

# U4 Expert Answer



## International support to anti-money laundering and asset recovery: success stories

### Query

**What recent examples are there of success stories at country level from international work on anti-money laundering and asset tracing/recovery and support for financial intelligence units? What are the existing tools/indicators to measure the effectiveness/impact of these approaches which are not just about the process?**

### Purpose

We are particularly interested in any success stories which demonstrate an impact on people's lives, savings in public losses and concrete policy changes.

### Content

1. Following the money: progress in anti-money laundering (AML) approaches
2. Repatriating the money: asset recovery success stories
3. Measuring the impact of AML and asset recovery
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5. Appendix: potential indicators for SDG target 16.4 on illicit flows

### Summary

There are few documented "success stories" in AML and asset recovery in the literature. Some progress has been achieved in AML in the last two decades, with many countries adopting AML regimes and complying with the Financial Action

Task Force (FATF) recommendations. In spite of this progress, implementation and enforcement of AML standards remain low.

The recovery process of stolen assets is complex and characterised by decade-long international legal processes with limited return compared to the estimated US\$20-40 billion that are stolen annually from developing countries. There are few recent examples of successful asset recovery cases, apart from the four well documented asset recovery processes in Nigeria, Peru, the Philipinnes and Kazakstan.

There is, therefore, little evidence of the impact recovered assets and AML have on poverty alleviation, and there are no mechanisms in place to systematically track this impact. In fact, the literature points to a lack of theoretical and empirical work to measure and track the impact of AML/asset recovery processes. There is a need for robust oversight mechanisms as well as continuous monitoring of the use of recovered assets to ensure that they are used properly and efficiently for development outcomes and poverty alleviation.

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## 1. Following the money: progress in anti-money laundering (AML) approaches

The amount of money stolen from developing and transitional jurisdictions and hidden in foreign jurisdictions each year is approximately US\$20 to 40 billion – a figure equivalent to 20% to 40% of flows of official development assistance (World Bank 2007). These stolen assets have a profound impact on societies in terms of eroding trust in public institutions, damaging the private investment climate, and undermining public service delivery mechanisms and poverty alleviation programmes. They deprive developing countries of valuable capital that could otherwise be invested in economic and social development.

Money laundering refers to the process by which a person or a company hides the true origin, nature and ownership of their criminal proceeds so that they appear to have originated from legitimate sources. Asset recovery is the reactive response from law enforcement and prosecutors to trace those unlawful assets, seize them from the perpetrators and restore them to their rightful owner to rectify the damage caused (Basel Institute on Governance 2011). Anti-money laundering (AML) and asset recovery efforts aim to suffocate the financial flow linked to criminal activity.

Combatting money laundering and enabling asset recovery are resource intensive and time consuming endeavours as they involve complex legal and procedural processes across borders and jurisdictions. Moreover, assets are often hidden through the use of shell companies in countries with strong bank secrecy provisions. In addition, the difference in legal systems, ambiguity in legislation, weak investigative capacity, as well as a lack of political will and the complexity and costs involved, pose even greater challenges for the effective recovery of assets (Martini 2014).

As of today, there are few documented “success stories” in AML and asset recovery. In fact, most papers reviewing AML standards and regulations suggest a lack of enforcement and implementation. However, there are a few promising emerging practices and initiatives in both AML and asset recovery that are generally acknowledged to have promoted greater transparency in offshore finance and banking, making it harder to hide money in domestic or foreign financial centres (Marshall 2013).

## Overview of progress made in anti-money laundering

Several measures exist to reduce and eradicate money laundering, including procedures that ensure strict adherence by financial institutions to anti-money laundering rules such as know your customer (KYC) rules, regulations covering politically exposed persons (PEPs) and disclosure of beneficial ownership.

### The AML framework

AML is governed by the the recommendations of the Financial Action Task Force (FATF). Created in 1990 and revised in 2003 and 2012, FATF’s 40 recommendations set out the framework for AML efforts and are designed for universal application. They provide a complete set of counter-measures against money laundering (Basel Institute of Governance 2011).

FATF recommendations require, for example, that financial institutions know their customers, understand their risk profiles and the source of their wealth, and monitor their transactions. Financial institutions are also required to identify the beneficial owner in cases where the client is a corporate body or trust and to be especially careful in cases involving PEPs.

More specifically, the main recommendations from the FATF standards and other international treaties can be grouped into six categories (Kukutshka forthcoming):

- criminalisation of money laundering with the widest range of criminal offences as predicate offences
- record keeping: financial institutions are required to keep records of all transactions for a period of at least five years
- customer due diligence/know your customer, including the identification of the beneficial owner of accounts opened for legal entities, i.e. the natural person who ultimately owns or controls them
- PEPs: financial institutions must apply heightened scrutiny to PEPs, i.e., individuals who are or have been entrusted with prominent public functions in a foreign country as well as their family members and close associates. Financial institutions are thus expected to have appropriate risk-management systems to identify PEPs.
- notification of large and/or suspicious transactions: financial institutions and a range of non-financial businesses and professions are required to report certain transactions to

- the appropriate authority, especially transactions that exceed a certain size or when there are grounds to suspect that the funds involved are the proceeds of criminal activity
- establishment of a system of regulation and oversight: countries are required to create financial intelligence units to oversee the fulfilment of the international standards, process notifications and forward them to law enforcement bodies where appropriate

### Enforcement and implementation of the AML framework

Some progress has been achieved in AML in the last two decades. Many countries have adopted AML regimes, implemented standards and complied with the FATF recommendations, resulting in enhanced levels of scrutiny and transparency of financial transactions (Marshall 2013).

The FATF Mutual Evaluation Review processes, for example, have helped improve compliance with FATF standards by “naming and shaming” non-cooperative countries and territories (OECD 2014). This strategy pushed non-compliant states to adopt the necessary financial reforms to fulfil with the international anti-money laundering and anti-corruption standards as being featured on the list of non-cooperative states could result in material economic losses (Basel Institute of Governance 2011).

