GBP 93 million, EUR 103 million) and water resource (USD 48 million, GBP 31 million, EUR 34 million). Nevertheless, while there have been instances of successful repatriation from several jurisdictions, many Abacha family funds still remain frozen in numerous foreign financial institutions, including USD 500 million (GBP 324 million, EUR 354 million) in Luxembourg and Liechtenstein alone.

Seeking to overcome this problem, many jurisdictions, e.g., Colombia, Mexico, the United Kingdom and the United States have sought legislative changes that allow the prosecution to seize and confiscate such assets through the criminal liability of companies, the reversal of the burden of proof in criminal cases, and through civil proceedings known as non-conviction based (NCB) forfeiture. The latter is achieved through proceedings against the criminal assets themselves, without actually initiating legal proceedings against a person. The advantage is the simplification of the asset recovery process due to the fact that civil proceedings require a lower standard of proof compared to a criminal prosecution. A criminal conviction of the persons

3 In such cases, the prosecution must determine the responsible person within the company that committed the corrupt of other criminal acts. Furthermore, the prosecution must normally pierce the corporate veil in order to reach the criminal assets that legally owned by the company. This situation adds a layer of convolution to the already complex asset recovery process.

4 http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf.

suspected of committing corruption or other criminal acts is not necessary, although NCB forfeiture should not act as a substitute to criminal prosecution.

NCB forfeiture also offers some relief to the obstacles indentified above. For example, there is no need to identify the owner of such property and the evidence available, which may otherwise not be enough to ensure a conviction of a person or company, may however be sufficient to allow for their seizure and confiscation of the proceeds of the criminal activity.

The importance of NCB forfeiture to combating corruption, money laundering and other criminal offences is such that the UNCAC recommends its state parties to consider enacting such a form of civil confiscation. The challenges to overcome in this field, however, are many. NCB forfeiture is still a new concept to most jurisdictions, and many legal and constitutional hurdles, e.g. human rights, rule of law issues, the rights of innocent owners, which raises cautionary resistance from the legal profession to introduce this type of legal instrument.

NCB forfeiture is a critical tool to combating corruption and other forms of criminal activity. It is an important area that development agencies should consider promoting in their assistance to developing country partners.

Technical assistance is generally necessary in the four phases of the asset recovery described above. A possible approach to setting priorities on technical assistance in asset recovery is by having the recipient country undertake a gap analysis to assess both its current capacities and gaps in its procedures and regulations. Such an approach would be comprehensive, although it would ultimately need the political will within the recipient country in order to obtain the most efficient results. The gap analysis would primarily serve national purposes by demonstrating the areas within the asset recovery process that are deficient, e.g., criminalisation, international co-operation, financial investigation and prosecution, the seizure and confiscation mechanisms of the proceeds of crime, and the management of seized assets. Moreover, such gap analysis can greatly contribute and support to the UNCAC review mechanism (as adopted in Resolution 3/1 by the Conference of States Parties of the UNCAC, in Doha in November 2009[5]) of the countries under review, while identifying the technical assistance needs of a country.

Linking Asset Recovery, Money Laundering and its Predicate Offences

If law enforcement has the capacity of understanding why, where and how to look for money laundering, they will find the connection between the unlawful activity, the criminal and the proceeds and instrumentalities of crime.

Criminals benefit from money laundering as it disguises the true origin, nature and ownership of the proceeds and instrumentalities of unlawful activities. If law enforcement has the capacity of understanding why, where and how to look for money laundering, they will find the connection between the unlawful activity, the criminal and the proceeds and instrumentalities of crime. Having the capacities and the resources to conduct a financial investigation to trace the assets and prosecute perpetrators for money laundering is a critical part of the asset recovery process. Moreover, the knowledge that arises from these financial investigations allow for the analysis of trends which could be used in the policy process of a country, so as to achieve greater efficiency in combating money laundering.

Money laundering and asset recovery go hand-in-hand. Money laundering is the criminal activity that a person (or company), following the commission of a predicate offence, commits in order to hide the true origin, nature and ownership of their criminal proceeds. Asset recovery, on the other hand, is the action law enforcement and prosecutors conduct to trace those unlawful assets, seize them from the perpetrators and restore them to their rightful owner.

