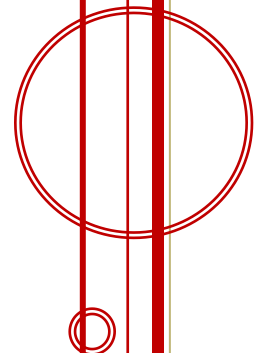


FRANCE'S PERFORMANCE IN INTERNATIONAL ASSET RECOVERY: AN ASSESSMENT

The present report aims to assess France's performance in international asset recovery (AR) with the aim of contributing to the Global Forum on Asset Recovery (Washington D.C; 4-6 December 2017). It was prepared by Maud PERDRIEL-VAISSIERE, independent legal consultant specialized in anti-corruption & asset recovery (mperdrielvaissiere@gmail.com).



1) COUNTRY OVERVIEW

Legal Framework

Overall picture

The French AR framework is based on criminal conviction: no confiscation can be ordered without declaration of guilt by a court.¹ This may pose a problem when confronted with AR cases involving foreign public agents who enjoy (or claim to enjoy) personal immunity.

French law further provides for direct measures for AR. In line with UNCAC Article 53, foreign states are entitled to stand before French jurisdictions and claim the repatriation of assets located in France to their national treasuries (as well as the award of damages).² In fact, foreign states are entitled to initiate a civil action before French jurisdictions for the purpose of establishing title or ownership over property (cf. UNCAC Article 53.a)). They can also stand before French courts and seek compensation or damages for the harm caused by the commission of a corruption offence – either before civil courts or criminal courts (cf. UNCAC Article 53.b)). Lastly, they can make restitution claims as part of a criminal confiscation process (cf. UNCAC Article 53.c)).

It is however unknown whether French authorities do facilitate such claims by proactively and spontaneously sharing information with foreign states about the proceeds of corruption over which they may have an interest (cf. UNCAC Article 56). In fact, it is believed that most often foreign states are simply not aware of the existence of proceeds of corruption in France (or of legal proceedings involving said property). Even though some pieces of information may be reported in the media, the fact remains that information is most often not easily accessible to foreign enforcement authorities.

Let's further note that civil litigation is not really adapted to the recovery of the proceeds of corruption in France (i.e. collection of evidence, restraining measures concerning the assets, international cooperation...) that's why AR cases brought there are mainly based on criminal remedies³ – foreign states being able to prompt and/or join criminal proceedings as “civil parties” and to claim damages through a specific action called “constitution de partie civile”.⁴

The French AR framework is based on criminal conviction: no confiscation can be ordered without declaration of guilt by a court. This may pose a problem when confronted with AR cases involving foreign public agents who enjoy (or claim to enjoy) personal immunity.

¹ It seems that France allows the enforcement of foreign non-conviction based confiscation orders (see further below). Let's further note that according to French case law, the death of the accused during the trial does not prevent the confiscation of the assets as long as it was ordered beforehand (Cass. crim; 25 June 2013).

² It is worth noting though that in the Duvalier Case, the 1st Civil Chamber of the French Court of Cassation (the highest Court of Justice in France) dismissed the restitution claim made by Haiti considering that French courts had no jurisdiction to rule on acts committed by a former foreign president and pertaining to the exercise of power (Cass.; 1^{ère} ch. civile; 29 May 1990). Even though there is no other case precedent and that French judges would likely ruled otherwise today (precisely because of UNCAC provisions), it illustrates the ‘state of affairs’ that prevailed in France back in the 1990s.

³ In fact, the only known international AR case that resorted to civil remedies is the Duvalier Case (see footnote 3).

⁴ For example, in 2007, Nigeria became civil party in a money laundering case initiated against Dan Etete, former minister of energy of Nigeria. During the 1st instance, Dan Etete was convicted and sentenced to three years' imprisonment and 300,000 euros fine; Nigeria, as a civil party, was awarded 150,000 euros for non-pecuniary damages. The court, however, rejected its claim for pecuniary damages (Tribunal de Grand Instance de Paris, 11^{ème} chambre, 7 November 2007). Nigeria did not ultimately collect the damages because it failed to respond to appellate proceedings.

Criminal confiscation

Under French law, confiscation may be ordered by the court as an additional penalty for any offence carrying one year or more of imprisonment, which is the case for all corruption and related money laundering offences.

The range of assets liable to confiscation is very large due to various laws adopted in recent years.

