

**Committee:** Economic and Financial (ECOFIN)

**Topic:** The question of measures to improve the recovery of stolen assets from LEDCs

**Chair:** Amanda Wills

**School:** Alconbury Middle High School

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## Summary

Stolen Assets is a major issue around the globe. Due to LEDCs not having the best intelligence and legal resources, it is more difficult to monitor and then recover the stolen assets. The Stolen Asset Recovery Initiative (StAR), has laid out specific guidelines needed in the asset recovery process, especially from LEDCs. Since these countries already have so little, stolen assets truly are detrimental to their economy and wellbeing. Assets can be recovered starting with collecting intelligence, evidence, and tracing assets; international cooperation (assisting with occurring assets, court orders, and/or other legal avenues); enforcing order and the return/management of assets.

## Definition of Key Terms

**Corruption** in simple terms, is the abuse of entrusted power for private gain. This could mean politicians misusing public money or corporations bribing officials to get lucrative deals.

**Assets** are an item of property owned by a person or company, regarded as having value and available to meet debts, commitments, or legacies.

**Less Economically Developed Countries (LEDCs)** are low-income countries confronting severe structural impediments to sustainable development.

**More Economically Developed Countries (MEDCs)** are countries that have a high quality of life, a developed economy, and an advanced technological infrastructure relative to other less industrialized nations.

**Money laundering** - It is a diverse activity that can range from simple wire transactions to complex mechanisms that rely on shell banks, undisclosed trusts, and hedge funds often set up with advisers from developed countries.

## Background Information

Stolen Assets have been an international issue for thousands of years. These assets can include anything from money to relics and paintings to other valuable items. Recovery of assets to LEDC's is especially difficult due to the lack of resources and expertise. The Recovery of money is much easier than it is to recover materialistic items, such as relics or paintings because it takes longer and is more difficult if it has been sold through many other parties, which is common in LEDCs.

According to the Stolen Asset Recovery Initiative, the asset recovery process includes UNCAC, collecting intelligence, evidence, and tracing assets, beneficial ownership transparency, international cooperation, domestic coordination, court proceeding/enforcement of orders, asset returns, and lastly asset management.

**UNCAC:** Recognizing the serious problem of corruption and the need for improved mechanisms to combat its devastating impact and facilitate the recovery of corruption proceeds. Chapter V of the convention provides this framework for the return of stolen assets, requiring state parties to take measures to restrain, seize, confiscate, and return the proceeds of corruption.

**Collecting intelligence, evidence, and tracing assets:** evidence and intelligence collection is conducted by law enforcement officers under the supervision of prosecutors or judges, or by private investigators to build subject and financial profiles. In some instances, special authorization is required from a judge, prosecutor, or law enforcement officer to access government agency databases or conduct electronic surveillance. In other cases, investigations can be conducted through open-source intelligence (OSINT), where data is publicly available. A robust profile would include information on the assets held by targets, their families and associates, and associated businesses. The financial data may include all assets and liabilities, income, and expenses of the targets and their businesses.

**Beneficial Ownership Transparency:** one of the key obstacles to tracing and recovering illicit gains from corruption is a lack of corporate transparency: during corruption investigations, investigators often must first uncover who actually benefits from the ownership of an asset – for example, a company or real estate that is involved in a corrupt scheme – since the beneficial owner may be hidden behind multiple layers of shell companies or behind a nominee company director. Implementing an effective beneficial ownership disclosure poses significant challenges, and most countries are struggling to implement FATF standards on beneficial ownership transparency.

**International Cooperation:** as a case for asset recovery progresses, international cooperation acts as an essential avenue for the successful return of assets that have been transferred to or hidden in foreign jurisdictions. It supports the gathering of evidence and intelligence, implementation of provisional measures, and the eventual confiscation of the proceeds of corruption, and for their return. International cooperation includes “informal assistance,” mutual legal assistance (MLA) requests, and extradition. An MLA request is normally a written request used to gather evidence (involving coercive measures that include investigative techniques), obtain provisional measures, and seek enforcement of domestic orders in a foreign jurisdiction.

