

Recovery of Assets Tied to Corruption Hampered by Lack of Political Will, Says Ex-FDIC Official

The United Nations and the World Bank estimate that \$45 billion a year is lost to corruption, which contributes to poverty, disease and environmental destruction around the globe, according to Jack Smith, of the Caux Roundtable, a group that will try to recover assets tied to government corruption when it launches in January.

One problem the group will face is a lack of political will on the part of world leaders to go after stolen money. Efforts to reclaim money from a former president or other high ranking official often leads back to those currently in power who don't want to implicate themselves or lose their own ill-gotten assets, said Smith, a former director of the International Centre for Asset Recovery (ICAR), a Switzerland-based group that trains developing nations in asset recovery.

Smith, also a former deputy general counsel for litigation for the Federal Deposit Insurance Corporation, spoke with reporter Larissa Bernardes about the hurdles developing countries face trying to recover looted assets and other issues. What follows is an edited transcript of their conversation.

What is the scope of the problem of looted corruption assets?

It's hard to pin down because a lot of different organizations have different numbers. But here are some of the figures: UNODC (United Nations Office on Drugs and Crime) studies indicate that between \$60 billion and \$1.8 trillion is the amount of money illegally laundered throughout the world each year. We are not sure how much of that money is tied to corruption. The World Bank estimates that more than \$1 trillion is paid in bribes each year. That figure does not even include the vast amounts of public funds embezzled and plundered by high government officials. The United Nations (UN) and World Bank STAR (Stolen Asset Recovery) program estimates that at least \$45 billion a year is attributable to corruption. The African Union says the amount of money lost to corruption each year in Africa is 25% of the GDP, which is \$150 billion a year. But the worst part of the problem is the large scale poverty, disease and environmental degradation that follow in the wake of this wholesale looting.

Are things getting better or worse?

Unfortunately, we are slipping downwards. In 2004 the United Nations reported that 54 nations were actually poorer than they had been 15 years before, despite infusions of billions of dollars in aid. Meanwhile, aid programs were being looted as corruption and money laundering skyrocketed.

Why is it getting worse?

If you look at the number of restitution and recovery actions around the world, they are far fewer than necessary to deal with this problem. When you talk to people around the world who are dealing with these issues, they admit they are not making much headway. On the UN front, the 2003 Convention against Corruption adopted 71 articles designed to stop corruption. The fundamental premise of the UN Convention against Corruption is great, but when you look at implementation- how much money has been recovered- it's very disappointing. The main problem has been a lack of political will in many developing countries. Where there is political will to recover the stolen assets there is often a lack of expertise and funding to pursue these cases properly.

You founded the International Centre for Asset Recovery (ICAR). What does the group do?

The group is based in Basel, Switzerland and its mission is to train developing countries to trace and recover assets that have been stolen by corrupt officials, and to provide mentoring and assistance on recovery cases.

What's the biggest hurdle in recovering stolen assets?

The lack of political will. There are a very few developing countries that have the political will to go after the money.

Although it varies from country to country one fundamental reason for this is that in many developing countries the political elite is so intertwined that if you go after the money, it tends to hit the people still in power.

If you have a corrupt president who pocketed a billion dollars and then died in office, it should be a no-brainer to chase and recover that money. On the other hand, none of these people operate alone. They usually have business friends, family members, etc., still in the government.

There is a new book out by John Githongo, "It is Our Time to Eat", describing how tribal traditions promote corruption in many African countries. A new group comes into power and they feel that it is their time to get rich, their 'time to eat.' When their time to eat eventually ends, the people who follow them think it's only fair for them to pillage the country for the benefit of their tribe, which suffered under the preceding administration.

In Angola, there was a survey last year of the 20 richest people in the country. Out of the 20 people surveyed, 12 were government employees and 5 were former government employees. So 17 out of 20 made their money off the government. Could you imagine that in a developed country?