5 See http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/V0988538e.pdf.

Unlawful proceeds thus provide the common link between money laundering and asset recovery, as the latter two occur once the predicate offence has taken place. They represent a cycle that the proceeds and instrumentalities of crime will follow. Once a corrupt or other unlawful activity has been committed and its proceeds and instrumentalities have been produced, the criminal will resort to money laundering to disguise the true nature, origin and ownership of these ill-gotten gains. Asset recovery thus comes as a reactive response from law enforcement seeking to rectify the damage that has been caused.

Several measures exist which are designed to frustrate and inhibit those seeking to launder assets. These measures represent a pre-emptive effort to reduce and eradicate money laundering, and include procedures that ensure strict adherence by financial institutions to Know Your Customer (KYC) rules, including regulations covering Politically Exposed Persons (PEPs) – senior government and political figures that are most likely to have access to public resources. Such procedures are aimed at ensuring financial institutions perform advanced screening of clients to determine their susceptibility to crimes such as bribery and corruption, and the likelihood that they will use their accounts to launder money.

Thus, financial institutions must put in place appropriate the abovementioned risk management systems so as to determine the source of wealth and funds. Furthermore, these measures increase the possibility of detecting instances where public officials and other persons who are (or have been) entrusted with prominent public functions are abusing their positions for private gain.

The importance of such risk management systems for the prevention and enforcement of anti-corruption and anti-money laundering measures cannot be underestimated. On the one hand, it allows for the financial institution to verify the identity of those customers and any individuals who ultimately own or control customers that are legal persons (such as companies) or legal arrangements (such as trusts) prior to establishing business relationships or conducting transactions on behalf of customers.

On the other hand, such record keeping measures ensure that there is a reliable paper trail the authorities can use to trace the proceeds of corruption, and use as evidence to prosecute corruption and other criminal activity. The authorities thus must have adequate, accurate and current information that identifies the individual(s) who own or control legal persons and legal arrangements. This increases the transparency of ownership, and makes difficult to hide the proceeds of crimes such as corruption within a company or trust. To that end, countries must ensure that appropriate measures are put in place for the production of such information.

These precautions ultimately increase transparency by making it difficult for corrupt persons to conduct business anonymously, or hide their business relationships and transactions behind other people, corporate structures, or complex legal arrangements.

It should be noted that even though these existing safeguards have been increasingly successful, they are still only able to deter a certain portion of laundered assets. Consequently, there still exists a great need to develop asset recovery initiatives to assist in rectifying the massive amount of damage caused by the continuing prevalence of money laundering.

There exists a great need for projects designed to improve the capacity of investigators and prosecutors in techniques of asset recovery.

In that regard, attention should also be given to a multi-stakeholder approach to the asset recovery processes and in combating money laundering. Due to the fact that globalisation has pushed the regulatory capacities of the state to its limits, substantive areas which are touched upon by the asset recovery processes and the fight against money laundering require a response not only by the state, but by other actors which can assist it, e.g., civil-society organisations, academia and the private sector.

One such approach is public-private partnerships, in which governments play an active part in the regulatory process with the assistance of private initiatives. Technical assistance seeking to strengthen the participation of civil society and the private sector, such as local financial institutions, in the creation of regulatory framework could greatly assist the levels of governance, transparency and overall confidence of the recipient country.

One such example are partnerships between financial institutions in developing countries and Development Financial Institutions. The latter could complement their assistance in financial infrastructure, e.g., banking regulations, with the necessary requirements to combat corruption and money laundering, e.g., KYC and enhanced due diligence (EDD) regulations.

Nevertheless, appropriate checks and balances need to be put in place in order to ensure that information produced by the private sector will not be abused in such a relationship, leading to regulations that may not be favourable to common interests.

The Wolfsberg Principles

In 1999, after a series of reputational disasters for the banking industry in the United States and in Europe, the Basel Institute on Governance and Transparency International convinced two leading banks to form the core of a group aiming at the creation of customer due-diligence standards in private banking. The group rapidly grew to the now twelve key industry players, controlling roughly 60-70% of the world market in private banking.

The Wolfsberg Anti-Money Laundering Principles on Private Banking were written in 2000 – were rapidly followed by further standards on preventing the financing of terrorism, on correspondent banking, anti-money laundering issues in the context of investment and commercial banking and texts relating to the risk-based approach. In 2002, the Anti-Money Laundering Principles on Private Banking were updated in the light of recent developments.

