

GFAR PROGRESS REPORT ON SRI LANKA – DECEMBER 2019

DEVELOPMENTS IN GFAR COUNTRIES SINCE DECEMBER 2017

KEY FINDINGS

Adequacy of Legal Framework

Sri Lanka continues to lack a composite law on asset recovery: whilst laws are in place for asset freezing, confiscation and recovery, there is no holistic law on asset recovery, including procedures related to the management of recovered assets. Different pieces of legislation deal with different aspects of asset recovery and are only applicable to a very narrow set of offences in the case of each piece of legislation.

As a result of the lack of a composite law on asset recovery, Sri Lanka is only able to request the destination countries to freeze the assets which are located in these countries. Sri Lanka is unable to return them or offer reciprocal treatment to these countries in the event that stolen assets belonging to them are found in Sri Lanka.

The Stolen Assets Recovery Taskforce (START) is a presidential task force mandated to,

“... Conduct necessary intelligence gathering, coordinate with local and foreign intelligence, law enforcement, prosecuting and judicial authorities and investigate and inquire into and thereby identify, trace, seize and transfer or return to Sri Lanka to be confiscated and be vested in the general treasury ... state assets and revenue due to the Government of Sri Lanka”.¹

Apart from this mandate START was also entrusted with the responsibility to submit to the Cabinet of Ministers a Bill that would comprehensively deal with proceeds of crime. Accordingly, they developed a Policy and Legal Framework of the Proceeds of Crime Bill in 2018 and submitted to the President (detailed more fully later). This has not yet been enacted in to a law.

Adequacy of Institutions and Political Will

At the 2016 UK Anti-Corruption Summit, Sri Lanka identified grand corruption and asset recovery as priority areas in the country’s anti-corruption work. This pledge was renewed at the follow up Global Forum on Asset Recovery held in Washington D.C. in 2017, where Sri Lanka was a focus country. As committed by the Sri Lanka Delegation at GFAR, START convened a drafting committee to prepare the Policy and Legal Framework of the proposed Proceeds of Crime Bill in January 2018. This committee consisted of members from law enforcement officials investigating and prosecuting financial crimes, members from the Attorney General Office, Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Ministry of Foreign Affairs, Ministry of Justice, and Civil Society.

This Framework was presented to the President who in turn would need to guide the Cabinet of Ministers to direct the Legal Draftsman to prepare the Bill. There has been no official indication as to whether the President has guided the Cabinet of Ministers accordingly. This work has come to a halt

¹ Cabinet Memorandum dated 16th March, 2015, No. PS/CP/10/2015.

due to the Presidential elections on 16 November 2019 and at this stage it is not clear whether the new President will issue the required guidance.

On 18th of March 2019, CIABOC launched the National Action Plan for Combatting Bribery and Corruption 2019-2023. This is a five-year action plan covering four main strategies: Prevention measures, Value-Based Education and Community Engagement, Institutional Strengthening of CIABOC and other Law Enforcement Agencies, and Law and Policy Reforms.

In this Action Plan, the Policy and Legal Framework of the proposed Proceeds of Crime Bill, which was formulated in 2018 by START is included as an activity that needs to be completed within a short-term, i.e. 1 to 12 months. And amongst the institutions responsible for implementing this are recognized as START, Attorney General's Department, Legal Draftsman's Department and CIABOC. It appears that CIABOC is assuming the responsibility of ensuring that the law is enacted.

However, there appears to be limited political will on enacting this law currently. In the latter part of 2018, a constitutional crisis occurred, halting all government functions for a considerable period of time. In late April, the Easter bombings happened, putting the country in a state of emergency, which continues to date. The main drivers of the drafting exercise from START side are no longer operating in the same positions. However, the new management of START remains committed to getting the law enacted.

Transparency and Participation

As committed at the GFAR meeting 2017, START invited CSOs to be part of the drafting process of the legislative framework. TI-SL's input into the document went beyond issues of transparency and accountability, and was based on the UNCAC, best practices of other countries, and new developments in the international standards of asset recovery. The Committee has relied on certain points of the input TI-SL had on substantive principles on asset recovery.

