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# Must stolen assets be returned to corrupt governments?

The Uzbek case

**UZBEK**  
ASSET RETURN  
NETWORK

# Must stolen assets be returned to corrupt governments?

Richard Messick<sup>1</sup>

*International law requires states returning stolen assets to ensure they benefit the citizens of the nation from which they were stolen. Not their government.*

## Introduction

As more countries crack down on large-scale, “grand” corruption, hopes are rising that the assets the corrupt steal will be returned to the countries from which they were stolen. The recent return by France of monies stolen from Uzbekistan raises a troubling question about the return process. How can the global community be sure the assets are returned to the real victims of corruption, a nation’s citizens, when as in Uzbekistan the government is still controlled by a corrupt clique?

France returned assets stolen by Gulnara Karimova, daughter of the country’s deceased dictator, in accordance with the provisions of the United Nations Convention Against Corruption (UNCAC). Provisions drafted when the world appeared to be on the verge of a new era. Corrupt rulers, “kleptocrats” like Philippine President Ferdinand Marcos, Nigerian autocrat Sani Abacha, and Indonesian President Suharto, had been replaced by leaders committed to the rule of law and the welfare of their citizens. A search for the billions these rulers had pocketed and hidden abroad was underway, sparked both by considerations of restorative justice and by a need to help finance the rebuilding of their countries.

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It was with these conditions in mind that UNCAC's drafters created provisions requiring states to return stolen assets. The drafters took it for granted that the states seeking the assets' return would be governed by responsible, non-corrupt leaders committed to the rule of law. France's return of the \$10 million shows what happens when these assumptions are not met. Karimova's father was not succeeded by a democratically-inclined leader who respects the rule of law. Rather, the successor government is deeply affected by high levels of grand corruption. So instead of using the returned \$10 million to meet citizens' needs and revitalize the nation's economy, the opaque governance environment allows for powerful figures in the new regime to use it to further their own interests.

The return was made in accordance with the procedure set forth in UNCAC article 53. That article requires states holding stolen assets to allow victim states to bring civil actions in the holding states' courts to recover the assets. In France this requirement is realized through the *partie civile* procedure. It gives those injured by a crime the right to participate in the criminal case against the perpetrator and be awarded damages if there is a conviction. Those who helped Karimova launder bribe proceeds in France were convicted in a French court in late 2019 of money laundering. The Uzbek government had been designated a *partie civile* in that case, and the \$10 million is the first tranche of some €60 million that it will receive as the properties purchased with the laundered funds are sold.

## **Did France have to return the \$10 million to Uzbekistan?**

The answer is no, for France is party not only to UNCAC but to the International Covenant on Civil and Political Rights. Article 14 of that treaty provides that:

*"In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*

A corollary to that article is that other parties to the covenant are bound not to give any legal weight to convictions obtained in trials that violate article 14.

The money laundering conviction in France stems from proceedings in Uzbekistan's Tashkent Regional Criminal Court. Karimova and associates were convicted there of a

variety of financial crimes arising from bribes she took. The convictions supplied the predicate offense for the French money laundering charges. The trials, however, were closed to the public; no transcripts exist, and the cases were not listed on the court's docket. These are standard practices in Uzbekistan where criminal trials are rarely, if ever, conducted in accordance with basic international human rights norms. By all accounts the Karimova and associates' trials were conducted in violation of article 14, meaning that French authorities should not have given effect to the convictions. Convictions that in turn were the essential prerequisite to the money laundering case that formed the basis of the return of the \$10 million.

## **Must Belgium, Ireland, Luxembourg, and Switzerland Return Assets?**

France is not the only nation where human rights violations should bar return of Karimova assets to the Uzbek government. Belgium, Ireland, Luxembourg, and Switzerland also hold assets Karimova stole, and if they have not already, they will likely soon receive requests to return them. As with the French return, the request will in one way or another arise from the convictions of Karimova and accomplices in the Uzbek case.

In Switzerland and Luxembourg, courts are barred from recognizing any judgment if the procedural principles set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms, similar to those in article 14 of the U.N. covenant, were not observed.\* In Belgium, courts are not to give effect to a confiscation order if "the rights of defense" are not observed, and legal commentary states that Irish courts can only recognize confiscation orders issued by the courts of countries which appear on a list issued by the government, a list that reportedly does not include Uzbekistan.