In February 2007, the Wolfsberg Group made its Statement against Corruption[6], in which it seeks to address the issue of corruption from the following perspectives:

First, by discussing the measures to prevent corruption that financial institutions may themselves consider internally to ensure that their own employees adhere to high standards of integrity;

Secondly, by considering the misuse of financial institutions to further acts of corruption together with some of the measures that financial institutions could implement to attempt to mitigate activity involving corruption; and

Thirdly, by highlighting the importance of taking a multi-party approach to combating corruption which includes efforts by governments and other entities. Areas for co-operation relevant to the financial aspects of corruption are set out for further consideration in the last section of this Statement, the aim of which is to promote further dialogue among the relevant parties.

The Wolfsberg initiative has managed to establish itself as a key policy interlocutor with the regulators and international bodies; the standards are increasingly referenced and quoted even by non-members as ‘best practices’ of the industry.

6 www.wolfsberg-principles.com/statement_against_corruption.html.

Asset Recovery, Management of Seized Assets and the Monitoring the Use of Returned Assets

Two additional elements should be considered in the asset recovery process: the management of assets that have been seized and that are pending confiscation, and the monitoring of assets that are repatriated by the recipient country to the victim country.[7]

Both national and international authorities often overlook the management of seized assets that are pending a confiscation order. Some of the problems include the cost of maintenance of the property – whether the taxes that are due during the seizure or the cost of up-keeping it in storage – while the seizure is pending a confiscation order, and the depreciation that the asset may have during its storage. To overcome such a situation, it is useful to analyse how some jurisdictions deal with the challenges, varying from the anticipated sale of the seized assets, such as in the United States and several Eastern European countries, or the promise from the person that committed the corrupt or other criminal act before a court that he/she will not sell the asset and will maintain it in good condition, such as in the United Kingdom.

Whatever the option chosen, if at all since many countries do not yet have regulations in place to adequately address the management of seized assets, countries must bear in mind the fact that the anticipated sale of assets must be properly introduced into a legal system, so as to avoid any conflicts with the right to property of persons who may have a legitimate claim to the assets. Furthermore, an adequate database of seized assets must be put in place so as to ensure transparency and security in the management of such assets.

On the other hand, the monitoring of returned assets is a much debated topic in the asset recovery field. Some countries returning assets have in the past requested or conditioned the return of proceeds of corruption and other criminal acts to spending on specific projects or areas mutually determined by both countries. The argument used by returning countries is that this is an attempt to avoid the returned assets being recycled out of the country again through further corruption or other criminal acts. Many victim countries, in turn, argue that such imposition and conditioning of the returned assets is a violation of their sovereign right to decide how to spend or invest returned money.

The monitoring of returned assets must be mutually decided upon both the recipient and victim countries in a case-by-case scenario, ensuring transparency and dialogue in the process. In past cases, there have been examples countries using independent third parties, such as civil-society organisations from both countries to monitor the process.

7 For more on the management and use of recovered assets, see Jimu, I. Managing Proceeds of Asset Recovery: The Case of Nigeria, Peru, the Philippines and Kazakhstan. (2009), available at www.baselgovernance.org/fileadmin/docs/publications/working_papers/Managing_Prodceeds_of_AR_Final.pdf.

Money Laundering, Asset Recovery and Country Development

The importance of asset recovery and anti-money laundering initiatives has been noted internationally. Combating money laundering has been the focus of numerous international conventions and internal legislative changes in countries for the past 30 years in an effort to fight corruption and other criminal activities. More recently, the United Nations Convention Against Corruption (UNCAC), with over 140 signatory countries, has highlighted the importance of asset recovery as an international priority. UNCAC considers asset recovery as one of the fundamental principles to the Convention.

Money Laundering: Implications for Development

Sustainable and inclusive growth requires mobilising diverse resources, including private capital flows and domestic sources of finance. It also means fostering the development of well-governed local, national and regional financial institutions (including regional development banks); crafting public-private partnerships to finance infrastructure; promoting local bond markets, fair and effective tax systems, sound government debt issuances and management, and financial instruments that support entrepreneurship. To ensure all of this, a country must secure the integrity and reputation of its financial system.