According to Article 131-21 of the Criminal Code, liable to confiscation are:

- Any asset *used* to commit the offence belonging to the convicted person or which are at his/her disposal
- Any asset that *constitutes the object or the proceeds of crime*, either directly or indirectly (no matter who owns it)

Article 131-21 of the Criminal Code further provides for extended powers of confiscation in two situations:

- If an offence carries five years or more of imprisonment and generated a profit: in this case, any asset owned by the convicted person or which are at his/her disposal may be confiscated by the court, to the extent that he/she cannot prove its lawful origin (note: the onus of proof is reversed in this case).
- When provided for by the legislative act incriminating the offence, confiscation of all the assets of the convicted person may be ordered by the court, irrespective of any link with the offence and of its lawful/unlawful origin

Both penalties may apply to foreign bribery and money laundering offences.

Value-based confiscation may be ordered in respect of any asset (no condition is attached to it).

Domestic restrictions, freezing and seizure orders

Any asset liable to confiscation may be seized prior to the judgment during the investigation (both preliminary and judicial investigations). Specific procedures have been established to deal with intangible assets and real estate.

French law further provides for two additional temporary measures concerning the assets:

- TRACFIN, the French Financial Intelligence Unit (FIU), may oppose any suspicious transactions it is aware of for a 10-day period (Article L561-24 of the Financial and Monetary Code as amended recently).⁵ Restriction measures may be extended beyond that period upon judicial authorisation. It is worth noting that TRACFIN made use of its opposition power during the events of the Arab Spring: just after the fall of the various corrupt leaders, TRACFIN urged all reporting entities to apply additional measures of vigilance and then opposed suspicious transactions. These actions, taken before the European Union (EU)/United Nations (UN) decisions to freeze the assets and the instigation of judicial investigations, likely helped prevent the dissipation of assets. TRACFIN did the same after the fall of Yanukovich.
- Freezing measures may also be ordered by the French Finance Minister based on international sanctions (decided either by the UN or the EU): for example, such freezing measures were ordered against the former regimes of Tunisia, Egypt, Libya and more recently Ukraine.⁶

⁵ The initial time-period was of two days; it was later extended to five days.

⁶ In that regard, it should be noted that an asset may be subject to both a judicial seizure and a political freezing and that the decision to release a political freezing has no consequence on a judicial seizure (and *vice versa*).

International Cooperation

Preliminary remark: According to Article 55 of the French Constitution, treaties or agreements duly ratified or approved prevail over domestic laws, subject, with respect to each agreement or treaty, to its application by the other party (reciprocity principle).

While the UNCAC is considered in France as a relevant treaty-basis for the purpose of seeking French judicial cooperation in AR, it remains insufficient in itself and the whole process mainly depends on the countries involved (EU member or not) and the existence of mutual legal assistance (MLA) treaties. Where the requesting country is not member of the EU and there is no relevant MLA treaty, the general provisions of the French Criminal Code of Procedure apply (together with the relevant mandatory provisions of the UNCAC – where applicable).⁷

French provisions dealing with international cooperation are numerous, scattered in different sections of the Criminal Code of Procedure and not easily accessible to foreign enforcement authorities (and not even to French lawyers). For example, while grounds for refusing cooperation are explicitly defined in the Code, there is no single provision and there are also some exceptions. In that regard, the French “Guide for asset recovery” that was prepared as part of the ‘G8 – Deauville partnership’, which is, as far as we know, the only public document available aimed at providing easy access to information about asset recovery in France, is oversimplified and does not provide sufficient or clear information.

Another concern relates to the fact that all requests (including memos within the EU) must be submitted in French (or accompanied by a French translation) – a requirement that may delay the transmission and execution of MLA requests. In that regard, it is worth noting that, according to the French organisation CCFD, in 2006, France refused to grant cooperation to Nigeria in relation to a case involving Abacha’s assets in France on the grounds that the request was made in English – a refusal which caused a huge scandal (CCFD, 2009). We are not aware of any other cases where assistance was refused due to language requirements.

Liaison magistrates⁸ as well as the Bureau of International Mutual Assistance in Criminal Matters (Bureau de l’Entraide Pénale Internationale – BEPI)⁹ may assist foreign jurisdictions in the preparation of MLA requests. It is unknown whether France has ever provided enhanced assistance to developing countries seeking French cooperation especially to countries where there is no liaison magistrate and/or where the judicial system is failing (e.g. Egypt). More generally, we are not aware of any programmes/projects aimed at building capacity in developing countries and in strengthening their capacity to investigate and prosecute corruption cases and return stolen assets (e.g., MLA support, mentorships, study-tours, funding for domestic law enforcement units, etc.) in which France is involved.¹⁰

The transmission process of MLA requests varies depending on whether the request originates from a EU member or a non-EU country. While EU members’ requests are dealt with directly between law enforcement authorities (direct transmission); non-EU countries’ requests pass through diplomatic channels (Article 694 of the Criminal Code of Procedure), which means that the transmission process is longer¹¹ and that the French executive has direct access to those requests and may therefore “easily” interfere with them. However, according to Article 30 of the Criminal Code of Procedure (as amended by Law no. 2013-669 of 25 July 2013) the Minister of Justice is expressly forbidden from giving instructions to public prosecutors in individual cases, and that provision extends to MLA requests from foreign

⁷ For the purpose of the present review we will focus on the general framework, which is mainly based on the distinction beyond EU member and non-EU countries.

⁸ As of 2017, France has 19 liaison magistrates on assignment in various countries (including Algeria, Belgium, Brazil, Canada, China, Croatia, Germany, Italy, Mali, Mauritania, Morocco, Netherlands, Niger, Nigeria, Romania, Senegal, Spain, United Kingdom, United States, Tunisia) and hosts liaison magistrates from nine countries (Algeria, Germany, Italy, Morocco, Netherlands, Romania, Spain, United Kingdom and United States).

⁹ The BEPI is the French central authority for MLA in criminal matters.

¹⁰ The French Minister for Justice regularly hosts workshops aimed at sharing with magistrates originating from developing countries French experience in asset recovery and mutual legal assistance.

¹¹ French law authorises direct transmissions to law enforcement authorities in cases of emergency.

authorities practice. (OECD, 2014). It is difficult to determine whether this provision is enforced in practice.

Either way, the French Minister of Justice – who, depending on the origin of the request, is informed either directly (non-EU requests) or by the Public Prosecution Office (EU requests) – may refuse to grant assistance whenever they consider that the request may threaten the public order or the “fundamental interests of the nation” (Article 694-4 of the Criminal Code of Procedure). This article concerned the OECD Working Group, which in its Phase 3 report called on France to ensure that “decisions to grant mutual legal assistance in foreign bribery cases are not influenced by considerations of national economic interest under the guise of protecting “the fundamental interests of the nation” (OECD, 2012). It’s important to note, however, that according to France’s responses to OECD Working Group, no request for mutual legal assistance made to France has been refused on the grounds set out in Article 694-4 of the Code of Criminal Procedure over the period 2010–2014 (OECD, 2012, 2014). It is nevertheless unknown whether this article has been used to refuse cooperation in foreign bribery cases in recent years matters (i.e. since 2014) or, ever, in money-laundering cases associated with foreign corruption.

Additional grounds for refusal may apply in relation to the enforcement of foreign orders of seizure or confiscation. Such grounds are explicitly provided for by the Criminal Code of Procedure and vary depending on whether the requesting country is member of the EU or not: while there are grounds for refusal that are common to requests from both EU-members and non-EU countries (such as *non bis in idem*, discriminatory purposes...); others are specific. For example, France may refuse to enforce an order from a non-EU country where the underlying offence is of political nature or where the decision that was rendered abroad does not offer sufficient guarantees with regard to the rights of the defence or the protection of individual liberties (cf. Article 713-37 of the Criminal Code of procedure). It is unknown whether those grounds have been invoked in recent years to refuse to enforce foreign orders.

The dual criminality requirement only applies in relation to the enforcement of non-EU orders (seizure and confiscation). However, in France, dual criminality does not require the offences to be identical: the foreign offence may be qualified differently as long as the underlying conduct constitutes criminal offences of equivalent nature under French law (in that regard, the French requirement may be considered to be in line with UNCAC Article 43.2). That being said, it is unknown whether dual criminality has been invoked in recent years to refuse to enforce foreign orders especially those involving the offence of illicit enrichment.

Although France does not provide for non-conviction based (NCB) confiscation, French courts have recognised and enforced foreign NCB confiscation orders (cf. cass. crim; 13 November 2003, case No. 03-80371 & cass. crim 19 October 2011, case No. 11-80247 both relating to the enforcement in France of Italian NCB orders of confiscation).

