

ASSET RECOVERY OVERVIEW: SRI LANKA

KEY FINDINGS

Adequacy of Legal Framework

Sri Lanka's legal framework for asset recovery is inadequate. It lacks a composite law on asset recovery, including procedures related to recovered assets. There are, however, several laws that provide for asset recovery in specific contexts (e.g. Prevention of Terrorism Act, Electronic Transactions Act), and general provisions on confiscation of proceeds of a crime (Code of Criminal Procedure), but these do not provide a holistic framework for asset recovery.

Secrecy provisions embedded in mandates of anti-corruption agencies expressly prevent the sharing of information and therefore impede the prosecution of perpetrators

Sri Lanka has long standing laws on asset disclosure, the use of which are impeded by onerous secrecy provisions.

Adequacy of Institutions and Political Will

The Stolen Assets Recovery Taskforce (START), a presidential task force, is the only mechanism 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”. START comprises of representatives from Commission to Investigate Allegations of Bribery or Corruption (CIABOC), Financial Crime Investigation Division (FCID) and Financial Investigation Unit (FIU) of Central Bank amongst others. START was established through a decision of cabinet and is not a statutory body, thereby raising concerns over its survival beyond the current government's mandate.

START is hampered by the lack of a comprehensive legislative framework on asset recovery. Experience has illustrated that exercising Mutual Legal Assistance commitments faces significant bureaucratic red tape in partner countries. Furthermore, government agencies and civil society have very limited asset recovery expertise. The government has been offered resources emanating from bilateral relationships to assist in asset recovery.

No successful case of repatriation of frozen assets.

Transparency and Participation

Public information on freezing, seizure and confiscation of assets is absent and media coverage is superficial. With regard to civil society participation, there has been no government civil society consultation. Furthermore, CSOs have not been engaged in asset recovery due to the lack of public information on asset recovery efforts and the failure of civil society to sufficiently connect domestic corruption with the technical aspects of international asset recovery.

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Enforcement Experience

We are aware of assets being frozen in other jurisdictions. There have been no instances of successful repatriation of frozen assets, and no domestic cases on asset recovery.

Among members of START, the rhetorical desire exists to try and establish a comprehensive legislative framework on asset recovery, though prevailing political will in bringing perpetrators of corruption to justice is less apparent.

RECOMMENDATIONS

Legal Framework

- Adopt comprehensive asset recovery legislation (e.g. Proceeds of Crime Act), in line with UNCAC obligations, for example processes for investigation, instituting actions, including non-conviction based forfeiture and procedures for administering recovered assets.
- Utilize government's existing OGP National Action Plan commitments on anti-corruption, namely through amendments to restrictive information sharing provisions between anti-corruption agencies and introducing the long delayed amendment bill to the Declaration of Assets and Liabilities Act.

Institutions and Political Will

- Expand the mandate of CIABOC (the primary anti-corruption body) to include all matters related to asset recovery.
- Build political support for the new composite asset recovery law and the long-delayed amendment bill to the Declaration of Assets and Liabilities Act.

Transparency and Participation

- Ensure that the Bill containing the proposed composite law for Asset Recovery incorporate the role of CSOs into law (such as providing for civil society to initiate action in Sri Lanka in relation to asset recovery, monitoring asset management). This would build on the cabinet approved OGP National Action Plan (2016), which proposes a multi-stakeholder approach in addressing corruption.
- 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 stolen and recovered, the names of countries where Sri Lankan assets are held after recovery, etc.) is made available to the public/CSOs, whilst remaining within the secrecy provisions of the law.
- Enhance public accountability through publicly disseminated asset declarations for elected officials.

START (Stolen Assets Recovery Taskforce) has informed of assets being frozen in foreign jurisdictions.