In spite of this progress, implementation and enforcement of AML standards remain low. Although the global supervision of regulation is supposed to be done by the FATF, there is a broad consensus that the task force has been too vague about due diligence, and does not have the capacity to effectively monitor enforcement and implementation (Marshall 2013). As a result, little is known about the effectiveness of the AML regimes in practice.

The 2011 FATF evaluations of the workings of the AML system, however, concluded that the standards are not always being implemented by financial institutions nor are the associated laws and regulations being enforced by regulatory authorities or supervisors. The cases included in the report show how financial institutions fail to follow AML procedures – even where those procedures called for only an ordinary risk-based approach, giving corrupt PEPs continued and unabated access to the global financial system (FATF 2011). Similar findings were reported by the Stolen Asset Recovery (StAR) initiative on asset recovery, which found that 80% of all

jurisdictions are not meeting PEP related requirements (StAR 2010).

The OECD reached similar conclusions when assessing compliance with the AML regime within its member states. The evaluation conducted in 2014 concluded that while the AML regimes have improved in many OECD countries since the first set of FATF recommendations were issued in 2003, some weaknesses remain. The implementation of a number of core recommendations, for example, remains low. Compliance with PEPs regulation and beneficial ownership, for example, are areas of weakness across most OECD countries: over one-third of OECD members do not comply with the PEP recommendations, and 27 out of 34 countries perform below expectations on beneficial ownership of corporate vehicles and trusts. OECD countries also scored poorly on average for their compliance with “regulation and supervision”, “measures taken towards high-risk jurisdictions”, “customer due diligence and record keeping”, and “reporting of suspicious transactions and compliance” (OECD 2014).

The level of enforcement, however, could improve in the future, as FATF introduced a new evaluation methodology in 2013 with a greater focus on the practical implementation and effectiveness of a country’s frameworks (Transparency International 2014). Between 2014 and 2021, as part of its fourth round of mutual evaluations, the FATF and its regional bodies have committed to publish more than 180 country specific reports over the next couple of years. These reports will evaluate what governments are doing to fight money laundering and stop illicit financial flows (IFFs).

While implementation in OECD countries is important, developing and low income countries are more exposed to the risk of money laundering. These countries often have proportionally weaker AML regimes and have made little progress to strengthen and improve them: low income and sub-Saharan countries, for example, have a proportionally high presence in the top third of the highest risk category of the 2016 Basel AML Index. This index covers 149 countries and provides risk ratings based on the quality of a country’s framework for AML and countering terrorism financing (CFT) (Basel Institute on Governance 2016).

It is worth mentioning, however, that the countries with the highest AML risks often suffer from structural and functional vulnerabilities such as high rates of perceived corruption, weak judicial

systems and inadequate financial sector standards (Basel Institute on Governance 2016). It is unclear whether better implementation and enforcement of the international AML standards would help reduce money laundering in developing countries as these measures have often been deemed ineffective in preventing and detecting money laundering in countries with a predominantly cash-based economy or a reliance on informal transfer systems, as is the case in many developing countries (Sharman and Mistry 2008).

Over the past few decades, many countries have also established financial intelligence units to help curb money laundering. However, in practice, there is little evidence of their success (Marshall 2013, Strauss 2010). The literature shows that the effectiveness of these units is often hampered by the weak implementation of existing legislation, limited operational effectiveness and limited inter-agency coordination, lack of experience, staff and inadequate means of the often rather young institutions, leading to few convictions of money launderers. This is, for example, the case in Central and Eastern Europe (Strauss 2010). Case studies of FIUs in Botswana, Tanzania and Zambia also suggest they face similar challenges including a lack of human and financial resources and flaws in enabling legislation (Goredema 2011). Sharing of information between FIUs and other government departments in the same country and between FIUs globally is also often problematic.

However, there are indications of progress made in coordination, as evidenced in the case of the Arab Spring; where alerts went out, banks identified and froze assets (Marshall 2013). A mere hour after Egypt's ex-president Hosni Mubarak stepped down in February 2011, the Swiss government ordered its banks to freeze his assets held in Switzerland on suspicion that they were the proceeds of corruption and the EU followed suit in March. The European Union also ordered an EU-wide freeze of assets linked to Tunisia's ex-president Zine El Abidine Ben Ali in January 2011 (OECD 2014).

### Country level progress

Against such a background, the Helpdesk was not able to identify a documented example of a country which is referred to as a "success story" in fighting money laundering in the literature. However, a few countries have made some notable progress in recent years, mainly in aligning their legal and institutional framework on the FATF recommendations. The effectiveness of

such legal measures and their impact on actually reducing money laundering is still largely unknown.

Assessing the effectiveness of anti-money laundering frameworks is hampered by a lack of publicly available statistics regarding AML activity by authorities. In February 2017, Transparency International published a report which sought to find a standard set of supervisory and enforcement statistics across 12 countries hosting major financial centres, including the number of banks inspected, the number of regulatory breaches found, and the number and value of sanctions imposed. The report's findings show that currently just one in three of such statistics is publicly available across the 12 countries assessed (Transparency International 2017).

In Africa, tangible signs of measurable progress in AML/CFT regimes have been recorded in Ethiopia, Kenya and Tanzania, whose efforts have been recognised by the international community through their removal from the FATF global AML/CFT monitoring process (Global Center on Cooperative Security 2015):

#### Ethiopia

Ethiopia has made substantial progress in recent years to strengthen its legal framework, capacity building and improving coordination and information sharing between relevant institutions. As a result, the country is no longer subject to the FATF global AML monitoring process since 2014.