"Sound financial systems [are] essential for private entrepreneurs to emerge, for business to flourish, and for local people and investors from abroad to find the confidence to invest, and create wealth, income and jobs."
Statement from the World Bank

Although it is difficult to quantify the negative effects of money laundering on economic development, it is clear that it damages institutions that are critical to economic growth by diverting resources and encouraging crime and corruption, which in turn slow economic growth and hamper long-term economic development. Moreover, money laundering undermines investor confidence and raises the cost of doing business. It impairs the development of the country by discouraging investments and aid inflows. It also distorts the allocation of resources as well as the distribution of wealth. For example, predictability of the environment for businesses is seen as a critical factor in attracting investment. A World Bank study of 69 countries in 1997[8] showed that a combination of high corruption and low predictability (of corruption) was associated with an investment/GNP ratio of 12.3%. This more than doubled (to 28.5%) where corruption was low and predictability was high. Transparency International has documented consistent evidence over several years of the disproportionate effect of corruption on the poorest.[9] Its latest Global Corruption Barometer (2009) shows the percentage of people in the lowest income quintile paying bribes for services exceeds those in the highest income quintile in all but one of the services surveyed.[10]

Furthermore, the social and political costs of money laundering are also serious. Organised crime may infiltrate financial institutions and public institutions, acquire control of large sectors of the economy and offer bribes to public officials and governments. The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society. Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue. Eventually, money laundering can contribute to social instability.

8 Cited in 'No Longer Business As Usual', p21, OECD, 2000.
9 Global Corruption Barometers 2003-2009.
10 Police: 25% lowest quintile; 15% highest quintile; Judiciary: 17/10; Land services: 14/9; Registry and permit services: 10/8; Education: 11/6; Medical: 9/9; Tax revenue: 5/4; Utilities: 5/4.

The rule of law is the cornerstone of democracy: it ensures that the state exercises its power in a reasonable and not in an arbitrary fashion. Proper checks and balances need to be in place to minimise the opportunities for the abuse of state power. The rule of law promotes certain liberties and creates order and predictability regarding how a country functions. It attempts to protect the rights of citizens from arbitrary use of government power.

Weak anti-money laundering policies and regulations encourage the occurrence of money laundering and its predicate offences. It distorts both trade and capital flows and damages long-term economic development. It may even result in the capture of the state by the criminals or criminal organisations. Three sectors of the economy will be analysed: the financial sector, the property market, and the external sector.

Financial institutions are critical to economic growth. However, a country with endemic money laundering weakens the role of financial institutions for economic growth, creating overall reputational risk and eroding confidence not only in the financial institutions themselves, but also in the country.

The international community, through FATF, has brought some success to enhancing transparency of financial transactions by publicly identifying non co-operative countries and territories (NCCTs). The main objective of this initiative is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centres adopt and implement measures for the prevention, detection and punishment of money laundering to internationally recognised standards.[11]

Criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of society.

This very public approach changes perception among investors and consequently produces pressure on those states to adopt financial reforms seeking to comply with international anti-money laundering and anti-corruption standards. This is so because listed jurisdictions either react to, or anticipate the material economic losses that results, or will result from the listing (Sharman, 2004).

Consequences of being listed may mean that foreign financial institutions may decide to limit their transactions with institutions from non-compliant states, subject the transactions to extra scrutiny (thus making them more expensive), or terminate correspondent or lending relationships altogether.

By contrast, the adoption of anti-money laundering policies reinforces good-governance practices that are important to the development of these economically critical institutions. Several of the basic anti-money-laundering policies are also fundamental, longstanding principles of prudential banking operation, supervision, and regulation (Schott, 2006).

Real property market. The purchase or sale of real property is one of the largest financial transactions a person may undertake. Potential buyers and sellers consider changes in property prices. Moreover, to the extent that property values influence rents, the effect is manifested in the distribution of wealth between landlords and tenants. Finally, property prices significantly influence the building industry.

It is difficult to monitor and explain variations in property prices due to a lack of reliable and uniform information – numerous factors shape the local price of real estate. Criminal seeking to hide the true ownership of the proceeds of their crimes take advantage of this fact. This in turn means that money laundering diverts resources to this less productive activity. Furthermore, criminal organisations can transform productive enterprises into sterile investments by operating them for the purposes of laundering illicit proceeds rather than as profit maximising enterprises responsive to consumer demand and worthy of legitimate investment capital.

11 www.fatf-gafi.org/document/51/0,3343,en_32250379_32236992_33916403_1_1_1_1,00.html.

Case Study: Theodor Obiang

Theodor Obiang is the President of Equatorial Guinea, the third-largest oil-producer on the African continent. The country has an annual income of EUR 3 billion (GBP 2.46 billion) from the oil market, but 65% of the population lives in extreme poverty.

The United States Senate found in July 2004 that money from Equatorial Guinea had passed through a financial institution in the United States. USD 26 million (GBP 17 million) had been redirected by President Obiang to an account in Spain of a shell corporation owned by him. A large portion of the money was apparently used to buy villas in Spain for members of his family.

The U.S. investigation concluded that the financial institution in that country had failed to comply with anti-money laundering obligations in connection with certain transactions relating to the accounts held by Equatorial Guinea and that, without any room for doubt, such transactions had their criminally unlawful origin in embezzlement in that country.

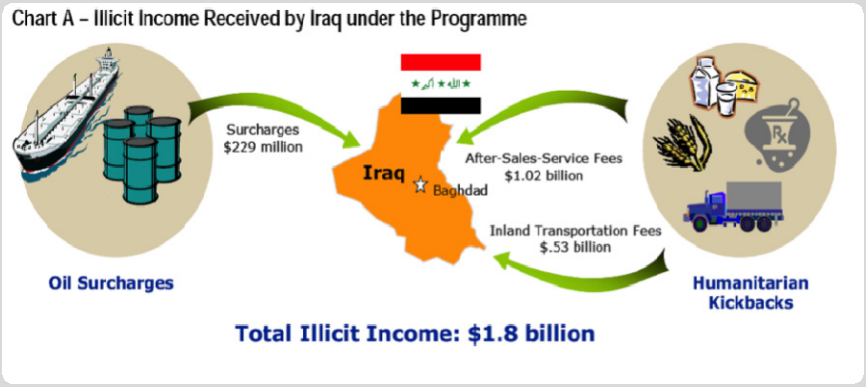
Civil-society organisations have filed a criminal complaint before the Spanish courts to investigate the shell corporation and the alleged money laundering activities in Spain.

The external sector. Money laundering can also impair a developing country's economy through trade and international capital flows. The well-recognised problem of illegal capital flight from developing countries is typically facilitated either by domestic financial institutions or by foreign financial institutions ranging from offshore financial centres to major money-centre institutions such as those in Tokyo, London and New York. Given that illegal capital flight drains scarce resources from developing economies, transnational money-laundering activity impairs developing country growth. Thus, confidence in a country demonstrated by its citizens, foreign investors and financial institutions is important for developing economies because of the role it plays in investment decisions and capital inflows.

The Oil-for-Food Scandal

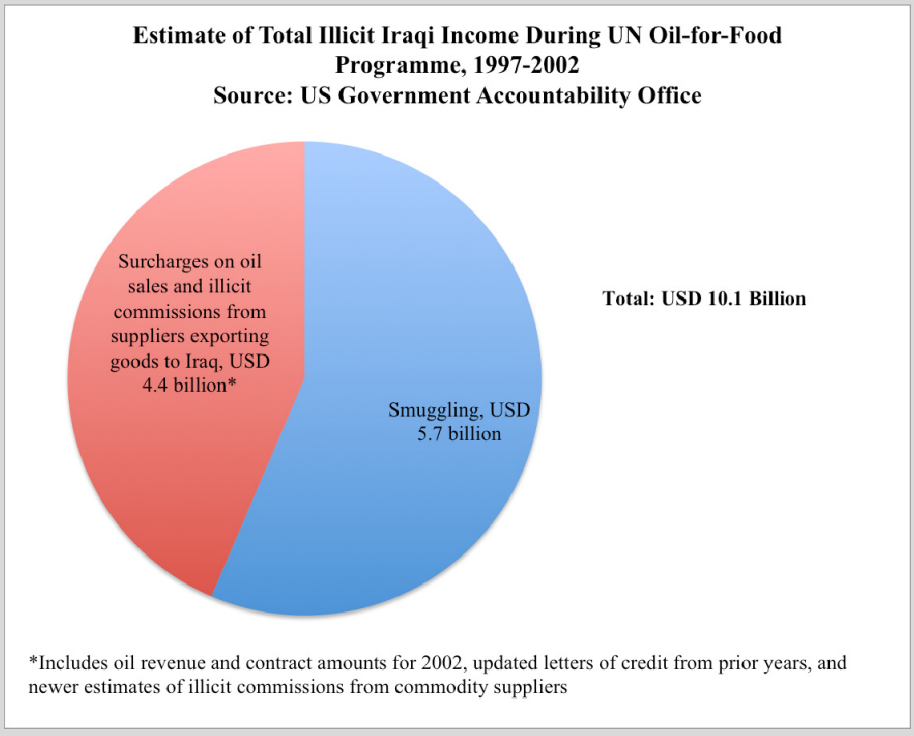
The Oil-for-Food Programme (OFFP) was established by the UN in 1995. The programme intended to allow Iraq to sell oil on the world market in exchange for food, medicine, and other humanitarian needs for ordinary Iraqi citizens without allowing Iraq to boost its military capabilities after the U.S. drove Iraq out Kuwait in 1991.

The programme, which ended in 2003, suffered from widespread corruption and abuse. It was dogged by accusations that some of its profits were unlawfully diverted to the government of Iraq and to UN officials. It became evident that both the oil exports and humanitarian imports under the Programme were accompanied by illicit activities that increasingly undermined the purpose of the Programme and eroded support for its maintenance. Persistent allegations of mismanagement and corruption within the UN itself prompted the Secretary-General of the UN to appoint the Independent Inquiry Committee (IIC) in April 2004.



The IIC's final report in September 2005 includes in its findings, among others, the fact that Saddam Hussein's regime derived far more revenues from smuggling oil outside the OFFP than from its demands for surcharges and kickbacks from companies that contracted within the Programme. The value of oil smuggled outside of the OFFP is estimated to be $10.99 billion (through over-pricing schemes), as compared to an estimated $1.8 billion of revenues that came from Hussein's specific manipulation of the OFFP.

The Oil-for-Food scandal is the biggest heist in the history of humanitarian relief. It involved thousands of contractors in dozens of countries and Saddam Hussein personally obtained vast sums of money from the programme.



Sources:

http://www.oilforfoodfacts.org/faq.aspx

http://www.oilforfoodfacts.org/numbers.aspx

http://www.meforum.org/716/iraq-and-the-importance-of-the-uns-oil-for-food

Money Laundering: Effects of Non-Compliance

Money laundering is often costly to detect and eradicate.

The UNCAC provisions reflect the approach adopted by Financial Action Task Force (FATF) and its 40 Recommendations. FATF is an inter-governmental body with 35 members whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. There are also 27 international and regional organisations which are Associate Members or Observers of the FATF and participate in its work. The Task Force is therefore a 'policy-making body' which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. FATF does not have an unlimited life span but reviews its mission periodically and only continues if the member governments agree that this is necessary. In 2004, its mandate was extended to 2012.

Created in 1990 and revised in 2003, the FATF 40 Recommendations set out the framework for anti-money laundering efforts and are designed for universal application. They provide a complete set of counter-measures against money laundering covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation.

Since the infiltration of proceeds of crime into legitimate financial sectors of the economy can threaten economic and political stability, the mutual evaluations conducted by FATF members may influence the effectiveness of progress in the implementation of the FATF recommendations. This in turn can be utilised by local and foreign investors, as well as aid development agencies to assess the political stability and the economic predictability of a country.

Money Laundering and Development Aid

Official Development Assistance (ODA) is a major tool of development policy. Aid-supported policy reforms, as well as improvements in governance and country investment have made it possible to reduce poverty in many least developed countries. Development assistance has also helped mobilise more foreign and domestic investment to those countries to develop economic infrastructure and lower overall risks.

However, ODA is prone to embezzlement, misappropriation, corruption and other forms of criminal activity, many of which are predicate offences to money laundering. This in turn allows for abuse and theft of technical and humanitarian assistance funds originating from international aid, e.g., from funds designed for emergency disaster relief, as the rapid nature of the distribution and spending of these funds make them particularly susceptible to corruption and money laundering. In many ways, money laundering and other forms of illicit outflows can be seen as one reason for underachieving efforts in aid assistance, such as the case of the fraud and corruption scheme in the tsunami reconstruction funds in the Aceh province in Indonesia.

ODA is prone to embezzlement, misappropriation, corruption and other forms of criminal activity, many of which are predicate offences to money laundering.

Studies indicate that the least developed countries do not benefit fully from development aid because as much as 30% of development disbursements may be siphoned off by corrupt actors and criminal organisations, which will inevitably launder them and place them in more stable and reputable economies, i.e, financial centres. Where such funds come from a multilateral development bank loan arrangement, the country will still have to repay the full amount even though it has benefited from none, or only a fraction, of the aid intended.

Corruption in development aid, and consequently the laundering of those assets, may lead to donor fatigue. Moreover, ODA inflows to the recipient country may be directly at risk of money laundering, which will have negative impacts on the economy. Donor agencies, on the other hand, are also concerned to protect their development assistance, and donor fatigue may lead to added pressure in protecting domestic revenues. Donor agencies must thus ensure that deliverables are met and that aid disbursements are used efficiently and for the purposes intended.