Contrary to the enforcement of non-EU countries’ orders, the enforcement of EU members’ orders is direct: as long as the order is approved by competent authorities, it is executed directly as a domestic order and there is no need for a domestic seizure/confiscation order.

French law further provides for sharing rules concerning the assets that were confiscated in France at the request of a foreign state. Here again, the rules vary depending on whether the requesting country is a EU member (Article 713-32 of the Criminal Code of Procedure) or not (Article 713-40 of the Criminal Code of Procedure). Either way, those rules do not involve any ownership consideration; the only criterion being *where* the confiscation was ordered. And yet, the country that ordered confiscation is not necessarily the one that has legitimate proprietary rights over the assets. Moreover, the sharing rules do not provide for systematic or full restitution: at best and unless an agreement rules otherwise, the state that ordered the confiscation might get 50 per cent of the sums recovered.

Those sharing rules differ greatly from UNCAC provisions on the return and disposal of confiscated assets (cf. Article 57), which substantially provide for mandatory restitution of (all) confiscated property to the requesting country that ordered the confiscation provided that it has or can establish prior ownership over the assets (UNCAC Articles 57.3.a), b)). France, however, has no choice but to apply UNCAC

provisions: in fact, subject to its application by the other State Party, UNCAC provisions prevail over those that are in the Criminal Code of Procedure (cf. Article 55 of the French constitution).

UNCAC further calls on State Parties, “in all other cases”, to “give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime” (UNCAC Article 57.3 c)). In practice, however, that mandatory provision, formulated in quite general terms, may be hard to implement in the absence of any guiding domestic provisions.

Another concern results from the fact that both the UNCAC restitutions provisions and French sharing rules are grounded on international cooperation. And yet, some confiscations may be ordered in an autonomous manner (i.e. by French Courts) even though they involve the proceeds of foreign corruption. In that regard, Transparency International France is greatly concerned about the destination of Teodorin Nguema Obiang’s assets in France should he get convicted and French courts issue an order of confiscation¹² given that to date, there is no proper legal framework in France to ensure that his assets – should they get confiscated by French courts – would be returned to (or at least disposed of in the benefit of) the people of Equatorial Guinea. In fact, based on current laws, confiscated assets would be transferred into the general budget of the French Public Treasury,¹³ which means that the only way to get them (or some of them) used in the benefit of the true victims would be to get a vote from the parliament as part of the annual Budget Bill – a decision highly political and, as such, surrounded by a lot of uncertainty.¹⁴

Institutional strengths and weaknesses

Law No. 2013-1117 of 6 December 2013 created the National Financial Prosecution office (“le Parquet National Financier”), a specialised prosecution unit, which has jurisdiction over the entire French territory to deal with grand/complex cases involving economic/financial and tax matters (corruption, tax fraud ...).

The creation of this specialised prosecution office together with the recent adoption of laws aimed at enhancing the independence of public prosecutors from the Minister of Justice have contributed to a sharp increase in the volume of cases (see below). However, the resources of this prosecution office are not sufficient to cope with them or to deal properly with requests for mutual legal assistance. In fact, as of May 2017, the office only comprises 13 operational magistrates (14 as of September 2017), four specialised assistants and 10 clerks.

Investigations are mainly performed by the Central Office for the Fight against Corruption and Financial and Tax Offences (OCLCIFF). OCLCIFF consists of two brigades : one dedicated to tax offences “la brigade nationale de répression de la délinquance fiscale” (BNRDF) and one dedicated to corruption and financial offences “Brigade nationale de lutte contre la corruption et la criminalité financière” (BNLCF). The BNLCF comprises about 30 investigative agents – a figure which is insufficient and accounts for important delays in the conduct of investigations.

France has two agencies designated as Asset Recovery Offices (AROs):

¹² On October 27th, 2017, a Paris court convicted Teodorin Nguema Obiang of money laundering in connection with embezzlement and corruption and sentenced him to three years in prison, a fine of €30 million, and the confiscation of all his assets that were seized in the course of the proceedings. (The prison sentence and the fine, but not the confiscation, were suspended, meaning they will only be implemented if he commits another crime in France within the next five years.) Teodorin Nguema Obiang has filed an appeal of this judgment. More info about the case provided further below.

