



UNDERSTANDING THE COMMON AFRICAN POSITION ON ASSET RECOVERY (CAPAR)

EX.CL/1213(XXXVI) ADD.1 REV.1

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Introduction

- **Truism** – Africa cannot eradicate poverty or meet SDG without improving Domestic Resource Mobilization (DRM)
- **Reality** – DRM cannot improve if
 - corruption is not diminished
 - IFF from the continent is not reversed
 - Fiscal governance from revenue and expenditure sides is not improved
 - Reverse the anomaly of African being a net creditor to the world yet burdened by debt
 - An African problem requiring global solution
- **CoVID-19**
 - threatens Africa's fragile effort to meet global and local standards of development
 - has increased poverty and under-development in the past 2 years
 - resulted in a decline in Africa's GDP by about 3.5% says AfDB and ECA
 - Increased opportunity for corruption with all its negative consequences
- **Africa's Response** –
 - AU/ECA High-Level Panel on Illicit Financial Flows from Africa otherwise known as the Mbeki Panel Report which recommended actions to **track**, **stop** and **get back** illicit financial outflows.
 - AU Declaration of 2018 as Anti-Corruption Year with PMB as Champion and call for recovery and return of stolen assets with due cognizance of sovereignty rights of African states
 - Development of the CAPAR.

CAPAR – (Adopted by AU Ex. Council at the 36th Ordinary Session 06-07 Feb 2020)

- CAPAR is a political, policy, and advocacy instrument founded on -
 - Special Declaration of Assembly of Heads of State of the African Union on Illicit Financial Flows (Assembly/AU/Decl.5(XXIV) endorsed the findings and recommendations of the High Level Panel Report on IFFs from Africa (otherwise the Thabo Mbeki Panel Report)
 - Assembly Theme for 2017: “Winning the Fight Against Corruption: A Sustainable Path to Africa’s Transformation” (Assembly/AU/Dec.Dec.657 (XXIX)
 - 31st Ordinary Session of the Assembly that called on international partners to agree on a transparent and efficient timetable for the recovery and return of illicitly acquitted African assets.
 - Supported by Articles 1 and 19 AUCPC and Article 2, Chapter 5 (particularly Art. 57) UNCAC
 - Report of HE Muhammadu Buhari, President of Nigeria and AU Champion of the Anti-Corruption Year, on implementation of the Anti-Corruption Year theme presented to 32nd Ordinary Session of the Assembly, February 2019.
- Framework to assist Africa identify, repatriate and effectively manage assets while respecting the sovereignty of Member States.

CAPAR Framework - Four Legs + Two Hands

 **Leg 1. Detection and Identification**

• **Leg 2. Recovery and Return**

 Cross Cutting Issues
 Policy Recommendations

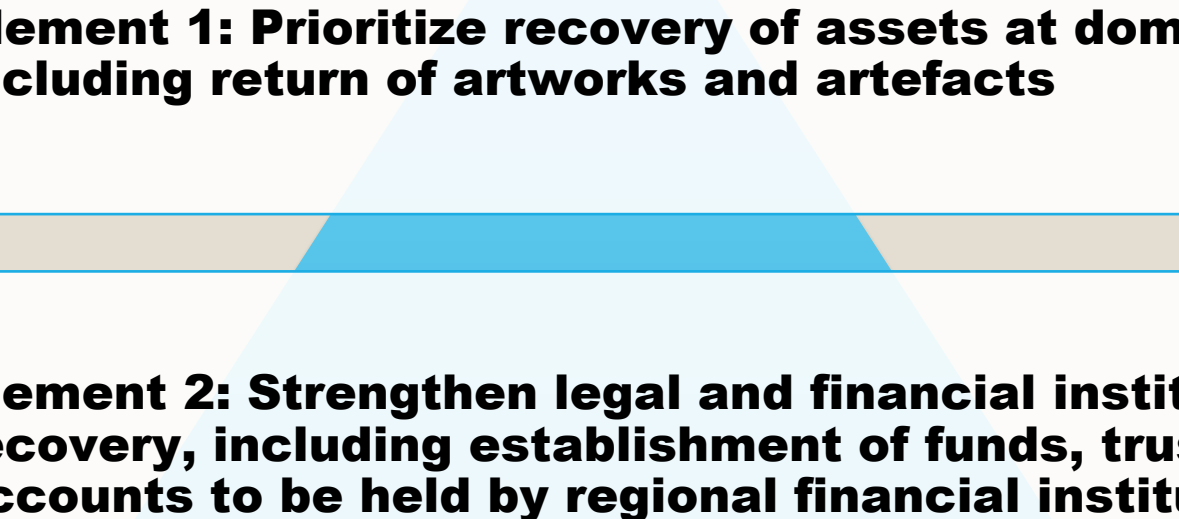
• **Leg 3. Management**

• **Leg 4. Cooperation and Partnerships**

Leg 1: Detection and Identification of Assets

- **Element 1: Strengthen domestic and regional systems, transparency and accountability and use of technology**
- **Element 2: Regulate, protect, incentivize whistleblowers**
- **Element 3: Strengthen and enhancing existing institutions**
- **Element 4: Encourage and advocate transparency**
- **this pillar stresses that detection and identification of assets in foreign jurisdictions is technically complex and inherently political**
- **For effective and efficient detection and identification of assets in foreign jurisdictions (both within and outside the continent) the 4 elements above are required**