The country passed its first AML legislation in November 2009, which was updated in 2013, calling for the establishment of the financial intelligence centre (FIC) and effectively and comprehensively criminalising money laundering. In September 2013, Ethiopia was accepted as a full member of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). As part of the membership process, the country gained access to a regional network of AML professionals and benefitted from opportunities for enhanced cooperation with other FIUs in the region. The FIC is committed to achieving membership in the Egmont Group of financial intelligence units.

The FIC was established in 2010. Now fully operational, the FIC consists of 22 core personnel and is still developing its analytical capacity through continued staff training. It reported receiving 667 suspicious transaction reports and almost 1.1 million cash transaction reports

between July 2013 and 7 July 2014. The international community supports the country's commitment to strengthen its AML regime, including through targeted technical assistance for the FIC.

In the past few years, Ethiopian financial institutions have shown strong political commitment to enhancing AML compliance, with the remaining impediments attributed in part to limited resources and institutional capacity.

### Kenya

Kenya has demonstrated an increased political will to address AML in recent years. With the passage of AML and terrorism prevention laws in 2012, Kenya is now considered compliant with international AML standards.

Kenya's FIU, the Financial Reporting Center (FRC), is fully operational and began receiving suspicious transaction reports (STRs) in October 2012. It has received a total of 345 as of December 2014 where 85 of these reports were sent to law enforcement and one case involving money laundering is moving through the Kenyan judiciary. FRC operations are hampered by limited institutional resources as well as a lack of resources among law enforcement professionals, limiting the number of prosecutions for money laundering offences.

In recognition of these efforts, and just like Ethiopia, Kenya was removed from the FATF monitoring process in 2014 and is also exploring membership of the Egmont Group.

### Tanzania

Tanzania is also moving towards effective and enhanced implementation of its AML laws through enactment of its national AML/CFT strategy and the strengthening of its FIU operations.

Tanzania's FIU is operational but lacks staff and support in the form of training to enhance their analysis and dissemination capacities. The FIU currently operates at half of its optimal staffing level, with a permanent staff of 15 professionals and limited office space. It receives approximately 150 STRs annually. Tanzania's membership in ESAAMLG and the Egmont Group remains an important component of its regional and international cooperation network.

### United Kingdom

Since 2006, the UK has a specialised team, funded by Department for International Development (DfID), working in the Metropolitan Police on corruption cases. In 2012, the UK launched a cross-government task force on asset recovery to Arab Spring countries. It is a multi-agency team under a single operational lead, involving staff from the Home Office, Serious Organised Crime Agency, Metropolitan Police and Crown Prosecution Service, with 10 investigators based in the UK and Egypt (StAR 2014). This multi-agency task force has visited Cairo to forge links with their counterparts in the Egyptian authorities, and has posted a Crown Prosecution Service prosecutor and a Metropolitan Police financial investigator to Egypt (OECD 2014).

In addition, the UK launched the Joint Money Laundering Intelligence Taskforce (JMLIT) in 2016. It is composed of government, the British Bankers Association, law enforcement and over 20 major UK and international banks, and has the goal of combatting high-end money laundering. The initiative is largely considered a success, contributing to: "a more informed prioritisation of money laundering risks by UK financial institutions; an improved collective understanding of new and emerging money laundering threats; targeted and coordinated interventions by law enforcement and the financial sector, and greater opportunities to use the tools and expertise across the public and private sector to tackle money laundering threats impacting the UK" (JMLIT [website](#)). In terms of concrete outcomes, it resulted in: arrests of individuals suspected of money laundering; bank led investigations into customers suspected of money laundering; identification of suspicious accounts; heightened account monitoring by banks; closure of bank accounts suspected of being used for the purposes of laundering criminal funds; and restraint of £145,000 (US\$176,400) of suspected criminal funds. A similar approach is being explored in Australia.

### Bangladesh

Bangladesh has made considerable progress with its legal and institutional framework in recent years, with a high level of technical compliance with the 40 FATF recommendations. The Bangladesh Financial Intelligence Unit functions well with sophisticated systems and has skilled, well-trained and experienced staff, demonstrating well-performing analysis capabilities and the dissemination of a range of good quality

intelligence products. However, the use of financial intelligence by law enforcement agencies remains limited and needs improvement to ensure greater effectiveness of the AML regime. At the time of the FATF evaluation, Bangladesh had four money laundering convictions and one acquittal and 214 prosecutions under trial (FATF 2016a).

### Guatemala

Guatemala has a fairly high level of compliance with FATF recommendations. The country has an effective system for generating financial intelligence. The financial intelligence generated by the financial intelligence unit (Intendencia de Verificación Especial – IVE) is used by the competent authorities in money laundering investigations, criminal activities and asset forfeiture. The AML system in Guatemala has achieved substantial levels of effectiveness, primarily regarding financial intelligence, investigation and prosecution of money laundering, asset confiscation, and means of crime and international cooperation. However, it is necessary to provide more human and technological resources to the public prosecutor's office and the police for the investigation and the prosecution of money laundering (FATF 2016b).

## 2. Repatriating the money: asset recovery success stories

### Overview of progress in asset recovery

Improving asset recovery is expected to yield many benefits. It can both help deter future corruption by ending impunity for corrupt officials hiding assets abroad, bring justice to victims by speeding up the return of stolen assets to legitimate governments and help spur development by providing additional resources to developing countries (Marshall 2013; OECD 2014).

Recognising these potential benefits, the international community has committed to repatriate stolen assets to their jurisdiction of origin and many OECD members have reaffirmed their commitment through major forums and political processes, such as the G8 and G20. Asset recovery is also increasingly recognised as a core development issue in aid effectiveness (OECD 2014). The United Nations Convention Against Corruption (UNCAC) has an entire chapter dedicated to asset recovery (Chapter 5, UNODC 2004), requiring state parties to take measures to restrain, seize, confiscate and return the proceeds of corruption, using a variety of

mechanisms. In 2007, the World Bank with the United Nations Office on Drugs and Crime (UNODC) launched the Stolen Asset Recovery (StAR) Initiative, "an initiative to help developing countries recover assets stolen by corrupt leaders, help invest them in effective development programs and combat safe havens internationally" (Marshall 2013).

