

ASSET MANAGEMENT

An Essential Part of CAPAR

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Relevant AU Assembly Decisions

- Paragraph 9 of the AU Assembly Decision on CAPAR (9 February 2020)–
EMPHASIZES that the use and disposal of recovered and returned African assets, is the sovereign right of individual Member States, which are entitled to use assets for the common good of citizens in accordance with Africa’s development agenda, domestic laws and other legitimate government purposes;
- And paragraph 8 provides:
CALLS ON the international community to support and collaborate with the African Union and Member States to recover African Assets, including the proceeds of corruption and illicit enrichment as well as to repatriate the proceeds of tax evasion;

CURRENT PRACTICE

- Assets are held by Financial Institutions in Developed Countries or Offshore.
- Confidentiality laws protect the assets from disclosure despite some efforts by the international community.
- African States are unable to consistently pursue the recovery of those assets which may include legal action
- Often the transferee States make an effort to dictate how the assets should be used
- Lengthy recovery efforts lead to erosion of the value of the assets.

Key Issues affecting Recovery

- Important – as Mbeki report says – use resources for development/deterrent
- Existing initiatives – Amnesties/Individual country initiatives (US – Kleptocracy Initiative – returned Abacha loot)
- Lack of Transparency in asset origin and ownership
- Legal Process is complicated and long
- Need clear policy and legal framework at national level – especially on the Institution at National level that handles the recovery.

ASSET TRACING

- Institutional collaboration at national level to identify assets – Tax, Accounting, Customs, Banking, FIA, Beneficial Ownership)
- Government, Legal and Institutional collaboration between transferor and transferee countries.
- Fast Track Commercial/Criminal cases to enforce recovery of the assets
- Harmonized Laws and Penalties across participating countries.

Identification

- Identification of Assets – Test to exonerate should be proof that assets were acquired legitimately.
- Burden of proof should be on the asset holder
- Legal Process taking place in African State to identify the asset should be sufficient
- OECD States should accept immediate transfer of assets to Regional Banks (be held on escrow)
- All parties agree on a clear time based process to finalise the release

Non-liquid Assets

- Ensuring the proceeds from the sale of those assets be returned to Africa.
- Determining the value of those assets and ensuring that recovery processes do not erode the value.
- There is also issue of cultural artifacts well articulated by Chimamanda Ngozi recently.

Creating an African Fund

- Need to create an African Fund where the assets are deposited while negotiations are taking place on their ownership and use.

Examples of Recovery

- Nigeria experience/Abacha loot – only possible when Swiss Banks admitted holding funds. But Liechtenstein, Jersey and others delayed. (Loss of interest). Agreed to use them for Infrastructure projects.

Examples of Recovery 2

- Kenya – Assets from Jersey recovered - UK insisted on how the funds should be used
- Kenya recovery within a legal framework with UK, Switzerland and Jersey - Framework for the Return of Assets from Corruption and Crime in Kenya (in context of UN Convention against Corruption)
- Tunisia – only able to trace US\$ 27 million that was located in Lebanon.

Policy and Legal Framework

- There is need for Africa to formulate clear policy and legal framework for asset recovery.
- This could start with guidelines that African countries could follow in the process.
- The policy should cover particularly the management of the assets while they are still being held by third states
- Certain initiatives – such as ATAF – Mutual Assistance in Tax Matters should be encouraged.

Key Policy Considerations

- Lobbying on Transparency in identification of accounts holding assets
- Transparency in disposal of assets
- Transparency in value appreciation of assets
- Absence of clear international policy on – repatriation of proceeds from tax evasion
- Clear international policy in dealing with non-liquid assets and proceeds of tax avoidance
- Develop template Framework Agreements between African States and Countries holding assets (similar to Kenya Agreement)
- Financial Secrecy Centers should be eliminated

CONCLUSION

- High Level AU Committee should lobby for removal of identified secrecy impediments.
- High Level Committee should lobby for establishment of Neutral body such as AfDB to hold liquid Assets and to value non-liquid assets.
- Increased capacity building (purchase of necessary tracing tools)
- Increase knowledge and advocacy