In other situations, a new administration comes and says that they would really like to go after these crooks but they don't have the money to finance the effort. Investigating these cases takes away money from other government programs, like housing and infrastructure. And the return in these cases is uncertain especially if you've never done it before. So it can be politically risky to spend several million dollars chasing even hundreds of millions. If you fail, you might lose your job and if you spend billions [to recover the assets] and some people [you hire to help you] bail. You will be laughed out of office.

On the other hand, there are people in every country who are appalled by how their country is held back by corruption and they are looking for help.

You've addressed lack of political will as a hurdle, can you discuss other challenges to asset recovery?

There are three main ones: lack of political will, lack of expertise and the lack of financing. It is very expensive to go after one of these people. If a person steals \$100 million, then he or she will have a lot of money to hire the best lawyers to help them keep it. If you want to be successful in getting the money back, you need to make sure you have the financing and expertise to do the job.

Most often the developing countries are trying to get back assets hidden in Western countries. Corrupt money is stashed in all the Western countries and not just Switzerland. In fact, Switzerland has recently been a leader in helping to repatriate funds. The Swiss have found that having corrupt money in their banks is bad for business.

Of course, Switzerland is not the only country with strong privacy laws. The U.S. has them too but in instances, like the Pinochet case, the United States has helped trace the money. So it's hard to say today that any of the industrialized countries will refuse to be helpful.

Offshore financial centers are always a problem, but even some of them are getting better.

Can you talk a little bit about the Caux Roundtable and what you hope it will accomplish?

Actually, I'm [just] one of ten people serving on a steering committee under the aegis of the Caux Roundtable.

Training people is important, but by itself training is insufficient to make a difference. Asset recovery is difficult and new practitioners need significant help to put what they learned into practice. If they are not recovering money, why are we doing the training? So after I left ICAR, I started doing the groundwork to establish a nonprofit group that would provide expertise in financing for worthwhile asset recovery cases.

Then, last year, I became aware of another larger group that was trying to do the same thing—that was the Caux Round Table. It was working with Lord Daniel Brennan, who was one of the lead counsel on an important anti-terrorism case in Dublin, Ireland. In June, that case resulted in a \$2.4 million judgment against the Real IRA and five of its members for the deaths of 29 people in a 1998 terrorist bombing in Omagh, Ireland.

One of the most effective ways to deter corruption as well as terrorism is through the civil court process. It is easier to use than the criminal process because the “preponderance of the evidence standard” is easier to satisfy than the “beyond a reasonable doubt standard.” The civil process has less stringent evidentiary requirements and allows the granting of summary judgments and injunctions. Take the O.J. Simpson case as an example. Simpson was found not guilty in a criminal court, but was subsequently found liable for millions of dollars in damages in a civil court. Before that, the Southern Poverty Law Center utilized civil procedures very effectively on behalf of the victims of racist violence to shut down the Ku Klux Klan.

The Caux Round Table is working on a business plan to raise £50 million over a ten-year period to finance asset recovery cases for developing countries. Properly deployed, that investment should yield over \$290 million in recoveries over 10 years. That is based on the 4.3 to 1 cost-to-recovery ratio realized by the FDIC over a 20-year period starting with the thrift crisis in the mid-1980s.

How many jurisdictions do you think will be interested in the group?

I don't know. I do know that many countries have been talking a good game, and now is the time to see if they are willing to put all that talk into action. Plenty of people have been writing books on aid to developing countries and how so much of that money has been wasted and stolen. There's an interesting book called “The Trouble with Africa-Why Foreign Aid Isn't Working” by a former World Bank official named Robert Calderisi. He lists 10 things you can do to make things better in Africa and guess what number one is? Recover the stolen assets.

Do financial institutions or other corporations ever pose difficulties?

Of course they do. That's one of the things your organization writes about: the fines and the failures of some banks to implement adequate compliance programs. Remember a good portion of the money that is being laundered into Western banks is corruption money. How could Riggs Bank have accounts for people like Pinochet and his relatives, for example?

Will the international efforts to crack down on tax havens and bank secrecy have an impact on your efforts?

Yes, they are very supportive—it's hand in glove. Everything they do to eliminate impediments imposed by tax havens helps efforts against corruption.

