

Civil Society Statement for the Global Forum on Asset Recovery

On the occasion of the first Global Forum on Asset Recovery co-hosted by the United States and the United Kingdom in Washington D.C., USA, 4 -6 December 2017, GFAR focus country civil society organisations, the UNCAC Coalition¹ Working Group on Asset Recovery and international civil society organisations seek commitments by participating governments in line with UNCAC based on the following recommendations:

1. Governments must address the underlying causes of asset theft and recognise that asset recovery is a complex two-way street.

Weak financial regulation and financial secrecy are key factors that enable the large-scale theft of state assets. Those countries and jurisdictions where corrupt wealth ends up, and whose commercial actors are involved either in paying bribes or helping facilitate money laundering, have a joint responsibility for the theft of state assets. It is their duty to ensure that their systems are not conducive to the laundering of corrupt wealth. To that end, they must commit to:

- ensuring that professional enablers in their jurisdictions who help hide corrupt wealth whether through complicity or wilful ignorance, and that commercial actors and individuals who engage in acts of grand corruption, whether through bribery or money laundering, face prosecution and sanction sufficient enough to deter future illicit activity;
- closing down secrecy loopholes by creating public and well verified Beneficial Ownership registers for companies, trusts and property;
- ensuring that their corporate and financial regulation framework is robust and fully FATF compliant, particularly with regard to ensuring that there are legal requirements, proactively enforced, on financial institutions and other gatekeepers to conduct proper customer due diligence;
- requiring oil, gas, and mining firms to publish what they pay to governments for the extraction of natural resources so that citizens can hold governments and companies accountable for how revenues are used in order to reduce the risk of their theft, and to monitor whether bribery or corruption has occurred.

Equally, those countries from which corrupt wealth comes have a responsibility to prevent the acquisition of corrupt wealth within its borders and its transfer abroad. To that end, they must commit to:

- ensuring that corrupt actors in their jurisdictions face prosecution and sanction according to international standards of due process;

¹ *The UNCAC Coalition is a network involving 350 civil society organisations in more than 100 countries promoting implementation of the UN Convention against Corruption (UNCAC). It includes civil society organisations in both origin and destination countries, including the four focus countries of the 2017 GFAR meeting.*

- ensuring transparency and accountability in the procurement and management of public finances, in line with Article 9 of the UNCAC, including ensuring transparent oversight of public revenues by independent audit bodies in accordance with international financial standards;
- creating public and well verified Beneficial Ownership registers for companies, property and trusts, and ensuring effective regulation of financial institutions;
- ensuring that asset declaration registers are public, and robustly and routinely verified;
- implementing proactively the Extractive Industries Transparency Initiative to ensure increased transparency over natural resource revenues and to prevent their theft.

2. Countries must work together urgently and proactively to find ways to identify and overcome the main obstacles to asset recovery

The process of asset recovery remains painfully slow. Only 1.6% of stolen assets frozen by OECD countries between 2006-2010 have been returned.² Six years after the Arab Spring, only \$1 billion of \$165 billion stolen by former rulers in the region has been recovered. The United Nations Economic Commission for Africa found that illicit flows from Africa could be up to \$50 billion a year.³ In that regard, and in order to give effect to Resolution 7/1 from the 2017 Conference of States Parties to the United Nations Convention against Corruption, countries must commit to:

- verifying independently that relevant law enforcement bodies, including Financial Intelligence Units, are properly resourced, fully independent of political interference, have the necessary expertise, and the mandate to uncover corrupt wealth as a priority;
- notifying other jurisdictions spontaneously and promptly of suspicions of corrupt activity, to providing prompt assistance upon request from other jurisdictions and to keeping statistical data to measure progress in this regard;
- simplifying legal procedures for asset recovery and providing assistance, including by developing legal tools to allow confiscation of the proceeds of corruption and to provide assistance without a criminal conviction.

3. Asset recovery must be accountable and transparent at all stages

The current absence of data from all countries on asset recovery, both requesting and requested states, is a startling failure of accountability that makes it impossible to measure the effectiveness of global and national asset recovery processes. While recognising that asset recovery can be a protracted legal process, transparency as to the volume and value of ongoing cases would significantly help build trust in the process. To address this serious failing, countries should commit to:

² Between 2006 and 2009, 277 million out of 1.225 USD billion frozen; and between 2010-2012, 147.2 million out of 1.398 billion USD frozen. OECD, *Illicit Financial Flows from Developing Countries: Measuring OECD Responses*, 2014, p. 88

³ <https://www.uneca.org/iff>

- collecting, maintaining and publishing comprehensive data, on investigations and prosecutions of grand corruption and associated asset recovery cases, including: publication of all court decisions and indictments; the volume of assets frozen, confiscated and returned by jurisdiction; volume of compensation in foreign bribery cases; sanctions taken against financial intermediaries; and statistical data on the timeframe within which Mutual Legal Assistance requests for grand corruption cases are dealt with;
- providing regular updates on progress in investigations that are in the public domain and creating avenues of communication with non-state actors, such as CSOs and whistle-blowers, who can provide crucial information for investigations;
- working to harmonise statistical measurements for data on asset recovery at a global level and standards for transparency, through international fora such as the UNCAC and Open Government Partnership.