For this reason, greater policy coherence is needed with the support of existing international treaties such as the UN Convention against Corruption (UNCAC) and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), e.g., policies to recover misappropriated development funds should be supported by complementary policies which address banking secrecy and effective anti-money laundering policies. The specific focus of donor anti-corruption efforts has been on programmes to strengthen mechanisms associated with those areas where corruption is most likely to occur, for example in procurement and financial management systems.

Both donor and recipient countries need to confront and tackle illicit financial flows and corruption in development aid as they may potentially undermine the efficiency of such programmes and also the rights of citizens of the recipient countries. They need to collaborate to assess and mitigate the money laundering (and predicate offences) risk in their developing strategies and build and adequate response plan.

Direct investment in a country and overall levels of governance are some of the indicators used by development agencies to assess the progress and efficiency of the development programmes they finance. Money laundering causes reduction of investor

confidence, raises the overall cost of doing business, and lowers the governance levels of a country. These indicators are used to assess the overall levels of social and economic development of the country itself.

Combating money laundering through policy reform, as well as building capacity for the investigation and prosecution of such crimes is a crosscutting theme in the development agenda that has too often been neglected. Combating corruption and money laundering requires development aid in both preventive, e.g. through legal reform and policy change, and enforcement aspects. Giving recipient countries the capacity to understand how money laundering works and how to combat and prevent it will raise investor confidence while ensuring greater governance levels.

Supporting Asset Recovery Efforts

Donors have been willing to increase ODA spending on areas that address accountability in society. This trend suggests there is a receptivity to, and scope for, increasing funding for specific programmes targeted to raising awareness and building capacities in the fields of asset recovery and of combating money laundering. Funding could be allocated for specific programmes in asset recovery and combating money laundering in the law enforcement field, seeking to strengthen local capacities to investigate and to prosecute corruption and other criminal activity.

Policies to recover misappropriated development funds should be supported by complementary policies which address banking secrecy and effective anti-money laundering policies.

Such funding would provide an added value to the asset recovery and combating money laundering agendas, as it would consolidate experience in the recipient country and ensure financial continuity of investigations and prosecutions. In that regard, the efforts of the UK Government to establish the International Corruption Group is a notable case example of DfID strengthening local capacities to investigate and prosecute corruption both locally and internationally, and ensure the return of stolen assets.[12]

Allocating specific resources available to, or allowing for new investment in such programmes would give recipient countries the tools necessary to create the checks and balances needed to prevent misappropriation of funds. Furthermore, investment in such programmes would also raise investor trust and the rule of law within the recipient countries, alleviating the pressure in development agencies to create their own set of checks and balances.

Capacity building on understanding the mechanics of money laundering, financial investigations and international co-operation could be inserted into legal and judicial development programmes; developing appropriate preventive mechanisms on combating money laundering and corruption could be addressed through public sector financial management and/or free flow of information programmes. Moreover, multi-stakeholder approach to the asset recovery processes could be addressed through programmes on strengthening of civil society.

Moreover, transfer of knowledge allows for the country to have better ownership of not just the aid projects, but also the overall governance and accountability of the project. It becomes a better partner for the aid development agency. More importantly, it reflects the spirit of the Paris Declaration and the Accra Agenda for Action.

Development agencies face diverse scenarios and different levels of compliance with the international standards on combating money laundering as well as requirements of the asset recovery process, e.g., international co-operation, financial investigations and

12 More information available at www.cityoflondon.police.uk/CityPolice/Departments/ECD/anticorruptionunit/DfID.htm.

criminalisation). They may encounter lack regulation that complies with the said international standards or lack of knowledge of these standards altogether.

Development agencies should first assess whether there is sufficient political will from local authorities to engage in legal reforms that comply with the anti-money laundering and asset recovery international standards. If such political will is found, donor agencies could engage local authorities in conducting gap analyses on the regulations and procedures of the recipient country. This is an important first step to assess what is needed in the recipient country and establishing short-, medium- and long-term action plans seeking to address the asset recovery process and anti-money laundering standards.

Such analyses would establish whether the recipient country has institutions seeking to combat money laundering and that can respond adequately to the asset recovery process, e.g., Financial Intelligence Unit, Central Authority for international co-operation, asset management agency, etc. They also analyse the effectiveness of said institutions and others, such as the public prosecution and the judicial system.

There must be both commitment and political will in the recipient country to ensure that asset recovery practices and money laundering preventive measures are put in place.