¹³ Under certain conditions, prior legitimate owners may oppose the transfer and claim the restitution of confiscated assets. One of these conditions involves the *bona fide* status of the claimant → He/she ignored the unlawful origin of the assets in question.

¹⁴ Transparency International France addressed that issue in a report released on October 26th, 2017 : “ Le sort des biens mal acquis et autres avoirs illicites issus de la grande corruption : Plaidoyer pour une procédure adaptée, au service des populations victimes ». It is available [here](#).

- The Criminal Assets Identification Platform (PIAC): created in 2005, it is a law enforcement unit dedicated to the identification of criminal assets; it is empowered to conduct financial and patrimonial investigations and to proceed with seizures under the supervision of a judicial authority.
- The Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC): created in 2010, this agency is responsible for the management of assets seized during criminal proceedings in France and for the disposal of confiscated assets.

According to a recent investigative report from the French Senate (2017), the coexistence of these two agencies poses two distinct types of problem:

- First, the fact that there are two AROs is confusing for foreign countries, which don't necessarily know which agency to contact.
- Second, both agencies are tasked with collecting data about seized assets. However, while some seized assets are collected twice (both by the AGRASC and the PIAC); others are not collected at all. This precludes the collection of comprehensive and reliable data about the volume of seized assets in France.

In that regard, it is further worth mentioning that despite the creation of AGRASC, France is not able to provide comprehensive and reliable data about the volume of confiscated assets in France. This is due to the fact the agency is not responsible for all the confiscations (but only those involving cash, bank accounts and real estate).

Overall assessment of political will

For a long time, cross-border corruption was too sensitive to pursue. While the prosecution office dropped grand corruption investigations, including where presented with a *prima facie* case, foreign bribery cases were barely enforced.¹⁵

There was a shift in French criminal policy around 2010/2012. Since then, several laws were passed with the aim of enhancing the pursuit of corruption and/or ensuring the independence of the prosecution; and there has been a very marked increase in cases. With respect to foreign bribery, the OECD notes:

... whilst the October 2012 report mentioned 33 proceedings initiated by France since 2000, that figure had risen to 58 by the date of submission of this report, which means an increase of 75% over [the period 2012-2014]. (OECD, 2014)

France still lacks a transparent and comprehensive policy to combat international corruption and recover the proceeds.

It is also worth mentioning the openness of the new National Financial Prosecution Office towards civil society – a first and welcome move.

France, however, still lacks a transparent and comprehensive policy to combat international corruption and recover the proceeds – a policy that would insist on the significance of asset recovery as an integral part of broader anti-corruption efforts, and assign the relevant authorities with the appropriate resources to

trace, seize and confiscate stolen assets and effectively support the relevant authorities in granting the widest range of international assistance.

¹⁵ Until recently, proceedings involving the offence of bribery of foreign public officials could only be instigated by the public prosecutor. In other words, and in an exception to ordinary law, no private prosecution was authorised in such matters.

Involvement of civil society

Civil society involvement in the issue of international asset recovery really started in 2007 with the publication of an investigative report by a French NGO, the *Comité Catholique contre la Faim et pour le Développement* (CCFD), which attempted to estimate the ill-gotten wealth amassed in Western countries by 23 dictators and former dictators as well as their relatives.¹⁶ Based solely on public sources of information, the research was necessarily non-exhaustive; its findings were nevertheless startling: by CCFD's estimates, the value of assets stashed away by the 23 ruling families covered in the report totalled some US\$ 200 billion.

Concerned by the findings of this research and especially by the volume of assets accumulated over the French territory, and refusing to let this report disappear into oblivion (like so many others once they have fallen out of the media spotlight), Sherpa decided to take action.

Thus, in March 2007, Sherpa, together with two other associations (Survie and Fédération des Congolais de la Diaspora) filed a criminal complaint (“*notitia criminis*”) against the presidents of Congo-Brazzaville (Denis Sassou Nguesso), Gabon (Omar Bongo Ondimba, now deceased) and Equatorial Guinea (Teodoro Obiang Mbasogo), as well as the members of their respective entourages (family members and close associates).

The complainants claimed, based on CCFD's research work, that these individuals held considerable real estate assets on French soil that could not have reasonably been acquired through their salaries and emoluments alone. The complainants alleged that, given the existence of serious suspicions of misappropriation of public funds surrounding these same individuals, these property investments likely involved money laundering.

After a three-year legal battle, a criminal investigation was finally launched (the case is known in France as the “*Biens Mal Acquis*” case – literally “ill-gotten assets”) and the first trial started on 19 June 2017 (see further below).

One of the key achievements of the case was the recognition of Transparency International France's (TI France) legal standing to institute criminal proceedings. In fact, the major decision handed down by the Court of Cassation on 9 November 2010 (which recognised TI France's standing to act as a “civil party”) was ultimately codified into law on 6 December 2013: since then, French anti-corruption associations are allowed to bring prosecutions in corruption-related matters and a large number of corruption cases have been filed at the initiative of Sherpa, TI France and Anticor (the largest anti-corruption groups in France). In particular, several recent cross-border corruption cases were prompted/joined by Sherpa including a foreign bribery case against Vinci in relation to an alleged corrupt deal in Russia and a money laundering case involving Gulnara Karimova, the eldest daughter of the former president of Uzbekistan.

2) DOMESTIC ENFORCEMENT OF FOREIGN CORRUPTION CASES

While there is now a comprehensive set of rules aimed at fighting cross-border corruption as well as stronger determination on the part of enforcement authorities, those changes are nevertheless too recent to really straighten up France's rating. In fact, enforcement results (i.e. number of convictions, volume of assets confiscated...) remain dramatically poor.

Overall assessment of availability and ease of access to information

¹⁶ The report was updated in June 2009 under the title “*Biens mal acquis: à qui profite le crime?*” (CCFD, 2009).

Even though the media may report some pieces of information, no official information is available about on-going cases (in France, both preliminary and judicial investigations are covered by the principle of confidentiality) and cases may be dropped or dismissed without any public scrutiny.¹⁷

Except where law rules otherwise, trial hearings are open to the public (court decisions are always open to the public). Court decisions are further available on the website [Legifrance](#) or upon request to the relevant court clerk.¹⁸

Public releases from the Public Prosecution Office are scarce and there is no official webpage/site compiling relevant information/data about foreign corruption cases. In other words, information remains scattered and is not easily accessible (especially to foreigners).

It is important to note, however, that Law n°2016-1691 of 9 December 2016 (“loi Sapin II”), which recently introduced in the French legal framework judicial settlements to deal with corruption-related matters (called “convention judiciaire d’intérêt public”) provides for the mandatory publication of all concluded settlements on the website of the new French Anti-Corruption Agency.

Resolved cases (up to five years)

Concerning money laundering associated with foreign corruption, to our best knowledge, not a single case has been resolved in the last five years. This is not surprising given that such cases are usually complex and require long investigations, that most were launched around 2010 and that they either involve failing states and/or corrupt states (meaning that international cooperation is constrained).

The exact number of on-going domestic proceedings is unknown. According to information reported in the media, at least four foreign politically exposed persons (PEPs) are currently being targeted by money laundering proceedings in France:

- Ben Ali “clan” (former president of Tunisia)
- Rifaat al-Assad (uncle of the president of Syria)
- Gulnara Karimova (daughter of the former president of Uzbekistan)
- “Biens Mal Acquis” Case (ruling families of Gabon, Congo-Brazzaville and Equatorial Guinea).¹⁹ Teodorin Nguema Obiang (son of the president of Equatorial Guinea and, since recently, vice-president of the country) was the main subject of investigations: he was ultimately sent before a Criminal Court in Paris to respond to accusations of money laundering associated with embezzlement and corruption offences. The trial started on 19 June 2017 and ended up on 6 July with the French prosecutor calling for a three-year prison sentence, a 30 million euro fine and the confiscation of Teodorin Nguema Obiang’s assets in France. The judgement was rendered on October 27th, 2017: as indicated above, the court convicted Teodorin Nguema Obiang of money laundering in connection with embezzlement and corruption and sentenced him to three years in prison, a fine of €30 million, and the confiscation of all his assets that were seized in the course of the proceedings. (The prison sentence and the fine, but not the confiscation, were suspended, meaning they will only be implemented if he commits another crime in France within the next five years.) Teodorin Nguema Obiang has filed an appeal of this judgment.

Concerning foreign bribery, only one case has been concluded over the period 2012–2017 and it is a decision of discharge. The case involves Safran – a large French group active in the aerospace, defence

¹⁷ However, where anti-corruption groups are involved in the case as a “civil parties” they may appeal such decisions.