Despite these international efforts, the recovery process of stolen assets is complex and difficult and often characterised by decade-long international legal processes with limited return. In general, progress in this field has been modest, with only a limited number of countries having frozen or returned assets.

According to a survey conducted by the OECD and the StAR initiative, between 2006 and 2009, only four countries (Australia, Switzerland, the United Kingdom and the United States) returned stolen assets, totalling US\$276 million, to a foreign jurisdiction. These countries, plus France and Luxemburg, had also frozen a total of US\$1.225 billion at the time of the survey. Similar figures were reported by the OECD in 2014 for the period between 2010 and June 2012. During this time, a total of approximately US\$1.4 billion of corruption-related assets were frozen, but only US\$147 million were returned to a foreign jurisdiction (OECD 2014). Moreover, only three OECD countries returned corruption-related assets during this period: the United Kingdom (45% of total assets returned), the United States (41%) and Switzerland (14%) (OECD 2014).

In contrast to the figures found in the first survey covering the 2006-2009 period, where most of the assets were returned to developed countries, between 2010 and 2012, an increasing percentage of assets are were returned to developing countries (StAR 2014). These figures, however, remain modest, especially when contrasted with the estimated US\$20-40 billion that are stolen annually from developing countries and hidden in financial centres (StAR 2014; Marshall 2013).

This gap is also apparent in individual cases. In the Philippines, Ferdinand Marcos siphoned between US\$5-10 billion during his reign, and the country managed to recover about US\$684 million from foreign jurisdictions (Marshall 2013). In the case of general Sani Abacha of Nigeria, the recovery processes that started in 1999 and took over 10 years to solve, only returned US\$1.3 billion out of the estimated US\$3-5 billion of public money he is suspected to have looted.

## Obstacles to asset recovery and ways to overcome them

Successful cross-border asset tracing and recovery processes are cumbersome, long and expensive, requiring a number of steps, including (CIFAR 2016):

- tracing and identifying the assets, which not only involves locating the funds but also to prove that the assets are linked to the crime or to the offender, or both
- freezing and confiscating the stolen assets, which involves taking legal action to prevent assets and funds from being moved or spent
- returning the assets to their rightful owners: it is essential that the receiving country has accountable and transparent mechanisms in place to manage the returned assets

There are, however, three major obstacles to the successful completion of these steps, which are explained below.

### Legal and procedural obstacles

An important obstacle to returning stolen assets to countries is being able to provide solid enough proof that the assets detained in foreign jurisdictions were acquired through illegal/corrupt means (OECD 2014). In addition, the corrupt individual may be deceased, a fugitive from justice or enjoy some form of immunity. Moreover, the beneficial owner of the stolen assets may also be unknown, and, in some jurisdictions, companies involved in corrupt or criminal activities cannot be prosecuted (Basel Institute on Governance 2011).

To address these issues, some countries such as Colombia, Mexico, the UK and the US have introduced legislative changes allowing 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, as recommended by UNCAC (Art. 53 and 54). The latter is achieved through proceedings against the criminal assets themselves, without actually initiating legal proceedings against a person. This greatly simplifies the asset recovery process as civil proceedings require a lower standard of proof compared to a criminal prosecution (Basel Institute on Governance 2011). In addition, civil proceedings do not require a criminal conviction and thus can be used in circumstances where a conviction for corruption seems difficult or unlikely (StAR Initiative, 2010).

Asset recovery also involves working across borders, between governments, different legal systems, police forces and political processes, with high levels of coordination and collaboration required between several domestic agencies and ministries in multiple jurisdictions. Efficient international cooperation and rapid exchange of information between countries is needed. This includes the provision of mutual legal assistance (MLA) as an indispensable tool for law enforcement, especially in cases of corruption with a transnational dimension, e.g. foreign bribery and money laundering. Despite regulatory efforts to facilitate MLA processes, some countries still refuse to provide MLA on various grounds such as the absence of dual criminality, immunity, bank secrecy or other procedural reasons.

There are a number of solutions, recommendations and good practices to lift these operational and institutional barriers, including developing international standards, promoting appropriate avenues for formal cooperation and developing guidance on the use of alternative legal instruments (StAR Initiative 2010). "Informal" assistance provided without a formal MLA request can also be a valid alternative in some circumstances. It typically includes non-coercive investigative measures (such as collecting publicly available information), spontaneous disclosure of information, conducting joint investigations or requesting the authorities of the other country to open a case (Terracol 2015).

### Informational and financial obstacles

Following the money also requires special investigative techniques and skills and the ability to act quickly to freeze the assets. Investigators are tracing money that has been deliberately concealed by well-informed and wealthy individuals with the means to access state power, global banks and lawyers (Marshall 2013).

For these reasons, technical capacity and sufficient resources are critical to asset recovery actions. In practice, originating and requested jurisdictions often do not commit sufficient resources to providing assistance in asset recovery cases, resulting in inadequately staffed and trained personnel as well as insufficient prosecutorial resources for asset recovery work, a lack of relevant knowledge, and inadequate training of prosecutors and judges.

A European study focusing on 21 EU states attributes the lack of qualified personnel to conduct financial investigations to a lack of

financial resources, the failure of political or law enforcement leadership to prioritise financial investigations and general personnel issues, such as difficulty recruiting qualified and experienced investigators (StAR 2011).

### Political obstacles

In many cases, the pursuing government lacks the capability to investigate, such as in the case of Libya, for example, where the state has almost vanished and the Libyan government has not built capabilities to chase funds stolen by its rulers. There are also challenges of political will and internal politics in the countries to where the assets have been transferred (Marshall 2013). A strong civil society and an independent media, however, can play an important role in addressing these political challenges, as political commitment to prosecute, investigate, seize and return money does not only come from politicians (Marshall 2013).

Given the obstacles outlined above, the available evidence suggests that successful recovery is achieved in countries with established policies, solid laws and organisational structures and a willingness to try alternatives in the face of barriers (StAR 2014).

## Success stories in asset recovery

### *Recent successful asset recovery processes*

There are few recent examples of successful asset recovery cases. There are four well documented successful asset recovery processes, including (CIFAR 2016):

#### Peru

Assets stolen by former president Alberto Fujimori and his long-standing head of Peru's intelligence service, Vladimiro Montesinos, worth US\$174 million have been repatriated from Switzerland, the US and the Cayman Islands, while accounts worth US\$47 million remain frozen in Switzerland, Mexico, Luxembourg and Panama (CIFAR 2016).

#### Philippines

It is alleged that Ferdinand Marcos siphoned off US\$5-10 billion during his reign in the Philippines from 1965 to 1986 (Jimu 2009). In 2004, Switzerland released US\$683 million to the Philippine treasury following a July 2003 Philippine supreme court decision ordering forfeiture of the former president and first lady Ferdinand and Imelda Marcos's Swiss deposits

(CIFAR 2016). The process was crippled by legal battles brought by the Marcos family and consequently saw "lawyers' fees eat up a good portion of whatever the Filipinos had hoped they would eventually get" (Sher 2005).

#### Nigeria

US\$160 million of money embezzled from the people of Nigeria and channeled through Jersey by the late Nigerian dictator Sani Abacha and his henchman Abukakar Bagudu were returned to Nigeria. While this is referred to as "a qualified success" in terms of recovering a significant amount of money, an out-of-court settlement between the Nigerian government and the Abacha family allowed the family to keep US\$100 million to avoid a crippling legal battle and enable swift and efficient asset recovery (Sher 2005). While it was probably a smart move to avoid a long drawn-out and counter-productive trial process, this means the Abachas were allowed to profit from looting the state's resources, limiting the potential deterrence impact of the asset recovery process (Sher 2005).

Additionally, between 2004 and 2006, Switzerland seized US\$505.5 million from former president Abacha and repatriated the money to the Nigerian government to be spent on Millennium Development Goal projects (CIFAR 2016).

The UK and the Nigeria authorities have also maintained on-going relations in the corruption cases of three state governors, Diepreye Alamieyeseigha, Joshua Dariye and James Ibori, providing a good practice example of cooperation between requested and requesting jurisdictions. Nigeria's Economic and Financial Crimes Commission and the London Metropolitan Police Proceeds of Corruption Unit have collaborated on the seizure, confiscation and ultimate return of the proceeds of corruption, with a range of asset recovery avenues pursued, including a corruption case in Nigeria, a money laundering case in the UK and civil action non-conviction based asset confiscation in the UK (StAR 2014).

#### Kazakhstan

In an unprecedented development venture, US\$116 million of disputed assets uncovered under a US Foreign Corrupt Practices Act investigation involving alleged unlawful payments on behalf of US oil companies were repatriated to Kazakhstan through programmes targeting the country's most vulnerable populations. The BOTAF Foundation was established following a 2006 trilateral agreement between the governments of Kazakhstan, Switzerland and the United States



and three organisations: IREX, the World Bank and Save the Children. The foundation represents a unique approach to manage asset return through the auspices of a local NGO for programmes targeting the country's most vulnerable populations, with international oversight and a board consisting of representatives of the countries that returned the assets and independent Kazakhstanis. Programmes include conditional cash transfers, social service grants and technical assistance and tuition assistance grants.

In more recent asset recovery cases, the proceeds recovered were used directly for development purposes, including health, education, water and sanitation, and the reintegration of displaced persons. The benefits of such actions is believed to have exceeded the amounts returned, with additional benefits accruing in improved international cooperation and enhanced capacity of law enforcement and financial management officials (StAR 2014).

### Angola

Following two criminal investigations in 2004 and 2012 by Switzerland into alleged corruption and money laundering by Angolan officials, assets worth US\$64 million were frozen as part of the criminal case. Although the criminal investigations were subsequently closed, it was not contested that the frozen assets belonged to the Angolan state and were returned. Switzerland and Angola designated them for projects in key development areas, and the funds were used to fund a number of projects including land mine clearance, agriculture development, hospital infrastructure, water supply and local capacity building for the reintegration of displaced persons. Resources also went to help Angola strengthen its law enforcement capability and international legal cooperation (StAR 2014).

### Tanzania

In 2010, a settlement agreement regarding bribery allegations between BAE systems and the UK's Serious Fraud Office (SFO) resulted in an ex-gratia payment of £29.5 million (US\$35.9) in voluntary reparations made for education needs "for the benefit of the people of Tanzania". DfID played a central role in the project design, working with the government of Tanzania and facilitating exchanges between the government of Tanzania and the SFO. The detailed proposal targeted primary schools in the country. The returned funds were used to provide teaching materials, refurbish classrooms in rural areas, and provide facilities to accommodate teachers in rural schools, with DfID

providing support to the government of Tanzania in the expenditure of funds (StAR 2014)

### *Process related successes*

#### **The use of administrative action**

The use of administrative actions to freeze assets is highlighted as a positive trend in the StAR 2014 report (StAR 2014). This helped countries to rapidly freeze assets in the context of the Arab Spring, resulting in an increased level of assets frozen. These legal avenues and powers proved to be more successful for freezing and returning assets than more "traditional" ones such as criminal confiscation. Of the total assets reported frozen by OECD members, 39% originated in either Tunisia or the Arab Republic of Egypt (US\$542.8 million of the total US\$1.398 billion). The assets were frozen pursuant to decrees or laws passed by Canada, the EU and Switzerland and not based on MLA requests (StAR 2014). In addition, more jurisdictions proactively initiated their own investigations, rather than waiting for a request from the jurisdiction of the corrupt official (StAR 2014).

#### **The use of multiple, alternative legal avenues, beyond criminal confiscation**

One of the most significant trends in recent years has been the use of non-conviction based (NCB) civil forfeiture, using civil, not criminal action, and going directly against assets rather than individuals. This approach avoids problems associated with individuals who have not been convicted (or are still in office), or where the criminal trial is still under way (Marshall 2013).

The use of alternative avenues such as NCB asset confiscation, court-ordered reparations and restitution, settlement agreements and private civil actions is increasing, with promising results, as evidenced by the StAR/OECD survey of assets recovered between 2010 and 2012 (StAR 2014). Reports by OECD members show that criminal confiscation accounted for only 13% of the total assets while other avenues proved to be far more productive, in particular NCB confiscation (40% of returns) and criminal restitution and reparations (34%). Assets were also returned following private civil actions in the UK by Libya and Ukraine. Of the 12 asset return cases, eight were resolved by settlement agreements, accounting for 74% of the total value of assets returned (StAR 2014).

### Progress in international cooperation

Progress has been made to address challenges of international cooperation in the context of the Arab Spring, with efforts made by several OECD member countries to support asset recovery processes and delivering proof that the frozen assets were gained through corruption. For example, Switzerland has sent judicial experts to both Egypt and Tunisia; US investigators and prosecutors have visited Egypt, Libya and Tunisia to work directly with their requesting country officials; and Canada has provided assistance on asset recovery to Tunisian officials. In addition, some governments have taken steps to strengthen domestic inter-agency cooperation. In November 2012, the European Union announced that its member countries had amended legislation to facilitate the return of the frozen assets formerly belonging to former presidents Mubarak and Ben Ali and their associates to Egypt and Tunisia respectively, with the new legislative framework facilitating the exchange of information between EU member states and the relevant Egyptian and Tunisian authorities as well as authorising EU member countries to release the frozen assets on the basis of judicial decisions recognised in EU member countries (OECD 2014).

At the country level, some OECD countries have taken legal and policy steps to support asset recovery processes. Switzerland's policy on asset recovery for the Arab Spring countries designates special points of contact in Egypt and Tunisia and sends magistrates to help draft mutual legal assistance requests for these countries. The Netherlands launched a national programme, "afpakken", in 2011 that provides €20 million annually for law enforcement authorities to pursue asset confiscation and aims to confiscate €100 million by 2018 (OECD 2014)

At the international level, several initiatives have been launched to facilitate international cooperation and the rapid exchange of information between countries. A 2007 European Council decision requires all EU countries to establish a national asset recovery office (ARO), which are designated points of contacts responsible for exchanging information and best practices, both upon request and spontaneously between EU countries.

Through the Action Plan on Asset Recovery, G8 members must designate or appoint an office or person responsible for inquiries, guidance or other investigative cooperation permitted by law. International networks on asset recovery also

facilitate international cooperation, such as the Global Focal Point Initiative on Asset Recovery, created in 2009 by StAR and INTERPOL and bringing together a network of practitioners representing 99 jurisdictions, or the Camden Assets Recovery Interagency Network (CARIN), an informal inter-agency network represented by a law enforcement officer and judicial expert from each of its members (OECD 2014).

### Private action and alternative approaches

Government-to-government action is not the only way to tackle asset recovery, non-state actors and processes can also play an important role and may play an increasing one in the future. As already mentioned, the use of civil litigation, rather than criminal law, has great promise and potential, as the evidentiary threshold is not as demanding as with criminal actions (Marshall 2013). Indeed, Article 35 of the UNCAC requires state parties to take measures to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage to obtain compensation.

The Alcatel case in Costa Rica is one example of how compensation for social damage can be used in corruption cases through civil proceedings. In January 2010, the Costa Rican treasury received US\$10 million in payment of a settlement agreement signed within the civil proceedings initiated by the Costa Rican Attorney General's Office for Public Ethics against Alcatel to repair the social damage emerging from a corruption case involving Alcatel management and staff and Costa Rican government officials (Olaya, Attisso and Roth 2010). A recent Transparency International Helpdesk answer also focused on [country experiences with reparations for social damages](#) (McDevitt 2016).

In France, a landmark legal decision allowed anti-corruption groups Transparency International and SHERPA to file a complaint and start judicial proceedings against the late Omar Bongo of Gabon, Denis Sassou-Nguesso of the Democratic Republic of the Congo, Teodoro Obiang Nguema of Equatorial Guinea and their relatives for acquiring luxury homes and cars in France with African public funds. Soon afterwards, TI France and SHERPA also called for investigations into stolen assets from Tunisia, Egypt, Libya and Syria. TI France's complaint against deposed Tunisian president Ben Ali and his relatives brought immediate results with French prosecutors seizing a private jet and €12 million (Transparency International 2011).

Such approaches could be replicated all over the world to end impunity of corrupt leaders. All of these processes could lead to new ways of bringing legal action, leading to lower burdens of proof and more cases as new plaintiffs emerge even where governments are unwilling or unable to act. However, civil processes bring other complex questions as they are often associated with negotiated settlements where corrupt officials, while returning some of their assets, continue to retain a portion of their ill-gotten gains, such as in the Abacha case (Marshall 2013).

### 3. Measuring impact of AML and asset recovery

There is a broad consensus that money laundering undermines development and affects a country's economy by increasing a shadow economy, criminal activities, fuelling illicit flows and eroding tax revenue collection (Hendriyetti and Bhajan 2017). However, little evidence can be found on the impact recovered assets has on poverty alleviation, and there are no mechanisms in place to systematically track this impact. The evidence in terms of the effect of AML on economic growth and development is even scarcer.

