



**Arab Forum Special Session Three:
The Role of Civil Society in Asset Recovery
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I. General Introduction

1. **The Arab Forum on Asset Recovery and the role of Special Session Three.** The Arab Forum on Asset Recovery (hereinafter referred to as the “Arab Forum”) is an initiative to bring together the Arab Countries in Transition, the G8, and other financial centers, as well as regional countries, for a multi-faceted effort that raises awareness of effective measures for asset recovery, provides a forum for regional training and discussion of best practices on cases, and identifies country-specific capacity building needs. Following the success of the first Arab Forum in 2012, a work plan was put together to carry forward the momentum, through several special sessions to be organized prior to the second Arab Forum on Asset Recovery, planned for October 2013. Specifically, the work plan outlines three special sessions that will focus on concrete technical challenges that emerged during the first Arab Forum on Asset Recovery as well as in the context of ongoing casework as well as technical assistance provided by multiple partners to Egypt, Libya and Tunisia. The third of these sessions was designed to allow for constructive engagement on asset recovery efforts between civil society organizations, the Stolen Asset Recovery Initiative, and government representatives from countries in transition, financial centers, and the G8.
2. **Special Session Three as a platform for dialogue between CSOs, governments and international organizations.** The session was well attended by representatives from local and global CSOs, international institutions, and governments participating in the Arab Forum. Over 30 regional CSOs engaged in asset recovery and in relevant aspects of good governance or anti-corruption participated alongside a dozen global CSOs engaged in research and advocacy associated with asset recovery, in asset recovery case assistance or through civil litigation/private prosecution and/or victim representation, and in capacity building of other CSOs in transition countries.
3. **Asset Recovery is a complex process further complicated by the regional context:** Nearly three years after the start of the transitions in many Arab countries in January 2011, the return of stolen assets remains high on the agenda of the affected countries as well as many

of the major financial centers. These combined efforts have to be seen against the overall social, political and economic context from which the transition countries are emerging. Although significant strides have been made, there remain major challenges for the Arab countries transitioning from their previous regimes. The formation of democratic institutions, based on the rule of law and the fight against impunity, that are needed to effectively locate, freeze and recover assets is impeded by structural and interconnected challenges such as leftover high levels of corruption and lack of accountability and transparency. Asset recovery efforts after the Arab Spring therefore remain a work in progress and require a coordinated and comprehensive strategy that involves governments, the private sector, civil society, and the international community.

4. **Asset Recovery as an important component in ending impunity:** In the Arab countries in transition, the public regards the recovery of stolen assets as crucial to the struggle to reestablish the rule of law, to end decades of impunity, and to promote international justice.
5. **The importance of prevention and effective anti-money laundering regimes:** The significant outflow of stolen assets from the Arab countries in transition into financial center countries reveals that corruption is not only an ‘offshore’, but also an ‘onshore problem.’ Preventing this outflow raises governance issues, both for countries seeking the recovery of assets as well as the financial centers. An important achievement in this regard is the commitment made by the G8 countries under the presidency of the UK Government to enhance the transparency of beneficial ownership of corporate vehicles, which includes the establishment of a corporate registry accessible to concerned authorities.
6. **Governments and civil society need to work together:** The fact that governments and CSOs share the ultimate goal of recovering their country's stolen assets is a good start. Governments and CSOs should work collectively and constructively in advancing asset recovery efforts in both countries seeking the recovery of such assets as well as in financial centers where they are suspected to be located.
7. **The role of civil society in asset recovery:** Civil society organizations can play a vital role in the asset recovery process by exposing large scale corruption, identifying stolen assets, providing intelligence and evidence to law enforcement agencies, and advocating for policy changes thereby making the hiding of assets far more difficult. In order to strengthen the role civil society may take in the asset recovery process, CSOs should work together with as opposed to bypassing governments
8. **Measuring progress of countries seeking the recovery of assets:** One of the core challenges in the recovery of stolen assets is identifying a method by which to measure progress beyond the dollar amounts recovered. In other words, is there a reliable ‘yardstick’ aside from a mere monetary assessment? A more constructive approach may be to assess progress at every stage of the asset recovery process, recognizing that every step along the asset recovery value chain brings a country closer to the final objective.
9. **Measuring progress in the financial centers:** Measuring progress in the financial centers cannot be limited to looking at amounts frozen, confiscated, and returned. Beyond the value

chain, the G20 asset recovery principles may be used as a benchmark to measure how they are creating an institutional, operational, and legal environment conducive to the recovery of assets. Furthermore the 'Action Plan on Asset Recovery' adopted by the G8 includes a comprehensive list of actions aimed to promote cooperation, capacity building efforts and technical assistance in support of the efforts of Arab countries in transition in recovering assets diverted by past regimes. See further information on the Action Plan at: <http://www.state.gov/j/inl/rls/190483.htm>