4. *Asset recovery must be put to the purpose of ending impunity for grand corruption.*

Asset recovery is not merely a technocratic process to recover assets but a political process that signals commitment to fighting corruption and to depriving those who engage in acts of grand corruption of the benefits. Secret agreements between authorities and corrupt actors and blanket amnesties for groups of persons or individuals should have no place in the asset recovery process. Equally immunities for public officials must not be used to undermine the asset recovery process. To that end, countries must commit to:

- ensuring that any settlements or amnesty agreements reached with corrupt actors are legal, available in the public domain with full details of the corrupt activity and sanctions imposed detailed, subject to judicial oversight, and that they provide victims and relevant community stakeholders the right to provide statements and evidence. Such settlements must avoid blanket immunity clauses which undermine public confidence in the fight against corruption, and must not be used to deny requests for assistance from other affected jurisdictions;
- ensuring that domestic immunities for public officials are strictly limited with transparent and effective procedures for suspending them and that immunities and other privileges enjoyed by public officials – domestic, foreign and international – are not abused or used to shield individuals from accountability for corruption offences.

5. *The role that civil society has to play in asset recovery should be properly and formally recognised.*

Civil society has a key role to play in exposing corruption and identifying evidence that could lead to a formal investigation; in bringing proceedings where there are domestic constraints in doing so; in monitoring returned assets; in generating and maintaining domestic political will to pursue investigations and conclude prosecutions; and helping to inform the public about asset recovery process and to ensure that the voice of victim communities and the population is heard during the asset recovery process. To ensure that CSOs can play this role to the full, governments must commit to:

- protecting the legislative and political space for CSOs to work on grand corruption and asset recovery and to ensuring that CSOs working in this area and whistle-blowers are not subject to harassment or restrictions;
- engaging CSOs in a regular and meaningful way on asset recovery issues, including by seeking their input into development of national asset recovery strategies and legislation;
- ensuring that law enforcement bodies commit to regular and constructive engagement with CSOs, including by drawing up protocols for how they handle and respond to information from CSOs, and by developing transparent processes that identify whether action has been taken on allegations of grand corruption;
- allowing prominent public-spirited citizens or organisations to bring public interest claims, initiate criminal proceedings or join as parties to criminal proceedings in relation to acts of grand corruption and the recovery of proceeds of corruption;
- ensuring CSOs are involved in decisions around how stolen assets are returned.

6. *Assets recovered should be used for repairing the harm caused by grand corruption and for meeting Goal 16 of the Sustainable Development Goals (SDGs).*

Assets confiscated as a result of successful grand corruption enforcement actions, whether assets stolen from the state, or compensation for bribery, should be returned in a manner that is transparent, accountable and that actively contributes to building accountable and transparent institutions in line with Goal 16 of the SDGs or repairs the damage caused to society. To this end, governments must commit to:

- engaging a wide range of stakeholders, including CSOs, in determining how returned assets should be used to best repair the harm caused and to meet the SDGs;
- ensuring that there is sufficient monitoring of and public accountability for how returned assets are managed and used, including through national level institutions and engagement of CSOs;
- ensuring that where a receiving country is non-compliant with UNCAC Articles 9, 10 and 13 (transparency and accountability in public financial management; public reporting and participation of society), resulting in a lack of effective oversight of returned funds, returning and receiving countries should in consultation with a broad spectrum of relevant experts and non-state actors find ways of repatriating stolen assets that ensures they cannot be re-looted.

7. *A regular multilateral and multi-stakeholder framework for dealing with asset recovery is desirable but must be transparent and accountable.*

Multilateral and multi-stakeholder fora are an important means of maintaining political will to push the asset recovery agenda forward. However, to be effective and to maximise the opportunities created by such fora, they must commit to:

- making tangible and measurable commitments to advance asset recovery efforts and ensuring some form of accountability mechanism such as a commitment by participating governments to make public on an annual basis and within one year, a

report by each country present at the relevant forum on progress made on asset recovery and commitments made;

- ensuring that CSOs are meaningfully included in the fora as relevant stakeholders, in particular by: ensuring that there is a transparent and open policy for CSO participation; integrating CSOs as far as possible into the main agenda; and creating meaningful opportunities for dialogue with government and law enforcement on asset recovery policy and where appropriate specific cases;
- reporting in an open and concrete manner on the successes and difficulties faced in specific cases, so that the barriers that continue to exist in asset recovery processes can be more effectively identified and overcome.

4th December 2017