¹⁸ It is worth mentioning though that the public prosecution office may oppose to grant a copy of a decision until the final court decision is rendered (cf. Article R.156 of the Criminal Code of Procedure).

¹⁹ As indicated above, this is an autonomous confiscation case that was prompted thanks to a criminal complaint filed by French anti-corruption groups in 2007.

and security sectors – and its operations in Nigeria. On 5 September 2012, Safran (formerly known as Sagem) was sentenced for the payment of bribes amounting to 380,000 euro to Nigerian public officials in relation to a US\$214 million contract for the supply of 70 million identity cards. The judges sentenced the company to a fine of 500,000 euro – corresponding to two-thirds of the maximum penalty then available (750,000 euro). Even though the sentence was not really dissuasive, it was the first conviction of a company in relation to foreign bribery. The company, however, filed an appeal and was ultimately discharged by the Court of Appeal.²⁰

In fact, no legal entity has ever been convicted in France for foreign bribery more than 17 years since the introduction of the offence.²¹

As of October 2014, 38 foreign bribery cases were on-going in France (OECD, 2014).

Other relevant cases

Since 2010, several French companies have been sanctioned abroad (particularly in the US) in connection with acts of foreign bribery (Technip, Total, Alcatel, Alstom). This situation raised much concern among the OECD Working Group on Bribery:

The WG continues to be concerned by the very low number of convictions in France for bribery of foreign public officials (...). The WG's concern is all the more acute insofar as, despite foreign judgments involving certain French companies, France does not seem to have pursued criminal action in such cases as vigorously as expected. (OECD, 2012)

3) Freezing and confiscation (up to 5 years)²²

Overall picture

In France, there is no system in place for the collection of data on international asset recovery cases (including the volume of frozen/confiscated assets) or, *a fortiori*, any transparency concerning said data. In fact, as seen above, even the AGRASC is not able to centralise that information in a comprehensive/reliable manner.

However, given that no criminal proceedings in relation to foreign corruption have been successful in the last five years, and that no confiscation is possible in France outside criminal conviction, it is believed that no confiscation was ordered in France over the period 2012-2017 in relation to said matters. Likewise, to the best of our knowledge, France has not executed any foreign confiscation orders in relation to foreign corruption in the last five years.

In France, there is no system in place for the collection of data on international asset recovery cases or, *a fortiori*, any transparency concerning said data.

²⁰ Source: [media](#).

²¹ Regarding natural persons, as of October 2014, five natural persons had been convicted for foreign bribery. All convictions related to minor cases involving petty bribery of foreign public officials by senior managers and employees of medium-sized enterprises. These convictions only gave rise to minimal penalties: suspended prison sentences and small fines of about 10,000 euros. Sources: OECD (2012, 2014).

²² The below comments only involve judicial freezing. The list of people/entities subject to political freezing is available [online](#).

It is further worth mentioning that French magistrates are reluctant to confiscate the proceeds of active bribery (i.e. all the illicit profits, benefits or advantages of monetary value derived from active foreign bribery). In fact, as of October 2014 (and despite the adoption of laws on seizure and confiscation), “no asset has been seized and managed by AGRASC in relation to a foreign bribery case” (OECD; 2014). In that regard, it is worth mentioning that the new settlement procedure for corruption offences (which covers foreign bribery) does not even provide for the confiscation of illicit assets (the only available monetary sanction is a fine).

Specific (freezing) proceedings (up to 5 years)

In the last five years, France has frozen (at least) the following foreign corruption related assets:

- Rifaat al-Assad’s assets: in 2016, various assets (totalling 90 million euros) were seized in France (Source: [media](#)).
- Abacha’s assets: in 2014, France enforced a freezing order from the US.²³ See [Order issued by High Court of Paris on April 24, 2014](#) authorising Banque SBA to transfer more than US\$159 million to the AGRASC.
- Gulnara Karimova’s assets: in 2014, various properties were seized in France including a flat in Paris (estimated value: 31 million euros), a mansion on the French Riviera and a castle in Groussay (Source: [SHERPA](#)).
- Teodorin Nguema Obiang: in 2012, his 150 million euros worth residence located on Avenue Foch (Paris) was seized. In reaction, Equatorial Guinea (EG) decided to hang up their national flag on the wall of the residence, to fix a plaque on the gate and to move some of its diplomatic staff there (Source: [media](#)). EG’s representatives alleged that the residence was the property of the state of EG used for its diplomatic mission in France, which as result enjoyed full diplomatic protection under the Vienna Convention. EG further instituted proceedings against France before the International Court of Justice (Source: [CIJ](#)). This illustrates the need to reconsider the international rules on immunity to prevent them from being abused.