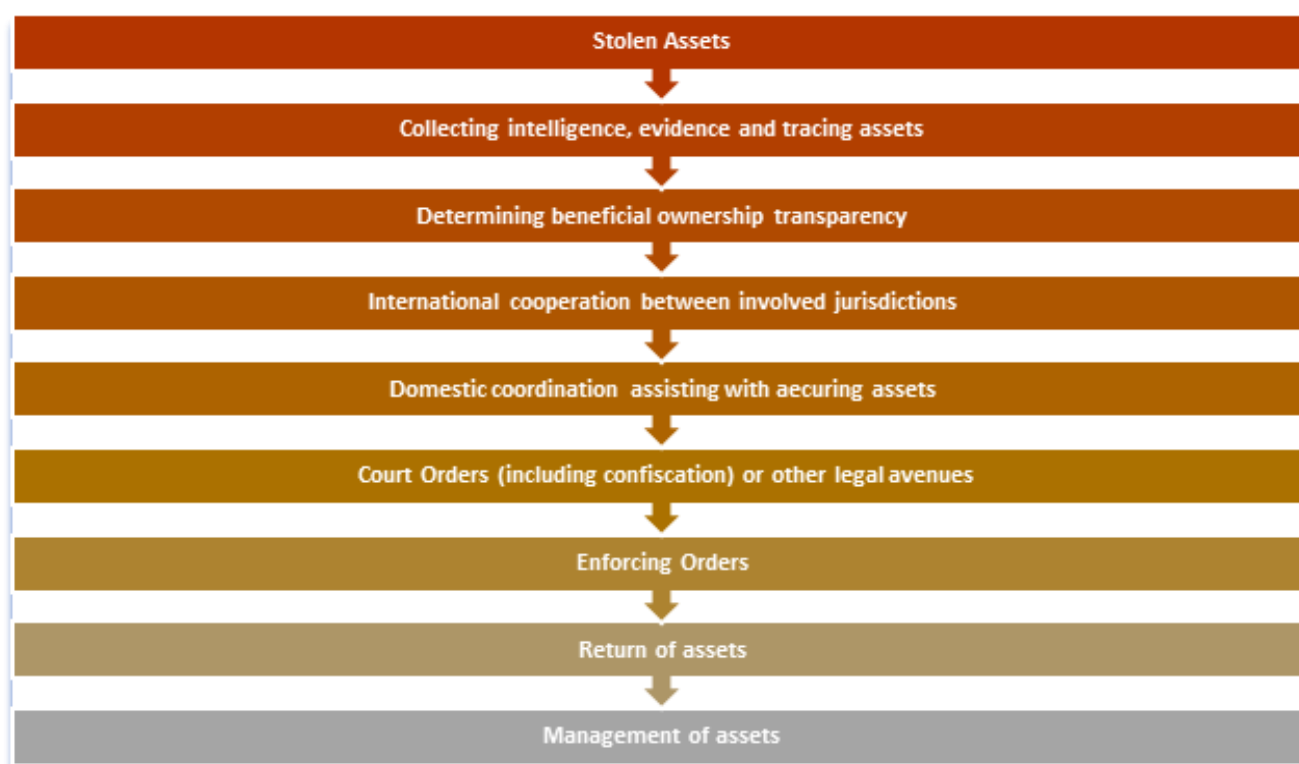
**Domestic Coordination:** In parallel to the investigative and legal work conducted by practitioners, and the different types of international cooperation between jurisdictions that assist in propelling the asset recovery process forward, an often-overlooked area of consideration remains domestic coordination. This relates to a clear system for domestic cooperation, ensuring there is a lead agency, and that all those with relevant information on the national level can share that with each other. Domestic coordination could take on the form of an ad-hoc task force, or a more permanent committee to support cohesion and sharing of information.

**Court proceedings/enforcement of orders:** Depending on the jurisdictions involved in the asset recovery case, and the practitioners/law enforcement agencies tasked with recovering stolen assets, there are a number of legal avenues available to countries to determine how best to proceed with the case. Proceedings may involve criminal or civil actions (or both) and will achieve the recovery of assets through orders of confiscation, compensation, damages, or fines. Countries have to establish the standard of proof in both cases and in the case of criminal proceedings; a link between the asset and the offense can be difficult to prove. However, once a court orders seizure or confiscation of assets, appropriate steps need to be taken to enforce that order and facilitate the return of assets to the requesting country.