Leg 2: Recovery and Return of Assets

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- **Element 1: Prioritize recovery of assets at domestic, regional and global levels, including return of artworks and artefacts**
 - **Element 2: Strengthen legal and financial institutions to aid process of asset recovery, including establishment of funds, trusts and dedicated African escrow accounts to be held by regional financial institutions.**

Leg 3: Management of Recovered Assets

- **Element 1: Use of recovered assets is the sovereign right of African Member States and they are entitled to use same for the common good of citizens in accordance with Africa's development agenda, domestic laws and other legitimate government purposes**
- **Element 2: Management of asset must include the power to invest returned assets, and generally adopt profitable and economically effective and efficient asset management standards in the interest of Member States and their people.**

Leg 3: Recommended Actions on Asset Management

- a) Mobilize domestic resources;**
- b) Preserve the value of seized and confiscated assets**
- c) Ensure accountability, transparency and measures to boost public confidence including monitoring of use by civil society**
- d) Institute corruption prevention & control measures**
- e) Compensate source (African) countries;**
- f) Assist source country collate data on assets in requested countries**
 - **Establish or designate recovered asset management agency**
 - **Create/establish a central returned assets account in local and designated foreign currencies**
 - **Codify or adopt policy on use of recovered assets for development goals or implementation of any other social investment project as deemed fit by Member States**
 - **Maintaining asset register**

Leg 4: Cooperation and Partnerships

- **Element 1: Prioritize cooperation and partnerships through advocacy and engagement**
- **Element 2: Enhancing coherence and cooperation between domestic, regional and global systems, frameworks and institutions.**
- **This leg notes the crucial importance of effective and efficient cooperation between various actors, including States, regional bodies, the global community, investigative bodies, law enforcement agencies and financial intelligence institutions in curbing IFFs**

Cross Cutting Issues – The First Hand: Three Fingers

- **1. Strengthening Domestic, Regional and International Systems**
 - prioritize domestic and regional levels
 - Create strong legal, taxation, financial and justice systems
 - Ensure independent well resourced domestic and regional justice systems;
 - Holding facilitators of IFFs to account
 - Regulate giving of gifts to public officials, transparency and accountability of the financial services sector
- **2. Inclusion**
 - Each leg to be defined by inclusivity, equity, gender equality, environmental sustainability and mutually beneficial development within and between Member states.
 - Elements of inclusivity - mutual support between countries, using, regional mechanisms for capacity building or assistance, strengthening domestic and regional capacity in negotiation of agreements, involving stakeholders like media and CSOs in the implementation of CAPAR
- **3. Enabling Implementation –**
 - This requires time-bound, relevant policy and strategic implementation, including allocation of resources for asset recovery activities, enhanced intra-continental cooperation and communication and experience sharing, and domestic and regional M&E mechanisms.

Policy Recommendations – The Second Hand: Ten Fingers

1. Strengthen domestic and regional systems for detection and identification;
2. Protection & incentivization of whistle blowers;
3. Strengthen existing bodies and institutions;
4. Encourage and advocate at the domestic and regional levels transparency in aid of detection & identification of African assets;
5. Prioritize the recovery of African assets at domestic, regional and global levels;
6. Strengthen legal and financial institutions to aid the asset recovery process;
7. Create and maintain an agreed African framework for management of recovered assets;
8. Enhance or create institutional, legal or policy frameworks for **transparent management** of recovered assets at the domestic level;
9. Prioritize cooperation and partnerships in efforts towards the recovery of African assets through advocacy and engagement at a regional and global levels;
10. Take steps to enhance coherence and cooperation between domestic, regional and global systems, frameworks and institutions

Conclusion

- Variance in the capacities of African States to engage the complex process of asset recovery underscores the need for a continental framework in the interest of all
- Capacity building should not be confined to that of members states but also of the regional institutions and organs expected to implement CAPAR – AU; AU-ABC;
- Constant engagement through bilateral and multilateral platforms with the international community towards pushing and advocating the African position
- The negative impact of CoVID-19 makes this actions inevitable
- Currently the AUABC and the CAPAR Working Group under the auspices of CoDA are driving the popularization of CAPAR but these organs need all the support they can get in the best interest of all of us.