What lessons can be gleaned from high profile assets recovery cases like the one involving the former Nigerian dictator General Sani Abacha, which involved the Nigerian, Swiss and the UK

governments requesting that certain banks scrutinize their accounts for ties to him?

First, you have to do your homework in your home country because it's a foundation for everything else. There are two examples of homework failures just this year: Guernsey rejected a plea by the government of Indonesia to extend a freeze on €36 million (\$46.4 million) kept by Tommy Suharto (a son of the former President of the Republic of Indonesia) in BNP Paribas Bank in Guernsey, on the grounds that prosecutors had failed to submit sufficient proof that the money was embezzled. And, Switzerland just released \$6.9 million deposited by the deceased former president of Zaire Mobutu Sese Seko because the Democratic Republic of Congo failed to pursue basic actions for 12 years.

Second, everything the Western countries can do to simplify the legal process for developing countries is helpful. A good example is the UNODC's (United Nations Office on Drugs and Crime) Web site which has a format for writing mutual legal assistance requests. Another example is the tremendous assistance the Swiss government provided to Nigeria in the Abacha case. Without that, there would have been no recovery whatsoever.

Finally, you have to ask for help.

The G-8 has promised to send Accelerated Response Teams to help out in large-scale corruption cases upon request of the victim country. I am not aware of any requests so far. Every year thousands of people attend the Conference of States Parties to The United Nations Convention against Corruption. They spend a lot of money writing white papers and compiling lists of best practices. But where are the recoveries? Who is doing the hard work to help developing countries to build their cases? STAR – the World Bank and UNODC initiative – has prohibited itself from helping countries on individual cases. So, what you have is a situation where all these countries are going to these conferences, putting out papers and best practices, but no one is actually helping them recover the billions stolen from them. The Caux Roundtable initiative is an answer.

Any idea why there a lot of lip service but little action?

Many of these cases are politically sensitive and you're talking about pursuing high level officials and they all have influential friends. And many times giant international corporations have been the ones providing the bribes and they have friends. Look at how few prosecutions have come out of the United Nations Oil for Food Scandal, even though were over 2,000 companies that had a seat at that table. It is a problem for most western countries. Law firms and accountants are often involved in the wrongdoing. For example, in 2007, a British court ruled that the former president of Zambia, Frederick Chiluba, and four of his senior aides conspired to rob their government and people of \$46 million- two British law firms were found to have helped to launder the Chiluba funds.

There are people in the government like at the U.S. Justice Department who love to help in these kinds of cases, but the number of requests they receive is pitifully few.

What's the biggest reform you'd like to see to address this sort of corruption?

I am not interested in recovering stolen assets for the sole benefit of retrieving the money. Most of it has already been wasted and lost. The reason to do it is because of the link between corruption, poverty, disease, and environmental degradation. If you can establish an effective deterrence to corruption, then these things will improve. This is a premise of many books such as "The Trouble with Africa", and Paul Collier's "The Bottom Billion: Why the Poorest Countries are Failing and What Can Be Done About It", and Bill Easterly's "The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good."

So, the biggest reform? Let people know that you're going to get the money back and then they will be less likely to steal it. The developing countries need to implement U.S. style financial reporting for government employees. They need to require employees and officials to provide information on unexplained assets. In other words, if you're a government employee

and we find out that you suddenly have \$100,000 in your account, you will have to show that money was acquired lawfully or the money will be forfeited and you will lose your job and be punished.

Some countries do have a disclosure system. But, take Macao, they get around 20,000 thousand disclosures a year, put them in a warehouse and never look at them unless there is an allegation against an individual. You should at least take an annual sampling so that people know that they are going to be looked at and that questions will be asked.

I'd also like to see the creation of rewards between 10% and 20% to be paid to whistleblowers whose information leads to the recovery of the substantial corrupt assets.

These reforms seem like simple measures, but they would have immediate and lasting results for most countries.

This article first appeared on moneylaundering.com and Fortent Inform on August 18, 2009