**Asset Returns:** Once a confiscation order is enforced in the requested jurisdiction and no legal or political hurdles impede progress, assets are often transferred to the general treasury or confiscation fund of the requested country, and not directly to the requesting jurisdiction. As a result, another mechanism will be needed to arrange for the return of the assets.

Depending on the agreements/policies between the jurisdictions involved, the assets may be shared or partially returned, whilst the remainder is kept by the requested jurisdiction to cover the costs of restraining, maintaining, and disposing of the confiscated assets. Assets can also be returned directly to victims through court orders.

**Asset Management:** A number of policy issues are likely to arise during any efforts to recover assets in corruption cases. Requested jurisdictions may be concerned that the funds will be siphoned off again through continued or renewed corruption in the requesting jurisdictions. Moreover, requesting jurisdictions may object to a requested country's attempts to impose conditions and other views on how the confiscated assets should be used. In some cases, international organizations such as the World Bank and civil society organizations have been used to facilitate the return and monitoring of recovered funds.



UNODC reports, “the theft of public assets involves two key steps: stealing assets, and then laundering the proceeds- either at home or abroad- to avoid detection and make them appear legitimate.” Monetary assets are often hidden in banks in the financial centers of MEDCs, although financial havens have also begun to appear in emerging market countries.

## Major Countries and Organizations Involved

**The Stolen Asset Recovery (StAR)- launched in conjunction with the UN Office on Drugs and Crime (UNODC) and the World Bank Group (WBG)-** StAR uses the leverage of both partner organizations to support international efforts to deny safe havens for stolen assets and promote asset recovery (Stolen Asset Recovery Initiative).

**Switzerland-** is taking measures to combat corruption at both domestic and international levels. Switzerland is also one of the major financial countries in the world and is home to a large proportion of banks and financial institutions. The key elements of Switzerland's approach for the recovery and return of assets stolen are partnership, benefiting the population, monitoring, non-governmental stakeholder's involvement, and international engagement. It also created its Task Force on Asset Recovery, in the Federal Department of Foreign Affairs, in 2011 as a consequence

**The Arab Forum on Asset Recovery (AFAR)-** works with StAR, key global and regional financial centers, as well as countries in the Arab World, to foster international cooperation for the return of stolen assets. Since its inception in 2012, it has addressed the needs of recovering assets in the Arab States.

**Canada-** established an anti-corruption unit to enforce the Corruption of Foreign Public Officials Act (CFPOA). This act makes it a criminal offense in Canada for persons or companies to bribe a foreign public official to obtain or retain an advantage in the course of business.

**Spain-** designated the Special Prosecutor's Office against Corruption and Organized Crime to fight corruption and deal with asset recoveries. Therefore, Spain has developed a powerful system of asset tracking and recovery, particularly in comparison to other jurisdictions of the same continental legal tradition, which includes compelling tools like debtor's assets disclosure orders and even electronic tracing and freezing of the debtor's bank accounts.

**OECD Anti-Bribery Convention-** establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for a host of related measures that make this effective. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction

**The Organization for Economic Co-operation and Development (OECD)**- is an intergovernmental economic organization with 38 member countries, founded in 1961 to stimulate economic progress and world trade.

**Paris Declaration- (a part of the OECD)** was endorsed in order to base development efforts on the first-hand experience of what works and does not work with aid. It is formulated around five central pillars: ownership, alignment, harmonization, managing for results, and mutual accountability.

**Financial Action Task Force (FATF)**- is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. The FATF reviews money laundering and terrorist financing techniques and continuously strengthens its standards to address new risks, such as the regulation of virtual assets, which have spread as cryptocurrencies gain popularity.

**Australia (Criminal Asset Confiscation Taskforce in 2011)**- introduced new laws permitting the confiscation of “unexplained wealth” in circumstances where a person’s total wealth exceeds the value of their wealth that was lawfully acquired (Australia Proceeds of Crime Act 2002, section 179E). If the defendant cannot prove that their wealth is lawful, the court may order confiscation of the assets. These laws have been focused on drug offenses, but nothing precludes their application in corruption offenses.