International AML standards also face criticism from experts for imposing reforms that are costly and ill suited to developing economies with a potentially negative impact on poverty and economic growth (Nawaz 2010). Some experts argue that costs associated with implementing international AML regimes are large and negatively affect the poor by diverting resources from the development agenda to meet the FATF standards. Moreover, indirect costs in both rich and poor countries include higher barriers in opening bank accounts, transferring money across borders or setting up charities (Sharman and Mistry 2008; Sharman 2006).

Similarly, on a policy level, most studies postulate that effective asset recovery and anti-money laundering processes can enhance political accountability by requiring more disclosure of financial information, ensuring better prosecution of the corrupt and deterring future corrupt behaviour by the political elite (Pieth 2007; Marshall 2013; OECD 2014). However, there is little empirical evidence to substantiate these claims. In fact, to date there is no substantial effort by any international organisation to assess either the costs or benefits of an AML regime (Halliday, Levi and Reuter 2014).

### Methodological challenges for measuring AML and asset recovery processes

This may be due to methodological challenges in measuring the impact of AML and asset recovery in the first place and the lack of theoretical and empirical work on the topic (Chong and Lopez de Silanes 2015).

#### Methodological challenges

The first step in minimising the repercussion of money laundering on the economy and measuring the impact of AML is to quantify money laundering. Given the clandestine nature of money laundering and corruption, it is challenging to accurately assess the volume of funds laundered and, consequently, their economic impact. Current estimates are based on various approaches such as the measurement of capital flights – as money laundering causes capital flows between countries – tax evasion, or an estimation of the proceeds of criminal activities that are not limited to tax evasion. All these approaches lack accuracy and have their respective flaws beyond confirming the significance of the magnitude of money laundering at the national and international levels (Hendriyetti and Bhajan 2017). Some estimates evaluate the impact of money laundering to account between 2% and 5% of global GDP, but these are rough estimates (Chong and Lopez de Silanes 2015).

Most AML related indicators and measurement tools focus on the existence of law and regulations, based on the assumption that a set of legal tools can help curb money laundering. AML assessments focus almost entirely on formal compliance with FATF standards and whether countries appeared to implement programmes, with very little emphasis on programme and outcome effectiveness (Halliday, Levi and Reuter 2014).

Only recently has the FATF methodology been amended to take into consideration the implementation and effectiveness of AML regimes, but efforts to gather valid and reliable evidence for compliance, beyond formal compliance and programme implementation, fall below professional standards of evaluation (Halliday, Levi and Reuter 2014). There is also little theoretical and empirical work that measure the difference that such legal frameworks make on curbing money laundering, reducing poverty, promoting economic development and political

accountability (Chong and Lopez de Silvanes 2015).

In addition, the state of the art for assessing AML/CFT regimes is poorly developed in general. For most countries, there is no systematic quantitative or qualitative data that would provide defensible bases for assessments and recommendations. There is even less empirical work measuring the impact of asset recovery processes. A few case studies on the utilisation of successful recovered assets in countries such as Nigeria, Peru, the Philippines and Kazakhstan have documented some impact on pro-poor spending, but evidence remains scarce and patchy (Jimu 2009). This can be expected given the relatively modest amounts of funds recovered compared to the estimated billions of dollars that are stolen from developing countries (StAR 2014). Unless efforts to increase the amount of return assets are stepped up, the impact of asset recovery on a country's economy is likely to remain limited.

#### **Tools and indicators for measuring progress in AML, illicit flows and asset recovery**

While there is little empirical work on measuring the impact of AML and asset recovery processes, states have committed to significantly reducing illicit financial and arms flows, strengthening the recovery and return of stolen assets, combatting all forms of organised crime and tracking progress on reaching this goal as a part of Sustainable Development Goal (SDG) 16 on building inclusive and peaceful societies. A forthcoming resource guide on SDG indicators identified a number of indicators and data sources to track progress on reducing illicit flows and asset recovery processes.

For example, Indonesia proposed the "realisation of corruption crime asset recovery paid into the state treasury compared to total assets seized by the state under court decisions" as a national indicator to track progress in asset recovery, using data available from the anti-corruption agency and attorney general. Tunisia proposes to monitor the total number of reports of suspicious transactions transmitted by the Tunisian Commission for Financial Analysis to the prosecutor in the last 12 months as an indicator of progress in AML. Examples of other potential indicators for monitoring asset recovery and money laundering are presented in Appendix 1 (Transparency International forthcoming).

#### **Tracking the development impact of recovered assets**

There is little information on systematic efforts to collect data and measure the effectiveness of recovered assets on poverty alleviation and development outcomes, and there is little publicly available information on monitoring processes in place to ensure that funds are actually used for poverty reduction and other development goals. Monitoring the use of recovered assets through an independent monitoring mechanism seems to be the first step. The use of the funds needs to be monitored not only at the disbursement stage, but also throughout the project implementation process since case studies show that a lack of safeguards can lead to funds being misappropriated again (Nawaz 2010).

Countries have adopted different mechanisms for this. A 2009 study looked at the use of assets recovered in Nigeria, Peru, the Philippines and Kazakhstan and provides some level of information on the monitoring mechanism established to track them or lack of thereof (Jimu 2009).

#### **Nigeria**

Following the above-mentioned settlement, the World Bank was identified as a neutral party to review the utilisation of the resources, while the Swiss government, through the World Bank, provided a grant of \$280,000 to co-finance the Public Expenditure Management and Financial Accountability Review (PEMFAR) programme to improve public financial management with regards to Nigeria's national economic priorities in education, health and basic infrastructure (power, roads and water). A Nigerian civil society organisation, Integrity, was selected by the World Bank to monitor the use of these funds. Integrity, together with other local NGOs, was tasked to prepare and administer a field monitoring survey of selected projects funded by assets recovered from Abacha and reviewed 51 project sites. A total of 168 people were interviewed, including contractors and local government officials and also involved some potential beneficiaries. The review found that repatriated funds did in fact increase budget spending in pro-poor development projects in the five priority areas. Analysis of federal budget spending in the five Millennium Development Goal (MDG) sectors of health, education, water, electricity and roads for the 2003 to 2005 fiscal years showed that these sectors received a considerable increase in their

allocation level and that this increase was substantially larger than the amount recovered from Abacha. However, following up on the allocation and expenditure of this money proved challenging in terms of the appropriation and tracking of the recovered assets in the national budget.