4) Repatriation of stolen assets (and/or payment of compensation to victim countries)

Overall picture

As seen above, in France, there is no system in place for the collection of data on international asset recovery cases or, *a fortiori*, any transparency concerning said data. However, there is not so much to report given that France has almost no experience in repatriation/compensation.²⁴

France has almost no experience in repatriation/compensation.

²³ The request relates to a civil asset forfeiture complaint filed by the US Department of Justice (DoJ) in November 2013 seeking to forfeit bank accounts and investment portfolios with funds located in Bailiwick of Jersey, France and the United Kingdom. Source: [DoJ](#).

²⁴ According to a recent informative report produced by the Senate, the AGRASC has shared 975.186 million euros with foreign countries since its creation in 2010, but none of these sharing agreements relate to foreign corruption (French Senate ; February 2017).

In fact, as far as we know, the only instance (of compensation) that we are aware of is Thales/ Taiwan Case.²⁵ In 1991, France and Taiwan, China, signed a contract to supply six Lafayette Class frigates for a total of US\$2.5 billion. Shortly thereafter, the authorities in Taiwan, China accused the French state-owned Elf Aquitaine of having paid bribes through the French firm Thomson CSF (now Thales Group) to persuade the authorities to approve the deal and launched an investigation. The International Chamber of Commerce's International Court of Arbitration eventually heard the case. The court found that Thales Group had violated the anti-corruption terms of the contract and was therefore liable to repay all bribes, plus associated interest and legal fees. Thales appealed, and the decision was upheld by the Paris Court of Appeal on 9 June 2011, ordering Thales Group to pay compensation to Taiwan, China, in the amount of 630 million euros (US\$913 million) (StAR/OECD, 2014).

Other cases (no repatriation/compensation)

There are plenty of cases given the volume of foreign wealth amassed in France. Let's just give a few highlights:

- While both Mobutu and Duvalier had amassed vast assets in France neither of them have ever been returned to their respective countries.²⁶
- Concerning Bokassa's assets in France, they were seized and then sold at auction, but the proceeds of the sale were ultimately transferred to First Curaçao International Bank, which held a 3.3 million of francs claim on the Haitian Republic (Source: CCFD, 2009).
- As for Saddam Hussein's assets, they have been kept frozen since 2003 and the UN resolution 1483, but, as far as we know, they haven't been returned to Iraq yet.

5) Civil society recommendations for GfAR

France should:

- Introduce non-conviction based confiscation tools
- Prompt an international debate over the issue of international immunities in corruption cases with the aim of preventing abuses
- Facilitate direct measures for AR through proactive sharing of information
- Enhance the civil framework for AR
- Encourage the judiciary to recognise the societal cost of corruption and develop research to that end
- Establish a website providing easy access to information about asset recovery in France, including relevant statutory provisions, and practical asset recovery case examples (including foreign bribery cases)
- Strengthen capacity-building in developing countries by developing programmes and projects
- Develop a legal framework in order to use confiscated assets to the benefit of victim populations
- Increase the resources of the National Financial Prosecution office and investigative agencies
- Consider merging the two existing AROs (AGRASC and PIAC) so as to facilitate international cooperation and centralise all relevant data

²⁵ The Noriega case that was tried in France and led to damages to Panama involved drug trafficking and not corruption offences.

²⁶ As seen above, Haiti tried in vain to institute civil proceedings in France.

- Adopt a transparent and comprehensive policy to combat international corruption and recover the proceeds
- Promote the seizure and confiscation of the instrument and proceeds of the bribery of foreign public officials and provide for the confiscation of said assets in settlement proceedings
- Maintain and publish comprehensive data on asset recovery cases, including publication of all court decisions (including pending cases), and the volume of assets frozen and confiscated, reparations or restitution ordered, and assets returned

Resources

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- Direction des Affaires Criminelles et des Grâces (French Directorate for Criminal Matters and Pardons)
- Madam Houlette, Head of the National Financial Prosecution office
- Madam Kostomaroff, Head of the AGRASC
- Stéphane Bonifassi, French Attorney-at-law