## Timeline of Events

Date	Description
2005	The United Nations Convention against Corruption (UNCAC) was established.
2007	The Stolen Asset Recovery Initiative (StAR) was established.
2010-2012	OECD countries have returned 147 million USD and froze nearly 1.4 billion USD of stolen assets
2012	The Arab Forum on Asset Recovery was established.
2017	Switzerland, Nigeria, and the World Bank signed an agreement to return illicitly acquired assets worth 321 million USD to Nigeria.
2020	Switzerland signed asset return agreements with Turkmenistan and Peru.

## Relevant UN Treaties and Events

**UN Security Council Resolution- S/RES/1970 & S/RES/1973 (2011)** imposes an arms embargo, a travel ban and an assets freeze in connection with the situation in the Libyan Arab Jamahiriya; and establishes a Panel of Experts to assist in monitoring the relevant measures.

**United Nations Convention against Corruption (UNCAC)- under the Office on Drugs and Crime-** is the only legally binding universal anti-corruption instrument; the convention covers five main areas: preventive measures, criminalization & law enforcement, international cooperation, asset recovery, and technical assistance and information exchange.

**UN Convention against Transnational Organized Crime** is the main international instrument in the fight against transnational organized crime. The convention is further supplemented by three Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms; their Parts and Components and Ammunition.

**GFAR Principles-** the inaugural Global Forum on Asset Recovery (GFAR) was held in Washington, DC, on December 4th to 6th, 2017, hosted by the United Kingdom and the United States with support from the Stolen Asset Recovery Initiative (StAR). Its inaugural meeting focused on assistance to four priority countries: Nigeria, Sri Lanka, Tunisia, and Ukraine.

## Previous Attempts to solve the Issue

In 2015, the Addis Ababa Action Agenda of the Third International Conference on financing for development was a crucial element towards the financing of the 2030 Agenda for Sustainable Development. The agenda specifically encourages the international community for good practices on asset return and supporting StAR and other initiatives to support the recovery of stolen assets.

The Lausanne Guidelines has convened a series of international expert seminars with participants from around 30 different jurisdictions and international organizations (the “Lausanne Seminars”).

The Lausanne process allows jurisdictions to discuss challenges in asset recovery and how to overcome them, working in close cooperation with the International Centre for Asset Recovery (ICAR) of the Basel Institute on Governance and with the support of the Stolen Asset Recovery (StAR) Initiative. The 10 Lausanne Guidelines provide a step-by-step guide and a key-items checklist for developing and managing an asset recovery case. They focus on establishing and using contacts; developing a communication strategy enabling discussions on the legal requirements, timing, and requirements of mutual legal assistance (MLA) requests; and accordingly formulating a case strategy that factors in restraint of assets, investigations, and initiation of parallel investigations.

## Possible Solutions

There are two simple ways to help developing countries recover stolen assets. One is to lower the hurdles they face when seeking the return of stolen assets located in other jurisdictions. The second is to strengthen laws and institutions governing asset recovery in these countries. These actions can then be grouped under two categories: reducing barriers in developed countries to recover stolen assets, and strengthening the ability for developing countries to recover them.

The Stolen Asset Recovery Initiative (StAR) presents challenges for LEDCs based on the importance of open and accountable public processes and strong public institutions. These challenges lay out what needs to be overcome for possible solutions. Developing countries seeking to recover stolen assets need to strengthen their public institutions and promote a system of checks and balances that increases accountability and transparency. The international donor community should assist these countries in the development of open and accountable governments.

Jurisdictions need to implement requirements on due diligence and should comply with the FATF 40 +9 Recommendations on Anti-Money Laundering and Combating the Financing of Terrorism, particularly in the case of Politically Exposed Persons (PEPs), as well as transactions involving wire transfers.

Effective and efficient mechanisms are needed that will enable developing countries to quickly respond to asset theft and provide them with the necessary technical assistance in this complex process.



Additionally, all countries need to be persuaded to ratify UNCAC. State parties to the Convention need to domesticate UNCAC and monitor its implementation.

Lastly, the framework needs to be developed for monitoring the use of recovered assets that adheres to sound principles of public financial management, conforms to UNCAC, and offers countries a menu of options tailored to their specific institutional constraints and/or any terms set down in the treaties between the resituating and recipient countries

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