### Peru

In Peru, the government created the Special Fund for Management of Illegally Obtained Money against Interests of the State to manage the assets recovered from corrupt officials. The fund has been managed by a board of five members appointed from different government ministries. There was no oversight mechanism in place to ensure that the funds are used for the intended purpose nor continuous monitoring of the use of the funds. Very little information can be found regarding spending on pro-poor projects, and it is alleged that the repatriated assets have mainly ended up supplementing budgets of public institutions that have a member on the board.

### The Philippines

The recovered money, initially remitted to the Philippines treasury, was later transferred to an off-budget fund known as the Agrarian Reform Fund, meant for land acquisition and distribution and support services. As in the case of Peru, there is no mention of a specific oversight mechanism or monitoring system to systematically track the use of these resources. However, the Commission of Audit reported in 2006 that a significant portion of the funds had been used to finance excessive and unnecessary expenses that were unlikely to benefit the intended beneficiaries of the agrarian reform while other amounts were spent on procuring items at inflated prices and a number of transactions involving the fund have been questioned for mismanagement and corruption. Furthermore, no record can be found of Philippines' authorities using a third of the fund to compensate the victims of the human rights violations during the Marcos reign as per the requirement of the Swiss court decision to repatriate the funds.

These case studies demonstrate that effectively utilising recovered assets to fund anti-poverty projects require robust oversight mechanisms as well as continuous monitoring of the use of recovered assets to ensure that they are used properly and efficiently. In the absence of such mechanisms, such as the case of Peru and the Philippines, recovered assets can be misused or diverted from their intended purpose. The World

Bank advises countries to follow basic principles to ensure that recovered assets are not misused a second time and actually contribute to improving the quality of life in developing countries (World Bank 2007):

- public record of receipt of the assets (amount, value, date of receipt, date of availability)
- public declaration of intended use of the assets (specific uses, amounts, entity responsible for expending the asset and accountable for results, etc.)
- public or official reporting of actual expenditures and results achieved
- timely auditing of financial statements and results to verify the accuracy of reporting
- official response to material weaknesses identified in audit findings

Further recommendations for the efficient use of resources in ways that improve the life of the people is to spend the money on a limited number of visible projects, introduce special tracking arrangements, such as budget codes, keep proper records on the use of the recovered funds, allow for the participation of third parties in following up on spending, as in the case of the Abacha money in Nigeria and make the results of the entire process public (Jimu 2009).

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## 5. Appendix 1: Potential indicators for target 16.4 (Source: Transparency International resource guide on monitoring corruption and anti-corruption in corruption in the sustainable development goals; forthcoming)

**Table 1: Potential indicators for target 16.4**

Indicator	Source
<b>Money laundering</b>	
country's score in the Basel Institute on Governance's Basel Anti-Money Laundering Index	<a href="https://index.baselgovernance.org">https://index.baselgovernance.org</a>
country's secrecy score in the Tax Justice Network's Financial Secrecy Index	<a href="http://www.financialsecrecyindex.com">http://www.financialsecrecyindex.com</a>
the estimated illicit financial outflow of funds from a country in the latest available year, according to Global Financial Integrity	<a href="http://www.gfintegrity.org/issues/data-by-country">http://www.gfintegrity.org/issues/data-by-country</a>
whether the country has a law criminalising money laundering	FATF mutual evaluation reports <a href="http://www.fatf-gafi.org/publications/mutualevaluations">http://www.fatf-gafi.org/publications/mutualevaluations</a>
statistics on enforcement of anti-money laundering legislation: <ul style="list-style-type: none"> <li>• the number of criminal investigations, prosecutions and convictions for money laundering (ML) activity</li> <li>• average length of custodial sentences imposed for ML convictions</li> <li>• average value of fine imposed on ML convictions</li> <li>• value of proceeds of crime, instrumentalities or property of equivalent value confiscated</li> </ul>	As FATF considers these statistics to be particularly useful, the data is likely to be included in the most recent mutual evaluation report: <a href="http://www.fatf-gafi.org/publications/mutualevaluations">http://www.fatf-gafi.org/publications/mutualevaluations</a>
whether the country has signed the competent authority multi-national agreement on automatic exchange of financial account information	The OECD maintains a list of signatories ( <a href="https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf">https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf</a> ) and provides information on the details of which jurisdictions will bilaterally exchange financial account information ( <a href="https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs">https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs</a> )
how the OECD's Global Forum assesses a jurisdiction's performance on the exchange of information for tax purposes on request (compliant, largely compliant, partially compliant, non-compliant)	<a href="https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263">https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/#d.en.342263</a> Additional relevant information in the Global Forum's Peer Reviews ( <a href="http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x">http://www.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-peer-reviews_2219469x</a> ) and on the Exchange of Tax Information Portal



	( <a href="http://eoi-tax.org">http://eoi-tax.org</a> )
<b>Beneficial ownership transparency</b>	
country's score in the Open Company Data Index produced by Open Corporates	<a href="http://registries.opencorporates.com">http://registries.opencorporates.com</a>
whether the country has a law clearly defining beneficial ownership	national legislation
<b>Asset recovery</b>	
whether the country has a specific asset recovery policy and resources have been allocated to support its implementation	government policies
number and volume of assets confiscated and repatriated	the STAR Corruption Case database ( <a href="http://star.worldbank.org/corruption-cases">http://star.worldbank.org/corruption-cases</a> )