Some of the key principles TI-SL advocated are as below, all of which were incorporated into the final Policy document:

- Ensure accountability and transparency of and public confidence in the proceeds of crime recovery system
- Ensure that the proposed law provides for annual reporting to Parliament and periodic public reporting – to avoid returned money being re- stolen.
- Guiding principles in the enforcement and interpretation of the provisions of the proposed law must be necessity, proportionality and public interest.
- The proposed law needs to contain adequate protection of bona-fide interests of third-party claimants
- In order to repair the damage caused to society as a result of the underlying crime, one of the uses that the returned money must be put to is the achievement of the Sustainable Development Goals.
- Board of the Trustees of the Trust formulated for the management of recovered assets must include persons from civil society
- The management and administration of the Trust Fund must be transparent and amenable to public inspection
- The need to clearly define/lay down criteria for terms like “proceeds of crime” and “course of criminal activities” for extended confiscation to avoid misinterpretation of the law.

Whilst it was positive that TI-SL was made part of this exercise, it is concerning to see the waning interest in enacting the law on proceeds of crime.

Enforcement Experience

Sri Lanka does not have any cases where assets have been returned to Sri Lanka.

International Cooperation

None which has not been officially communicated.

Recent Cases

There are no reported cases in which stolen assets have been returned to Sri Lanka

Compliance with GFAR principles

The following comments are based on the Legislative and Policy Framework of the Proceeds of Crime Bill:

- **Principle 4: Transparency and accountability**

Transparency and accountability are recurrent themes of the Legislative and Policy Framework. Ensuring accountability and transparency of the proceeds of crime recovery system is identified as one of the key objectives of the framework. It also seeks to provide for an effective and expeditious procedure for annually reporting to Parliament.

Necessity, proportionality and public interest have been recognized as guiding principles in the enforcement and interpretation of the proposed law.

The orders issuable (e.g. confiscation order, order for extended confiscation, non-conviction-based asset recovery order) under the law are subjected to appeal. The law is to include adequate safeguards to protect bona fide interests of third-party claimants.

The Trust Fund for Confiscated Proceeds of Crime (the Trust Fund) to where recovered assets would be transferred (detailed below) will be audited periodically and will come under the supervision of Parliament. It will also have members from civil society in the Board of Management. The Management and administration of the Fund is mandated to be transparent and amenable to public inspection.

The Proceeds of Crime Recovery & Management Authority of Sri Lanka (the Authority), has the mandate to conduct investigations into proceeds of crime, detection, seizure, temporary administration, transfer and dispose of proceeds of crime based on authority received from a judicial order. The finances of the Authority will be audited by the National Audit Office.

- **Principle 5: Beneficiaries and principle 6: strengthening anti-corruption and development**

Once the confiscated property/ value are apportioned between the direct victims and the Authority is reimbursed for the expenses incurred in the administration and management of the seized property, the remaining funds will be transferred to the Trust Fund.

The funds of the Trust can be utilized for the following purposes:

- a. To strengthen law enforcement, in particular, in its efforts to recover proceeds of crime.
 - b. To strengthen administration of justice.
 - c. To promote and protect rights and entitlements of victims of crime and witnesses.
 - d. For development and maintenance of crime prevention measures.
 - e. To provide lawful incentives to law enforcement officers associated with enforcing provisions of this law.
 - f. To strengthen a fund to be entitled 'Informants Reward Fund'.
 - g. To achieve targets of the Sustainable Development Goals.
- **Principle 9: Preclusion of Benefit to Offenders**
Depriving criminals from the ill-gained assets, has been recognized as one of the purposes of the proposed law.
 - **Principle 10: Inclusion of non-government stakeholders**
The Board of Trustees of the Trust for Confiscated Proceeds of Crime consists of persons who have related civil society activism and will be appointed by the Constitutional Council.

The Constitutional Council is also to appoint individuals with expertise in the related civil society activism to the Authority.

RECOMMENDATIONS

Legal Framework

- The President to present the Legislative and Policy Framework on Proceeds of Crime Act to the Cabinet of Ministers for them to instruct the Legal Draftsman to prepare the Bill for enactment.
- Ensure that the Bill incorporates the role of CSOs in managing and supervising the process of asset recovery.
- START and CIABOC to build political support for the new composite asset recovery law.
- Ensure that a degree of information relating to asset recovery processes, statistics and cases (the number of cases, case selection criteria, total quantum of assets known to have been illegally obtained and recovered, the names of countries where Sri Lankan assets are held after recovery, etc.) is made available to the public and CSOs, without prejudicing on-going investigations.

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