10. **Asset Recovery is a lengthy process:** Frustrations about the length of the process are unavoidable. Two years is a long time for the Arab Countries in Transition, but in comparison to other countries' past experiences it is still short. At the same time, delays and backsliding should be met with consistent pressure and vigilance.
11. **Developing domestic asset recovery capacity:** An essential step for countries seeking the recovery of stolen assets is the establishment of dedicated investigative and judicial capacity in tandem with inter-institutional coordination mechanisms. This is particularly critical in the Arab countries in transition given the lack of any prior experience or existing capacity dedicated to stolen asset recovery.
12. **Asset recovery as part of a broader anti-corruption strategy:** There is a need to integrate the effort to recover stolen assets into the broader national governance, anti-corruption and anti-money laundering agendas.
13. **Using all the tools and channels available:** Countries need to make use of all available mechanisms and channels for international cooperation. International conventions such as UNCAC and the Arab Anti-Corruption Convention as well as bilateral treaties can provide a solid legal basis. Asset recovery can be pursued through mutual legal assistance as well as through direct recovery using private civil litigation. Countries need to take advantage of existing channels for the exchange of information and intelligence through Interpol, Egmont, and the various existing asset recovery practitioners' networks. In addition, countries exchange information through police to police or FIU to FIU cooperation.

II. Asset Recovery in the MENA region: Achievements, challenges, and success stories

14. **Challenges within the Arab countries in transition:** Initially the Arab countries in transition had to overcome a complete lack of capacity, experience, and resources dedicated to the recovery of stolen assets. The number of targets involved and the complexity of the cases posed further challenges. The transitional nature of the new regimes created additional difficulties, in terms of maintaining consistency and coherence of the strategies adopted and the coordination mechanisms created. The cooperation between government and civil society was not developed thereby allowing CSOs to only marginally contribute to the gathering information relevant to the tracing and recovery of assets.
15. **Challenges in international cooperation:** At the international level, some countries continue to refuse to cooperate. In other cases, requested countries are concerned about legal

guarantees, such as the independence of the judiciary or human rights protections, which are sometimes difficult to ease in view of the transitional nature of the governments seeking the recovery of the proceeds of corruption. Other challenges include the legal complexity and diversity of procedures in many requested countries as well as tough threshold for the giving of initial information and evidence required by some countries to initiate an investigation and to freeze assets. One very effective way to help the Arab countries in transition to tackle some of these challenges is the placement of advisors from the requested countries with their respective authorities to assist in the process of building the domestic case and effectively engaging in international cooperation.

16. **UNCAC Implementation:** UNCAC provides a comprehensive and innovative legal framework for the international recovery of stolen assets. However, many countries still appear to lack the experience, systems, and expertise to make the framework effectively work in practice. This situation is likely to improve as more and more countries are basing their requests for international cooperation on UNCAC. Moreover, the upcoming review of all UNCAC State Parties' implementation of Chapter V of the UNCAC under the UNCAC review mechanism, which is planned to be carried out between 2015-2019, will help countries to identify and address any implementation gaps.
17. **Challenges relating to the complexity of cases:** Technical challenges are created by the alleged offenders' frequent use of front men and shell companies to hide the true beneficial owner of assets as well as the frequent use of jurisdictions with strong bank secrecy protections. Moreover, countries face immense difficulties in producing conclusive evidence linking individual assets to specific offences, sometimes dating back several decades.
18. **Independence of investigative, prosecutorial, and judicial authorities:** Stolen asset recovery, in particular where it involves high-level government officials, is political in nature, thus the independence of the relevant investigative, prosecutorial and judicial authorities in both the requesting and the requested countries is key to success.
19. **Engaging the services of lawyers:** Many countries rely on private law firms and investigative service providers for the tracing and recovery of stolen assets. However, due to lack of experience and expertise in transitioning countries, there are often additional challenges in the selection, management, and quality control of such service providers.
20. **Addressing the role of accomplices:** In large scale corruption cases involving senior government officials, the focus of the investigation should not be limited to convicting the offender and recovering the respective proceeds of corruption, but also to address the role of international business partners as well as banks and other gatekeepers that have either been involved in committing the offences or in facilitating the laundering of their proceeds.
21. **Level of expectations in requesting countries:** Another challenge stems from unrealistic expectations and concerns both the length of the proceedings as well as the amounts available for recovery and return. For instance, the media often plays a disruptive role in this context by inflating the value of assets assumed to be available for recovery, and fueling unrealistic expectations about the speed and ease of the process. When successes are then not

forthcoming, it immediately questions the integrity, commitment and motives of authorities both in the requesting and requested countries.

22. **Mistrust between some requesting and requested countries:** Trust and mutual confidence are critical to successful international cooperation in general and asset recovery in particular. This varies greatly among different countries presently engaged in the recovery and return of assets to the Arab countries in transition. Some requesting countries have raised doubts concerning the political willingness of requested countries to cooperate in the recovery and return of stolen assets and to live up to their obligations under UNCAC. In other cases, concerns have been expressed about the true intentions of parallel investigations for money laundering offences often pursued by requested countries. This mistrust often reflects on strategies and approaches adopted by the requesting countries and can undermine progress.
23. **Asset recovery is possible:** Tunisia and its partners have been able to achieve some initial successes in recovering of assets, including 28 million USD recovered from Lebanon, yachts from Italy and Spain, and a plane from France. While these successes appear modest against the overall alleged volume of assets stolen from Tunisia, they show that it can be done.
24. **What can we learn from the Tunisian experience:** Building effective legal, institutional, and operational asset recovery capacity takes time. Practitioners need to develop the necessary knowledge, skills, and experience. Also, the strategic objectives of the asset recovery effort must be clear – it is not only about recovering state funds, but also about restoring the dignity of citizens.
25. **What can we learn from actions taken in the financial centers:** Several financial centers have made the recovery and return of stolen assets to the countries of origin a policy priority and have often found innovative ways to improve their capacity to cooperate effectively in the tracing and recovery of such assets. A few centers have created specialized, sometimes multi-agency task forces, to respond to MLA requests relating to asset recovery and to proactively provide support through volunteering relevant information, through taking rapid actions to freeze assets (in particular in the immediate aftermath of regime changes), and through assisting the authorities of the requesting country in the preparation of MLA requests. In certain cases long-term advisors have been posted within the agencies of the requesting countries. Moreover, in many instances, the authorities of the financial centers have started to provide capacity building directly or indirectly together with StAR and/or ICAR, to the Arab countries in transition in the area of stolen asset recovery. One should note, however, that even with these efforts and the large strides made in regards to asset recovery, the recovery process remains a lengthy and arduous.

III. The Role of CSOs in Asset Recovery

26. **CSOs can play several roles in supporting asset recovery efforts:** CSOs can play a range of diverse roles in asset recovery, including research and awareness raising, advocacy, supplying relevant authorities with information and identifying whistleblowers, as well as

pursuing direct legal action for the recovery of assets and supporting the proper management of returned assets. For example, some CSOs in Egypt and Tunisia are involved in providing increased transparency through preparing and issuing reports on the actions taken by governments in the pursuit of stolen asset recovery. They may also help in identifying and highlighting the barriers to asset recovery on both sides. In Switzerland, civil society has contributed significantly over the years to the evolution of Swiss policies and laws relevant to asset recovery. That said, civil society must remain mindful of the fact that the tracing, freezing, confiscation and return of assets is primarily a task of governments.

27. **Complementing government efforts:** In order to complement governments' efforts, civil society needs to establish and maintain open channels of communication with relevant governmental bodies concerned with asset recovery.
28. **Managing risks:** When getting involved in asset recovery, CSOs need to be mindful that their work may come into conflict with powerful interests and that they may expose themselves to potential acts of retaliation.
 - a. Awareness raising, research and advocacy:
29. **Advocacy and Awareness raising:** CSOs can get engaged in putting pressure on governments in both requesting and requested states to become more willing to cooperate. While legal practitioners may succeed in overcoming the technical and legal problems that often arise in the course of preparing and responding to MLA requests, they may not be in a position to overcome political issues affecting their work. Moreover, CSOs may target their advocacy efforts at governments, pressuring them to pass necessary legislation, and at law enforcement bodies, demanding increased transparency.
30. **Building partnerships and coalitions:** CSOs can build coalitions by bringing together multiple NGOs ideally able to pursue the different roles outlined above. Partnerships between NGOs in both requesting and requested countries towards enhancing information exchange and coordinating advocacy aimed at the authorities in both countries can be effective. Other partners include the media, donors, as well as the diplomatic representations of the financial centers within the countries seeking the recovery of assets.
31. **Providing media training:** Asset recovery is a very technical and complex topic on which to report. As a result, media often either shies away from covering the issue or reports incorrect or distorted information. Therefore, providing training to media can be an effective way to improve the quality of reporting as well as to build a better understanding in the public of the core issues involved.
 - b. Casework and legal analysis
32. **Experience of CSOs advancing legal action in support of asset recovery:** A few highly specialized CSOs, such as SHERPA and APDHE, are pursuing legal action in support of the

recovery of stolen assets. Legal actions have been taken both in support of cases against former as well as against serving heads of states and other senior members of governments. CSOs in the Arab countries in transition can learn from these experiences.

33. **Assessing legal options for CSOs to litigate for the recovery of stolen assets:** The legal avenues open to CSOs to engage in support of the recovery of assets differ significantly across legal systems. They include private civil litigation, forcing or joining a criminal prosecution as *partie civile*, or advancing private prosecution. Several jurisdictions have recognized that individual citizens can be the victims of public sector corruption, even in cases when they only have been affected indirectly by such acts of corruption. In some jurisdictions, courts have further recognized that non-governmental organizations can have a legal standing as the legitimate representative of the interests of the victims of corruption, even when such victims have not been identified individually.
34. **Getting prepared:** Interested CSOs should familiarize themselves with the criminal and civil procedures, tools, and legal avenues available to recover stolen assets under their respective domestic laws as well as in other jurisdictions. They should also understand the respective advantages and disadvantages, the relevant timeframes, and know how to make the available procedures, tools, and legal avenues work in a mutually reinforcing fashion. CSOs need to develop an understanding of specialized tools such as settlements and recognize that stark differences exist between jurisdictions in terms of what constitutes recoverable assets and what procedures must be followed.
35. **Providing Evidence:** CSOs can play an important role in collecting and providing evidence, in particular in foreign countries. They can help to identify witnesses and conduct background checks. In this context, they should be aware of the useful information that might be contained in asset declarations.
36. **Effective proceeds of crime legislation:** The existence of an effective domestic proceeds of crime regime is key to the successful recovery of assets both at the domestic and international level. Where this does not exist, CSOs may consider advocating for such legislation, which may include legal tools allowing for the rapid freezing of the proceeds of corruption.
37. **Advocating for effective whistleblower protection:** Effective whistleblower protection both in the public and private sector is key in discovering cases of large-scale corruption as well as in gathering information relevant to the tracing and recovery of stolen assets. CSOs can advocate for the establishment of effective legal and institutional frameworks for the protection of whistleblowers, which should include a clear definition of what constitutes whistleblowing and outline the protections in place for formal and informal reprisals for any information disclosed in honest belief. CSOs should make sure that proper safeguards are in place before proactively soliciting whistleblowers to come forward so as to not expose them to undue risks.

c. Return of confiscated assets:

38. **Management of returned assets:** CSOs may contribute to the transparent and effective management of returned assets. This role is crucial in order to ensure that assets are properly managed to benefit parts of society representing 'the real victims of corruption'.
39. **UNCAC and the management of returned assets:** It is imperative that the issue of the management of returned assets be considered in the context of UNCAC. In essence, this is a domestic issue for countries to which assets are returned. It is their responsibility to determine the appropriate systems to be used to ensure transparency and accountability in the management of returned assets.
40. **The importance of the transparent use of returned assets:** There is a strong consensus on the importance to ensure that returned assets are not misused and, just as importantly, are mobilized for productive and sustainable activities, benefitting in particular those that had been most negatively affected by past corruption.
41. **The role of CSOs in the management of returned assets:** There is also a strong consensus on the fact that CSO have a role to play, but still there is some debate on the how and what – and on the broader picture of how returned assets are to be used and managed.
42. **Learning from the past:** There is no experience in the region regarding neither the management of returned assets, nor the involvement of civil society in such a process. This creates the opportunity to be creative. International experience can be used as a template for action' (e.g. StAR, The Management of Returned Assets, <http://star.worldbank.org/star/publication/management-returned-assets> and ICAR, Managing the Proceeds of Asset Recovery. <http://www.baselgovernance.org/publications/working-papers>).
43. **Getting engaged early on:** Participants concurred that it was important for CSOs to get involved in a dialogue with governments on possible options for the management of returned assets early on, including providing an opportunity for them to: help shape the strategy for the management of the returned assets, determine how the assets could be used (with strong call from CSO that social/development projects have the priority and not “regular” government expenditures), and how they should be managed (with various options – country financial management systems; enhanced country financial management systems; creation of special trust funds; creation of CSO supported management of assets).
44. **CSOs can:**
- Be involved upstream – in dialogue on strategy/planning to use assets and set up of management mechanisms, including where funds would be better used for development purposes and meet the need of the population.
 - Be involved downstream – in advocacy where needed for a legal framework to allow approaches that do not only rely on traditional budget mechanisms.

- Be involved in oversight mechanisms – some representatives of public officials, however, expressed the caveat that CSO cannot just be in “scrutiny” mode, but be actively involved.
- Be promoters and implementers of projects that would use these funds for social services /development purposes (i.e. implementing partners/beneficiaries, notably if special funds are created).

IV. Conclusions

45. **Asset recovery as an issue of morality:** After decades of systematic abuse of power and victimization through corruption, for many societies the recovery of stolen assets is not only an economic issue, but also an instrument for the restoration of their human dignity and confidence in the rule of law.
46. **Dealing with the challenge of institutionalized corruption:** Domestic legal systems and international treaties provide relevant authorities with the necessary framework to address individual offences, to recover their proceeds and to cooperate internationally for that purpose. They are far less adept in dealing with the type of institutionalized corruption the Arab countries in transition used to suffer from. These countries were under the total control of the ruling elites who were able to shape policies, laws, and procedures in a way that allowed them to enrich themselves at the cost of the public without necessarily having to commit punishable acts of corruption. This raises multiple challenges to the recovery of stolen assets including the difficulty in establishing a predicate offence, the lack of the necessary legal framework, and the absence of any institutional capacity or experience to trace and recover stolen assets. This absence of a functional legal and institutional framework to recover stolen assets stands in stark contrast to the legal complexity and related advanced technical skills and knowledge required to effectively cooperate with many of the financial centers for the purpose of tracing, freezing, confiscating and recovering stolen assets.
47. **Enforcing professional ethical standards:** There is a need to address the complicity of many of the operators in financial centers, including bankers and other financial service providers. CSOs should expose such behavior and lobby for the sanctioning of such infractions through relevant professional associations and regulatory bodies and through building and exploiting CSO coalitions across jurisdictions.

V. Recommendations

48. **CSOs, the G8, and relevant governments should use the lessons and momentum from Special Session III to further asset recovery efforts in the region.**
- CSOs should study the guide developed as a result of the session, recommend changes, and, above all, use it in their asset recovery work;
 - Governments and civil society should recognize the necessity of dialogue between them and should strive to maintain sustained and systematized dialogue as trust between governments and civil society is crucial;
 - CSOs should partner with other CSOs within the region and beyond through constant dialogue and cooperation;

- Governments should aim to work directly with focal points;
- Asset recovery should not be viewed as an independent and isolated task or event. It is part of the overall process of building and fighting corruption. Therefore, CSOs active in this field should consider methods of fostering dialogue among themselves either through the existing networks or developing new ways of cooperation;
- G8 countries should, through the presidency, encourage dialogue between governments and civil society with a view of systematizing and sustaining cooperation and should provide the required support, especially to those countries in transition, to aid in the recovery their assets.