Gap analyses also check whether the recipient country produces the necessary intelligence and paper trail in combating money laundering, on the one hand, and whether an appropriate and timely response based on such intelligence is possible. Adequate capacities within the law enforcement authorities and prosecutors to respond and act upon such intelligence are critical for the asset recovery process, e.g., financial investigative techniques and mutual legal assistance.

However, such a response from law enforcement authorities and prosecutors is only possible if adequate tools are found in the regulations of the recipient country. Technical assistance in this area includes ensuring legislation that allows for the ability to freeze or seize proceeds of corruption and other criminal activity – either through conviction or NCB forfeitures, to conduct and carry out special investigative techniques such as wiretapping, among others.

Finally, donor agencies should seek to ensure that the recipient country has appropriate capacities to ensure the independence of the Judiciary to ensure a fair and impartial trial. To ensure this, judicial integrity tests should be conducted periodically by the recipient country to avoid the misuse of power by local judges.

Some other areas in which asset recovery and combating money laundering programmes could be inserted include, but are not limited to:

1. Support for systemic reforms, reforms and capacity building and actions to address sector-specific problems;
2. Enhancing good governance programmes that are the building blocks of transparency and accountability, specially through:
    a. Diagnosing the systemic risk of money laundering by conducting gap analyses to better understand the system and ensure proper timelines for setting the necessary policies, regulations and legislation in place.
    b. Engaging civil society in the anti-corruption and anti-money laundering strategies.
    c. Strengthening human resource capacities, through adequate training in anti-money laundering policies and effective investigation and prosecution mechanisms to strengthen the rule of law.
    d. Targeting case studies, by coaching local authorities in real case scenarios on the steps needed to effectively combat money laundering and ensure efficient asset recovery procedures.

e. Strengthening the judiciary and the judicial processes, by ensuring technical assistance seeking to facilitate the independence of the judiciary, integrity and efficiency of the judicial system and its actors; reducing ambiguity in interpretation of laws and regulations; better public dissemination of laws and legal opinions; consistent and transparent penalties.

f. Reforming Public Administration regulations, to include safeguards on anti-corruption and anti-money laundering policies through enhanced scrutiny of public officials.

g. Reducing bureaucracy and arbitrary discretion, by defining more precisely activities requiring licences or permits and curtailing opportunities for money laundering and corruption.

h. Reforming procurement processes, so as to ensure transparency and accountability in the procedures, as well as other safeguards that ensure anti-money laundering measures are put in place.

Nevertheless, technical assistance in and by itself is not sufficient to curb money laundering. There must be both commitment and political will in the recipient country to ensure that asset recovery practices and money laundering preventive measures are put in place. Political will and commitment from a country, in turn, can be achieved through positive dialogue and awareness-raising on the damaging effects that money laundering has on the development of the country.

Donor agencies must make their efforts in combating money laundering and assisting in the asset recovery processes more efficient. One of such ways is through networking with other bilateral and multi-lateral donors (such as the IMF, the World Bank Group, and UNODC) and providers of technical assistance (such as the International Centre for Asset Recovery) in this field and also participating in regional anti-money laundering initiatives usually carried out by FATF-style Regional Bodies. Bilateral agencies should be encouraged to participate in such meetings to assess the level of participation of recipient countries and also to assess their level of development in not only in anti-money laundering regulation, but also concerning the asset recovery processes.

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The traditional criminal response has been insufficient in the combat against corruption, money laundering and other financial crimes. Billions of dollars continue to be laundered by individuals and criminal organisations through and ever-growing myriad of complex financial schemes. Official Development Assistance (ODA), a fundamental tool of development policy, is equally prone to corruption, embezzlement and abuse — to the extent that up to 30% of disbursements may be siphoned off by corrupt actors and criminal organisations.

The international response to effective combating of such crimes is through the asset recovery process. It is a multi-layered process which spans from intelligence gathering to recovering of stolen assets. Its effectiveness, however, is dependent on knowledge on the process, political will from within and co-ordination of efforts between countries that fall victim to such crimes and countries which are recipients of these proceeds.

This brochure seeks to provide a basic understanding of money laundering and the asset recovery process and their link with development agencies. It covers the definition of money laundering, its predicate offences and some typologies, as well as a basic understanding of the phases and steps which comprise the asset recovery process. Furthermore, it demonstrates how these two fields link with the development agenda. The brochure, however, does not present an exhaustive list of activities that can be pursued by development agencies to reduce money laundering and corruption in their disbursements and in recipient countries, but rather seeks to inspire people to reflect on activities that may be pursued to reduce money laundering and corruption through asset recovery.

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