A refusal to return the assets directly to the Uzbek government does not mean they will remain unclaimed in the four countries. The money laundering laws of the four countries give the governments of the four the right to claim whatever bribe money Karimova has on deposit in their countries' banks or properties purchased with the money. Ironically, confiscation by the four governments would open the way for the assets to be returned

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\* Frédéric Lugentz, Jacques Rayroud, and Michel Turk, *L'Entraide Pénale Internationale en Suisse, En Belgique et au Grand-Duché de Luxembourg*, Group Larcier, 2014.

to Uzbek citizens. For the four governments jointly, or anyone of them separately, could then pursue an approach developed in a previous case much like the Uzbek one.

## **Responsible return of assets to a corrupt state**

In the asset return case of Kazakhstan, Switzerland and the United States ('Kazakh I') were the governments holding the assets to be returned. To avoid returning the assets to the then corrupt Kazak government, Switzerland and the United States agreed with the Kazak government on a return method that would provide the assets directly to Kazak citizens. The funds were transferred to a Kazak non-governmental organization with no ties to the government. Under the watchful eyes of the World Bank and the three governments, the NGO hired two reputable, international NGOs which devised programs to see they went to the neediest Kazak citizens.

The Kazak I solution was the result of fortuitous circumstances: three governments willing to work together to find a solution to a complex, delicate problem rather than raise countless legal squabbles. But given the financial and political stakes in asset recovery cases, the global community can't be sure that the governments involved in future cases will always be so cooperative, as the French return to Uzbekistan shows. Thus, the hunt for a firm legal foundation on which to rest victim-centered solutions remains.

As the group responsible for the enforcement of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights (ESCR) has explained, the covenant creates "minimum core obligations" to ensure that all citizens have access to certain "minimum essential levels" of food, shelter, education, and health care.\*\* Lack of resources can excuse a violation, but only if a party can show it has made every effort to use all resources available to meet its minimum obligations.

That a kleptocratic government surely cannot do. The wholesale theft of a nation's resources through condoning bribery, extortion, conflict of interest, and other crimes of corruption would seem on its face a patent violation of the "minimum core obligations" the covenant mandates.

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\*\* UN Committee on Economic, Social and Cultural Rights, General Comment No 3: The Nature of States

Parties Obligations (Art. 2, para. 1 of the Covenant), December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html>

Even were a kleptocracy to meet its citizens' most basic needs, it would still be in violation of the covenant. Article 2(1) binds parties to "take steps... to the maximum of [their] available resources [to achieve] progressively the full realization of the rights" specified in the convention. As the ESCR Committee reports and learned commentary both stress, article 2(1) thus demands that state-parties continually strive to realize fully the rights guaranteed by the covenant. From this duty it follows, as the committee has observed, that where a state has taken "deliberately retrogressive measures" that reduce compliance with the covenant, a rebuttable presumption arises of an article 2(1) violation. A presumption no kleptocracy could rebut.

The Roman law maxim that there can be no legal right without a legal remedy, *ubi jus ibi remedium*, informs the laws of all countries -- for its logic is impeccable. To declare a citizen has a right to a fair trial or to a minimum standard of living, one deprived of these rights must have a place to turn to enforce them. Otherwise, the rights are nothing but words on parchment.

Indeed, it is this logic that informed the 2013 *Report of the Secretary-General to the Human Rights Council on the Realization of Economic, Social and Cultural Rights*. The Secretary-General there emphasized that without a remedy for violations of these rights, the rights themselves are meaningless.\*\*\* "A remedy," the Secretary-General proclaimed, "is fundamental to the very notion of human rights." Applied to asset recovery, the logic long recognized by all the world's legal systems and reiterated by the Secretary-General, provides unequivocal support for the proposition here. Assets stolen from the citizens of Uzbekistan or from the citizens of any other nation once victimized by kleptocrats and with no present assurance their governors will not again steal them must, as a matter of law, be returned in a way that directly benefits their citizens.

## **Conclusion: Karimova's Assets Should be Returned to Uzbek Citizens**

The governments of Belgium, France, Ireland, Luxembourg, and Switzerland are thus all obliged by international law to see Karimova's assets are returned to the citizens of Uzbekistan. Civil society in the five countries should insist each honor that obligation.

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\*\*\* UN Human Rights Council, Report of the Secretary-General on the Question of the Realization in All Countries of Economic, Social and Cultural Rights, December 2013, A/HRC/25/31, available at: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx>