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ADDIS ABABA UNIVERSITY

SCHOOL OF LAW

LL.M PROGRAM (PUBLIC INTERNATIONAL LAW)

**LEGAL AND INSTITUTIONAL FRAMEWORK FOR STOLEN ASSET RECOVERY
IN ETHIOPIA**

By

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**A Thesis Submitted to Addis Ababa University, School of Law, in Partial Fulfillment of
the Requirements for the Degree of Masters in Public International Law (LL.M)**

Advisor: Simeneh Kiros Assefa (Ass. Prof)

May, 2020

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Declaration

I, **Endalkachew Worku**, declare that this thesis is my original work and all sources used have been duly acknowledged.

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ACKNOWLEDGEMENT

First and Foremost I would like to thank the Almighty God and His Mother for giving me courage and power to take on this thesis.

I want to express my special appreciation and gratitude to my advisor Simeneh Kiros Assefa (Ass. Prof) for your professional advice and helpful feedback.

I would also like to express my sincerely gratitude to all my family (especially my wife Bilen and my son Marcon), friends and colleagues (particularly Ato Abat G/Tadik) for their support and encouragement in doing this thesis.

At last but not list, my especial thanks go to Mr. Charles Goredema and Biniam Shiferaw for giving me useful comments.

ACRONYMS

AR	Asset recovery
Art	Article
BMLAT	Bilateral Mutual legal assistance treaty
Chap	Chapter
CEART	Centers of Excellence in Asset Recovery and Training
EU	European Union
FATF	Financial Action Task Force
FDRE	Federal Democratic Republic of Ethiopia
FIU	Financial Intelligence Unit
IFF	Illicit Financial Flow
ML	Money laundering
MLA	Mutual legal assistance
NCBC	Non conviction based confiscation
OECD	Organization for Economic Co-operation and Development
PEP	Politically exposed person
UN	United Nations
StAR	Stolen Asset Recovery Initiative
TUGRA	Technical Unit on Governance and Anti Corruption Reforms
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime
UNGA	United Nations General Assembly
UNTOC	United Nations Convention against Transnational Organize Crime

Abstract

Stolen asset recovery is the whole process of recovering illicit proceeds from all crimes and returns them to their owners. The proceeds from the perpetration of a criminal action are often transferred to other countries for laundering purposes. This hinders the government to use these assets for the benefit of the people. The restitution of the assets obtained through crime is regarded as a fundamental principle UNCAC. To have effective stolen asset recovery system countries must have strong policy, law and institution. Having strong stolen asset recovery system serve also as deterrent effect and achieve the maxim 'crime should not pay'. This article critically examine the existing Ethiopian Stolen Asset Recovery system. Although in Ethiopia there are some laws scatteredly dealing with some element of stolen asset recovery, there are still remaining gaps that should be addressed are indicated in this article.

Chapter One

Introduction

1.1. Background of the Study

Most Developing countries, especially African countries including Ethiopia, have lost an immense amount of financial resources due to capital flight and illicit financial flows these are, especially caused by corruption, resulting in a situation whereby, “stolen African assets equivalent to more than half of the continent’s external debt are held in foreign bank accounts”.¹

The proceeds from the criminal activities are often transferred to other countries for laundering purpose. To this end, all kinds of mechanisms are used – tax havens, corporate vehicles, financial transfers, etc. The investigation and recovery of such proceeds is thus made highly difficult, more so if the assets are hidden in other countries.

The recovery of assets refers to the mechanisms for the retrieval of assets produced or acquired through crimes, which are hidden in other countries than they originated. This concept constitutes one of the most important innovations introduced by the United Nations Convention against Corruption (UNCAC), in force since 2005, chapter 5 of which pays special importance to the recovery of assets from corruption. The restitution of the assets obtained through crime is regarded as a fundamental principle; therefore States Party are obliged to provide each other with the deepest level of aid and co-operation in this respect (article 51).

Stolen assets can be hidden either at home or abroad. The focus of this thesis is on the cross border component of public assets stolen from Ethiopia. Such assets are believed to be hidden in banks located in the financial centers of developed countries, although off-shore financial jurisdictions have begun to appear in emerging market countries as well. Further, multinational corporations from developed countries are often the source of bribes paid to public officials in developing countries. So, recovering stolen asset hidden in another country requires strong legal and institutional framework. This means there must be effective and efficient policy, laws and institution.

¹ Commission for Africa, ‘Our common interest: Report of the Commission for Africa’ (2005) 152

1.2. Statement of the Problem

Research has shown that most crimes are committed for profit such that asset deprivation attacks criminality through negating this profit motive². Removing unlawful assets underpins confidence in a fair and effective criminal justice system and shows that nobody is above the law. It also disrupts organized criminal activity and promotes confidence in the system.

Stolen assets hidden abroad are often hidden in banks located in the financial centers of developed countries, although financial havens have begun to appear in emerging market countries as well.

The existing laws and institutional structure of Ethiopia on forfeiture and recovery of proceeds of crimes vary greatly and depend on the kind of crime and the law being enforced. Thus the Criminal Code, the Criminal Procedure Code, the Revised Anti-Corruption Special Procedure Proclamation No. 434/2005 (As amended by Proclamation No. 882/2015), the Revised Anti Corruption Commission Establishment Proclamation No. 433/3005 (As amended by Proclamation No. 883/2015), Corruption Crimes Proclamation No. 881/2015, Prevention and Suppression of money laundering and financing of terrorism proclamation No. 780/2013 provides the extant framework for forfeiture in Ethiopia. Forfeiture under these pieces of legislation covers instances where the property subject to forfeiture constitutes evidence of an offence is liable to be forfeited for restitution purposes, or where the instrumentalities of the crime are confiscated. It is therefore correct to say that there is no single legislation for the recovery and management of the proceeds of crime in Ethiopia. In addition to that they do not provide sufficient place for international cooperation to recover stolen asset.

Some of the above mentioned laws provide for criminal forfeiture in relation to the proceeds of crime. Others provide for civil forfeiture of the proceeds of crime. They also don't cover the whole process of stolen asset recovery. There is no single law in Ethiopia that provides for a uniform scheme for recovery of criminal assets. So, the absence of a consolidated law on asset recovery is a challenge to the development of uniform system in Ethiopia on the recovering of stolen assets.

² Yulia Chistyakova, David Wall and Stefano Bonino, 'The Back-Door Governance of Crime: Confiscating Criminal Assets in the UK'(2019) European Journal on Criminal Policy and Research,1

Regarding the institutional structure for forfeiture and recovery of criminal assets there is no single mandated institution for this purpose. The laws aforementioned entrust the power to recover and confiscate criminal assets to different institutions.

The absence of single law which provide for uniform scheme as well as a single mandated institution for the recovery and forfeiture of criminal assets creates problems in applying uniformly on stolen asset recovery, for all types of crime, from overseas where the criminals may be hiding illicitly acquired assets. Having multiple mandated institutions create the problem of coordination, duplication of effort and conflict of mandate.

The problems stated above could be ascertained from the scattered laws, lack of covering the whole process of stolen asset recovery and multiple mandated institutions in forfeited as well as recovering stolen asset.

In this study, I will examine the existing laws and compare them with some selected country system and international instrument, which Ethiopia is party. This will be discussed in detail in the body of the study.

1.3. Scope of the Study

This study only assesses the capacity and effectiveness of the Ethiopian legislations and institutional framework in recovering stolen assets found in foreign jurisdictions. It compares the Ethiopian system with international legal instruments and other countries laws.

1.4. Significance of the Study

This research is expected to contribute to effective and efficient laws to recover stolen assets from foreign jurisdictions. This will ultimately enable the government to use recovered assets for the overall development of the country. In one way or another it is tied to the achievement of the Sustainable Development Goals³, and implementation of the UNCAC. In a nutshell, this research will benefit the justice sector to deliver quality and expeditious justice that helps to develop public trust and confidence in them. Finally, this research serves as a basis and references for further study.

³ United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development' Goal 16.4

1.5. Objectives of the Study

The general objective of this study is to assess the Ethiopian existing legislations and institutional setup in stolen asset recovery hidden in foreign jurisdictions.

1.6. Research Questions

The study attempts to address the following questions:

1. To what extent do the existing legislations facilitate the recovery of stolen assets from foreign countries?
2. Which institutions are responsible for or mandated to recover stolen assets from foreign countries?
3. Do the existing asset recovery legislations in line with the obligation of Ethiopia under international instruments?

1.7. Literature Review

Internationally many scholars have conducted research on stolen asset recovery. They have examined an international instruments and other countries law and practices. Some national researchers also try to conduct research on stolen asset recovery.

According to Mamenie Endale⁴, in Ethiopia stealing public money is perceived to have significant adverse effects. Red tape in the public sector is the biggest hurdle in the way of improved government-citizen relationships. He also pointed out that to overcome the aforementioned problems, a strong legislative and regulatory framework with multiple legal tools to detect criminal activity and illicit financial flows, rapidly freeze assets, and conduct effective investigations and court processes is necessary. Successful asset recovery requires a solid foundation of comprehensive policies and strategies, a legal framework that offers a variety of tools for practitioners, and well-resourced institutions. The article did not critically examine the Ethiopian existing legal and institutional setup in stolen asset recovery from foreign countries which is the main issue of this study.

⁴Mamenie Endale, 'Stolen Asset Recovery in Ethiopia: Critical Legal Issues and Challenges' (Abyssinia Law, 15 December 2018) <www.abysiniaweb.com> accessed 22 December 2019

Demmellash Ejeta⁵observed that until recently the traditional mind set towards crime fighting has centered on conviction and imprisonment of the accused. Confiscation of the proceeds of crime has been regarded as secondary. He argued that the ineffectiveness of the conviction based confiscation system is mainly attributed to its limitation to target and hit the main motive behind crime, i.e., making a profit. The adoption of civil confiscation law into the Ethiopian legal tradition is a landmark achievement in the asset recovery regime and in the fight against crime. The legal framework has also assimilated extended confiscation and unlawful enrichment laws as important asset recovery tools. The article didn't examine whether the Ethiopian existing legal and institutional setup is capable of recovering stolen assets and didn't examine stolen asset recovery hidden abroad which is the main issue of this study.

1.8. Research Methodology

This study is doctrinal and comparative legal research type. Doctrinal research type is preferred because the aim of this study is to analyze the existing legislations and institutional system to regulate the recovery of stolen assets hidden in foreign countries. Doctrinal methodology is preferred because it is a way of conducting research which is usually thought of as “typical legal research”. A doctrinal approach to research will focus on legal sources and examines law as a written body of principles which can be discerned and analyzed using only legal sources. It is a library based critical analysis of relevant legal instruments.

Comparative legal research type is preferred to draw lessons and experiences from other jurisdictions and international instruments. For these purpose, Nigeria and Rwanda system will be compared briefly.

1.9. Limitation of the Study

In conducting this research, the main limitation of the study is difficulty of getting data due the outbreak of Covid-19. Initially this research is proposed to be done as non-doctrinal research type. But due to the outbreak of the pandemic of covid-19 getting respondents to the interview and questioner become difficult and changed the research methodology to doctrinal type.

⁵Demmellash Ejeta, ‘The Legal Regime on Recovery of Misappropriated Public Property in Ethiopia’, (LLM thesis, Addis Ababa University 2017)

Chapter Two General Background

2.1. Introduction

Different people use different terms for proceeds from crime when analyzing various legal literature and legal records. To mention a few, some legal documents use the term “criminal assets” and certain records often tend to use “illegal properties” or “stolen asset”. Similarly, some authors use the word “illegal profits”, while others also opt to use “ill gotten gains” or “proceeds of crime” to indicate the same terminology. In this paper the writer used interchangeably the words “stolen asset” and “Proceeds of crime” as described by the 2003 UNCAC as: “shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence.”⁶

Since the adoption the 2003 UNCAC of many scholars and legal documents use the term “asset recovery”. UNCAC was the first international legal instrument to deal directly with the whole process of identifying, tracing, freezing or seizing, confiscating and returning stolen asset by corruption to its rightful owners. The convention calls this comprehensive process “asset recovery”.⁷ This concept of stolen asset recovery constitutes one of the most important innovations introduced by the UNCAC, in force since 2005, in which special importance is given to the recovery of assets originated in corruption. Under chapter 5 of the convention, the recovery of the assets obtained through crime is regarded as a fundamental principle; therefore the States Party are obliged to provide each other with the deepest level of aid and co-operation in this respect.⁸

The stolen assets are often transferred to other and hidden in other countries for laundering purposes. To this aim, all kinds of mechanisms are used – tax havens, corporate vehicles,

⁶ United Nations Convention against Corruption, 31 October 2003, General Assembly Resolution 58/4, art 2 (e)

⁷ UNODC, *Legislative guide for the implementation of the United Nations Convention against Corruption* (2nd rev end Publishing and Library Section, United Nations Office at Vienna 2012) ch 5, 193ff

⁸ UNCAC (n 6) art 51

financial transfers, etc.⁹ Getting and recovering of such proceeds is thus made highly difficult because it is out of once jurisdiction.

2.2. Definition

Different definition is given to asset recovery by different legal instruments and authors. Transparency International in 2009 define asset recovery /AR/ as “the legal process of a country, government and/or its citizens to recover state resources stolen through corruption by current and past regimes, their families and political allies, or foreign actors”. Another definition given to asset recovery by Mathis Lohaus is “the objective of gaining control over proceeds of crime by seizing them”.¹⁰ Mathis Lohaus said that when these assets are located in a foreign jurisdiction, asset recovery can serve as a countermeasure to IFFs. Such processes take several steps.¹¹ First, the assets in question must be identified and traced, which may involve cross-border cooperation when the funds are located abroad. Second comes the freezing of assets, which might again involve multiple jurisdictions. The third step is the completion of the procedures chosen in each case, which might be based on civil law (non-conviction based forfeiture) or a confiscation that concludes criminal proceedings. This step of course depends on the gathering and – in cross-border cases – exchange of evidence. Finally, international cases raise the questions of if and how funds will be returned (repatriated) to the country of origin.

Legal texts of the Council of Europe¹², EU Council decision from 2007 on Asset Recovery Offices¹³ and Council of Europe communication¹⁴ define asset recovery simply as the whole process of recovering illicit property and proceeds from all crimes and returning it to their

⁹ CEART Project, *White Paper on Best Practices in Asset Recovery* (National Police Force Printers, 2009)

¹⁰ Mathis Lohaus, ‘Asset Recovery and Illicit Financial Flows from a Developmental Perspective: Concepts, Scope, and Potential’ (2019) U4 Issue, 3

¹¹ *ibid.*

¹² Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism, 2005, CETS No. 198 (Warsaw Convention)

¹³ Council Decision ‘Concerning Cooperation between Asset Recovery Offices of the Member States in the Field of Tracing and Identification of Proceeds from or other Property related to Crime’ (2007), 1

¹⁴ Commission, ‘The EU Internal Security Strategy in Action: Five steps towards a more secure Europe’ COM (2010) 6

rightful owners. The EU builds on UNCAC and extends the term for recovering proceeds from all types of crime. The author of this paper refers to the “assets recovery” by EU. I prefer this definition because it deals about recovering proceeds of crime from all crimes and tell us AR is a whole process. EU Council Decision which define asset recovery elaborate the process of criminal assets recovery includes the intelligence gathering and formal investigations for tracing and identifying assets in any form that are not only direct proceeds from crime but also related in any way to the offender. Secondly, assets recovery covers the process of preliminary legal actions of freezing or seizing assets in any form for the purpose of securing the proceeds that could be subject to further confiscation, from being disbursed or transferred. The third part of the asset recovery is the confiscation process. The last step of the process is the returning of the assets to its rightful owners that can be claimants, the state or victims of the offences.

2.3. Drivers Toward Having Stolen Asset Recovery Mechanism

There are many interlinked justifications that leading to the emergence of a policy for the recovery of stolen assets that crystallized in international agreements and domestic legislation late in the 1980s.¹⁵

First, sentencing offends to imprisonment and/or fines fail to discourage offenders as they earned substantial income. The huge revenues they derived from some crimes makes the deterrence effect of traditional criminal sanctions very less. “Applying the business analogy, criminal sanctions become a cost of doing business, an expense that is easily absorbed by the revenues“¹⁶.

Second, very large quantities of stolen cash are pumped into the financial system by money laundering processes, then diverted to foreign destinations then transformed into different goods

¹⁵ Arnar Jensson, ‘Crime should not pay Iceland and the International Developments of Criminal Assets Recovery’ (MA Degree University of Iceland 2011) 12

¹⁶ Gallant Michelle, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Edward Elgar Publishing 2005) 3

or cash. This causes losses of public trust in financial institutions and can harm both financial and credibility.¹⁷

The third element behind to have stolen assets recovery mechanism is terrorism¹⁸. The connection amongst and between crimes, that the stolen assets facilitate the commission of another.¹⁹ Terrorism evokes a connection between stolen assets and the ideologically-driven crimes rather than profit-oriented crime.

The fourth justification that could be the most important force to have a stolen asset recovery system is the moral principle that criminals should not be able to take advantage of their evil act, that is, “crimes should not pay”. This is based on the old rooted legal maxim *ex turpi causa non oritur actio*: “no one can rely upon an illegal title to property.”²⁰

2.4. Confiscation

Asset confiscation is a pre-requisite for any jurisdiction that wishes to have in place stolen asset recovery mechanism. Confiscation involves the permanent deprivation of assets by order of a court or other competent authority.²¹ Into order to explain the nature of confiscation, we should first differentiate between contemporary types of confiscation relating to the instrumentalities or the subject of crime and modern type of confiscation relating to proceeds of crime.²² Instrumentalities confiscation concerns the instruments used in committing the crime (e.g. gun or knife used to murder). Subject confiscation relates to the goods subject to the criminal behavior

¹⁷ John McDowell and Gary Novis, ‘The Consequences of Money Laundering and Financial Crime’ (2001) 6 (2) An Electronic Journal of the U.S. Department of State <[https://web-archive-2017.ait.org.tw/infousa/zhtw/DOCS/ijee0501.pdf](https://web.archive-2017.ait.org.tw/infousa/zhtw/DOCS/ijee0501.pdf)> accessed 7 January 2020

¹⁸ Jensson (n 15) 13 See also *FATF’s* Interpretative Note to Special Recommendation II: Criminalizing the financing of terrorism and associated money laundering <<http://www.fatf-gafi.org/dataoecd/45/19/34863009.PDF>> accessed 7 January 2020

¹⁹ McDowell and Novis (n 17) 6

²⁰ Michelle (n 16) 13

²¹ UNCAC (n 6) Art 2 /g/

²² Biniam Shiferaw, ‘Crime Should not Pay: Confiscation under the AML/CFT Law of Ethiopia’ (2016) Spec Ed 1(1) Federal Attorney General Higawinet Journal 1, 4

(e.g. falsified passport or a credit card) but the modern confiscation relates to the proceeds of crime or the financial gains obtained through criminal activities.²³

Secondly, we can distinguish between two methods to confiscation, which is confiscation of object and confiscation of value. The object confiscation is applied “blindly” at items that are specifically related to the predicate offence, handing the property title to the state without paying attention to who is the actual possessor of the property at that time.²⁴ Typically it is independent of any potential property rights formed with respect to the property, only the connection to the offence matters. Indeed, one of the negative drawbacks of object confiscation is suffering protection in good faith of third parties. Some countries softened the sharpness of object confiscations in various ways in order to protect *bona fide* third parties.²⁵ Second model, value confiscation is when other properties or amounts of money equivalent value are seized from the stolen goods.²⁶ Unlike object confiscation, value confiscation may be imposed on property that has been lawfully obtained and is no linked to the crime itself. When it is not possible to determine the amount of the value of the proceeds of crime the sum can usually be assessed.²⁷ From this one may understand value confiscation is directly linked with the underlying principle that crime should never pay.

The third way of recognizing the nature of confiscation is by looking the proceedings either *in personam* or *in rem*.²⁸ In *in personam* proceeding confiscation comes after a person’s criminal conviction for the commission of a profit generating crime as punishment. This type of confiscation is also called criminal confiscation or conviction based confiscation. In *in rem* proceedings the charge is not against the person but the property itself which is the proceeds of crime; not a part of the criminal procedure but a separate legal action and therefore not

²³ Ibid.

²⁴ OECD, ‘Confiscation of Instrumentalities and Proceeds of Corruption Crimes in Eastern Europe and Central Asia’ (2018) 22

²⁵ Swiss Penal Code, art 59 See also Dutch Penal Code art 33.

²⁶ Jensson (n 15) 22

²⁷ Stessens Guy, *Money Laundering: A New International Law Enforcement Model* (3rd edn, Cambridge University Press 2000) 36

²⁸ Vettori Barbara, *Tough on Criminal Wealth Exploring the Practice of Proceeds from Crime Confiscation in the EU* (Springer 2006) 8-10

conditioned by the conviction of the offender. These *in rem* practices are also called civil confiscations or non-conviction based confiscations.²⁹

2.5. Conviction based and Non-conviction based Confiscation

Traditionally, offenses are deemed to be unjust act against society so that the criminal law can have a solution by criminalizing actions and punishing wrongdoer. Civil law on the other hand, is intended to provide for remedies which either involves a return to the way things were before or a remedy to compensate an injured party for harm done to him.³⁰

Stolen asset from the public in recent years are growing particularly from serious crime like corruption. Conventional criminal justice and punishment such as arrests, indictments, convictions and imprisonments are not adequate to prevent public theft. Confiscation of the proceeds of crime was added to the conventional mechanism. But the effect of confiscation has been restricted by the need to obtain adequate evidence to secure a criminal conviction that is requirement for stolen asset confiscation.³¹ In criminal prosecutions prosecutor must establish guilt “beyond reasonable doubt” but in civil cases the level of proof is lower or “on the balance of probabilities”.³²

International instruments and organizations have gradually urged countries to pass new legislation or amend their legislation to permit the use of non-conviction based confiscation /NCBC/ and civil proceedings, because it is a far simpler and more effective legal process to recover stolen assets.³³

NCBC by civil evidence requirements has many benefits in achieving confiscation and recovering the stolen assets. First, the standard of evidence used is the standard of civil procedure, that is, balance of probabilities. Second, the proceedings may be a separate case from the criminal proceedings such that they can be brought before, during or after the criminal

²⁹ Ibid.

³⁰ OECD (n 24) 19

³¹ Barbara (b 28) 2

³² Jensson (n 15) 23

³³ UNCAC (n 6) art 54 /1/ /c/ See also FATF Recommendation 3.

proceeding. Third, both civil and common law jurisdictions use NCBC.³⁴ Fourth, it is possible to file NCBC lawsuit even though a criminal conviction is unsuccessful, which is very helpful in a particular ways, as if defendant is acquitted or dead, or abscond or unknown.³⁵

The recent ongoing evolution and developments towards NCBC reflect the centrality of the global efforts to tackle the financial dimension of crime, reflects the fact that both international organizations and an increasing number of national legislators have taken a strong stance on the subject, namely stolen asset recovery mechanism well explains certain restrictions on due process protections.³⁶

³⁴ Michael Fernandez, 'The confiscation and recovery of criminal property: A European Union State of the Art' (2016) *Journal of the Academy of European Law* 10

³⁵ *Ibid.*

³⁶ Barbara (n 28) 10

Chapter Three

Legal framework on Asset Recovery

3.1. The United Nations

Before two decades, United Nations started grappling within the problem of Stolen Asset recovery. The UN addressed this issue for the first time in December 2000, when the UNGA passed Resolution A/RES/55/188 to prevent and combat corrupt practices and illegal transfer of funds and recovery of stolen assets to the countries of origin.³⁷ This resolution request Member States to use international cooperation in the United Nations, through the system, to help prevent and combat the illicit transfers of funds and to recover stolen assets and return them to their home countries.

This resolution prompted the recovery of properties to become a priority for the special Committee in responsible for negotiating the Convention against corruption.³⁸ In its Resolution 2001/13, of 24 July 2001, the Economic and Social Council asked the Secretary General to prepare a global study for the Special Committee on the transfer of illegally-originated funds. The study was presented in 2002, and was entitled *A global study on the transfer of illegally-originated funds, in particular the funds originated in corruption related actions*³⁹.

Since the adoption of the UNCAC, recovering the stolen asset by corrupt officials to their rightful owners has become a global priority.⁴⁰ Assets gained through corruption and then transferred abroad form part of the wider trend of illicit financial flows (IFFs), which deprive developing countries of their domestic resources. The consequences of illegal outflows are particularly detrimental to developing states, as they lack funds that could be used to provide public goods.⁴¹ Each year tens of billions of dollars are lost to different kinds of IFFs from

³⁷ UNGA, Minutes of meeting of Ad Hoc Committee for the Negotiation of a Convention against Corruption, Fourth session, 28 November 2002

³⁸ Ibid

³⁹ UNGA, 'Global study on the transfer of illegally-originated funds, in particular those which originate from corruption' 2002

⁴⁰ Ibid

⁴¹ Lohaus (n 11) 7

Africa, according to some figures.⁴² Asset recovery as envisaged by UNCAC offers a path to recover the share stolen asset that relates to corruption, although the total amount recovered so far is very small in comparison to the estimated outflows.⁴³

3.1.1. Mechanisms for Recovery and Confiscation of Stolen Assets under UNCAC

The return of corruption profit (i.e. stolen assets) to their rightful owners is a core principle of the UNCAC.⁴⁴ Under Article 53 of UNCAC, which is one of the main provisions of the convention, direct recovery of property is set as key issue. It deals with the domestic legal framework needed by states parties to satisfy their obligations under the convention with regard to measures for direct recovery by another State Party claiming its rights as the legal entity legally entitled to property or to compensation or damages. Article 53 permits recovery, by means of procedures like civil suits, judicial orders providing for compensation or damages to another State party; restitution awards in connection with criminal sentencing and acceptance of a claim by State Party as a lawful owner of property obtained through the conduct of an offense in a confiscation proceeding.

Articles 53 stipulate the creation of rights to, or possession of, properties gained through an offence of corruption. Article 54(c) strengthens the statutory forfeiture provisions by requiring states parties to consider implementing NCBC. Under Article 56 the concept of spontaneous information sharing is introduced, encouraging states parties to advise each other of information that could lead to investigations, judicial proceedings or requests for assistance to recovering the proceeds of corruption. Article 57 codifies international practice in allowing states parties to return the confiscated proceeds of corruption and the money laundering proceeds to their rightful owner, with the deduction of reasonable expenses. In the case of all other offenses, the convention requires that assets be returned if the requesting state establishes prior ownership or if the requested state recognizes damage to the requesting state.

⁴² Lohaus (n 11) 4

⁴³ Lohaus (n 11) 14

⁴⁴ UNCAC (n 6) chap V

3.2. Legal Barriers to Effective Stolen Asset Recovery

3.2.1. Legal System Differences

There are different legal systems in the world. Differences in legal practices between countries cause challenges in the asset recovery process.⁴⁵ The differences in terminology, available restriction or confiscation procedure, evidentiary criteria, and admissibility criteria between civil law and common law jurisdictions can create barriers to the asset recovery process.⁴⁶ These differences may result in requests being sent back which may delay MLA.

Although legal differences can make it harder to obtain and provide mutual legal assistance, the jurisdictions requested can help to overcome this difficulty by looking all procedural laws that can allow them to execute an MLA request. Various multilateral conventions require flexibility in the application of procedural types. The UNCAC builds on preceding provisions and stipulates that an application shall be performed in compliance with the domestic law of the requested jurisdiction.⁴⁷ The same clause also specifies, however, that the request shall be fulfilled where necessary.

To improve the problem created by the differences in legal practice, thorough effort are required from both originating and requested jurisdictions, as well as ability on the part of the requested jurisdiction to be transparent about its procedure to be satisfy requests.

3.2.2. Failure to Observe UNCAC and UNTOC

Many countries failed to criminalize all UNCAC and UNTOC offenses or do not extend their legislative confiscation framework to all of these offenses.⁴⁸ As a result, these countries are often limited in their ability to secure or confiscate property if a foreign request relates to an uncovered

⁴⁵ Kevin M. Stephenson and others, *Barriers to Asset Recovery* (The International Bank for Reconstruction and Development / The World Bank 2011) 47

⁴⁶ Ibid

⁴⁷ UNCAC (n 6) Art 46 /17/ See also United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Art 7/12/; UNTOC Art 18/17/

⁴⁸ Stephenson (n 45) 53

UNCAC or UNTOC offense.⁴⁹ To overcome this problem of asset recovery, countries should ensure that the scope of their domestic restraint and confiscation framework encompasses all offenses under UNCAC and UNTOC. Countries must co-operate one another in the restraint, confiscation, and return stolen asset. Countries that do not apply their domestic restraint and confiscation provisions to all such types of property are necessarily limited in their ability to provide mutual legal assistance in asset recovery cases.

3.2.3. No Quick Freeze or Restraint Mechanisms

Because financial assets can be moved within seconds countries must act quickly. Unless countries become time-sensitive in executing a freezing order it cause great damage to recovered assets. But, current trend with MLA system are not capable to address this reality, particularly for tracing, freezing, or seizing of assets.⁵⁰ Although many countries permit MLA during the investigation stages or once there is reason to believe that a proceeding is about to be instituted against the alleged offender, a few countries require that criminal charges be initiated before restraint or seizing assistance can be provided⁵¹.

To overcome such problems, countries should not condition the provision of MLA on the imposition of criminal charges. In such cases, the originating countries may be required to show reason to believe that criminal charges and proceedings will be instituted. However, a request for a temporary freeze is to be distinguished from a request to forfeit assets, which is permanent and requires notice to the asset holder in most jurisdictions.

The recovery of illicitly-acquired assets is not an easy task. Such a process is faced with several challenges. In fact, the restraining measures (freezing, seizure, confiscation and restitution) may sometimes create conflicts with international standards for human rights.⁵² In addition,

⁴⁹ Ibid

⁵⁰ Stephenson (n 45) 54

⁵¹ Ibid

⁵² Kodjo Attisso, 'The Recovery of Stolen Assets: Seeking to Balance Fundamental Human Rights at Stake' (2010) Basel Institute on Governance International Centre for Asset Recovery Working Paper Series No 08 <https://www.baselgovernance.org/sites/default/files/2019-06/biog_working_paper_08_EN.pdf> accessed 25

December 2019

safeguards can be introduced to ensure that the asset holder has the opportunity to contest the freezing order. One safeguard can be a requirement that a formal MLA request for a freeze be filed within a certain period of time.

3.2.4. Legislative Gaps

Many countries have not comprehensive law on stolen asset recovery. Although progress has been made in some countries, others do not have the tools or powers that have been applied in successful asset recovery cases.⁵³ To have successful asset recovery countries must have laws permitting rapid freezing of assets, NCB confiscation, and direct enforcement of foreign confiscation orders. Many countries have the laws in scattered ways, i.e., they have it in different laws with having some part of it.

3.3. The Current Ethiopian Legal Framework on Stolen Asset Recovery

According to some reports, the amount lost by corruption to developing countries was estimated at 20 to 40 billion US dollars per year,⁵⁴ although UNODC and World Bank StAR project estimates that no more than 5 billion dollars in stolen assets were recovered in the 15 years prior to 2011.⁵⁵ According to estimates by Global Financial Integrity's, an approximate amount US\$1,259 million to US\$3,153 million per year left Ethiopia as IFFs between 2005 and 2014. IFFs have resulted in an average GDP growth loss of 2.2 per cent per year in Ethiopia.⁵⁶ A research conducted by Boyce and Ndikumana (2012) shows that "Ethiopia was eighth in sub-

⁵³ Larissa Gray and others, *Few and Far The Hard Fact on Stolen Asset Recovery* (International Bank for Reconstruction and Development / The World Bank and the OECD 2014) 66

⁵⁴ UNODC and World Bank, 'Stolen Asset Recovery Initiative: Challenges, Opportunities, and Action Plan' (The International Bank for Reconstruction and Development/The World Bank 2007) 10

⁵⁵ UNODC, *Digest of Asset Recovery Case* (Publishing and Library Section, United Nations Office at Vienna 2015) 5

⁵⁶ Roberto Martinez B. Kukutschka, 'Illicit financial flows in Ethiopia' (2018) Transparency International U4 Helpdesk Answer 2

Saharan Africa in terms of total capital flight in years 1970-2010, which amounted to \$25 billion”.⁵⁷

Despite the difference in the estimated amount of stolen asset that are out flowing from Ethiopia and hidden in a foreign countries, all estimated numbers shows us that the stolen assets are huge. Recognizing the adverse effects of illicit financial flows in Ethiopia and the need to recover stolen asset, Abiy Ahmed’s current government stresses the recovery of asset stolen by former and current corrupt officials and their affiliates.

Ethiopian Prime Minister Abiy had expressed the commitment of his administration to repatriate the nation wealth stolen by the corrupt officials and their affiliates. The Federal Attorney General’s office said work is underway to recover over 130 billion birr stolen public funds that had been embezzled and diverted to foreign countries by government officials and affiliate investors.⁵⁸

Presenting his office’s performance report to the national parliament for the 11 months of 2011 Ethiopian budget year, then Attorney General Berhanu Tsegaye said his office is investigating and working to repatriate the nation wealth stolen by the corrupt officials and their affiliates. Those corrupt officials who are allegedly involved in such offenses reportedly deposited their stolen assets in foreign banks in such countries as in Singapore and UAE banks.⁵⁹

Absence of strong legislative and regulatory framework with multiple legal tools to detect corrupt activities and illicit financial flows, rapidly freeze of assets, and conduct effective investigations and long court processes are believed to have created safe haven for corrupts officials to live freely.⁶⁰ More public wealth had been diverted to foreign countries in various methods by government officials and their affiliate investors, Berhanu added.

⁵⁷ Alula Nerea, ‘The Impact of Illicit Financial Flow on Economic Growth of Ethiopia’ (2018) <<https://www.researchgate.net/publication/331014000>> accessed 12 February 2020

⁵⁸ ‘Ethiopia to Recover Over 130 Billion Birr Stolen Public Funds: Official’ <www.ezega.com/News/NewsDetails/7566/Ethiopia-to-Recover-Over-130-Billion-Birr-Stolen-Public-Funds-Official> accessed 12 February 2020

⁵⁹ Ibid.

⁶⁰ Ibid.

The existing Ethiopia's legislations on assets recovery do not have the capacity effectively to recover all proceeds of major economic crimes from abroad. Successful asset recovery, specially hidden in a foreign country requires strong and comprehensive policy, legal framework and single independent as well as well-resourced institution.⁶¹ However, there are clear gaps and loopholes on the laws of Ethiopia to recover stolen asset from abroad. Ethiopia does not have a self-standing asset recovery policy, laws and institution. Having self-standing single law harmonizes the regulation of stolen asset recovery, cuts red tapes and creates a single system to govern stolen asset recovery. Pertinent asset recovery laws are found dispersed in different legislations.

3.3.1. Criminal Code

Deterrence is one of the primary objectives of criminal law.⁶² The goal of deterrence is to discourage members of society from committing crime. Especially for those crimes drive economic gain the criminal law achieves its goal effectively when the law is strong enough to target and spoil the appetite for commission of crime. This is realized when criminals are deprived of the proceeds of their misconduct. The dispossession of proceeds of crime carries over a 'crime does not pay' strong warning message for offenders not to get into a calculative commission of further crime.

Under the FDRE Criminal Code⁶³ a conviction based confiscation is incorporated as a form of punishment.⁶⁴ Criminal confiscation is an element of the criminal justice system that constitutes part of the sentencing process. A criminal confiscation takes place after a criminal prosecution is instituted and the guilt of the defendant is ascertained following a trial or a guilty plea.⁶⁵ This mechanism is the oldest asset recovery when we compare with other form of stolen asset recovery mechanisms.

⁶¹ Gray (n 53) 33

⁶² Ben Johnson, 'Do Criminal Laws Deter Crime? Deterrence Theory in Criminal Justice Policy: A Primer' [2019] MN House Research 2

⁶³ Criminal Code of the Federal Democratic Republic of Ethiopia Proc. No. 414/2004

⁶⁴ Ibid art 98

⁶⁵ Patricia M. Canavan, 'Civil Forfeiture of Real Property: The Government's Weapon Against Drug Traffickers Injures Innocent Owners' (1990) 10 Pace L. Rev.487, 492

The FDRE Criminal Code has only four articles that deal with confiscation of property, sequestration of property, forfeiture to the state and seizure of dangerous articles. When we look at those articles critically we found that under article 98 of the Criminal Code confiscation is ordered by court only when provided by law that means, only when provided by provision of this Code or other laws provide criminal confiscation. Definition we see in chapter two tell us that confiscation involves the permanent deprivation of assets by order of a court or other competent authority. Though the definition of confiscation found in article 98 is compatible with definition given by international instruments, article 98 is only applicable for conviction based confiscation. This makes the Criminal Code ineffective by lacking other means of confiscation which are more effective other than conviction based confiscation in stolen asset recovery process.

Article 99 of the criminal code deals with sequestration of property. What this article deals is different from article 98. Article 98 deals about mandatory confiscation when the law provides so. But article 99 deals with confiscation, at the court's discretion, of property of a criminal convicted in absentia for the crime of conspiring or engaging in hostile acts against the constitutional order or the internal and external security of the State. Therefore, this article is not about confiscation for recovering stolen asset. Whereas article 100, which titled forfeiture to the state, speak of material benefits given or intended to be given to a criminal to commit a crime as well as fruit crime is forfeited for the government if owner or any other claimant is not found within five years. Article 140 which is titled Seizure of Dangerous Articles deals about the seizure of property which having been used or likely to be used for the commission of a crime, or which have been obtained as the result of a crime, when they endanger public order, safety, health or decency.

In general those articles of Criminal Code do not cover the stolen asset recovery mechanism properly. This is because, first, the mechanism employed by the criminal code is conviction based confiscation only. It left out those other mechanisms, like non-conviction based, civil based confiscations, which are sound strong in recovering stolen asset specially hidden in a foreign jurisdiction. Conviction based confiscation as mentioned above is part of sentencing in a criminal case imposed by the court after the accused is found guilty. To materialize the confiscation based on conviction prosecutor must go through the difficult criminal procedure and

satisfy the highest standard of evidence requirement. Failure to reach this elevated standard of proof will result in acquittal of the accused and this automatic result failure to secure confiscation of the property. That is non-recovery of stolen asset. Second, it does not provide other process of stolen asset recovery, like tracing assets, securing the assets, international cooperation and others, which are vital in recovering stolen asset from abroad.

3.3.2. The criminal Procedure Code

The 1961 Criminal Procedure Code of Ethiopia has few provisions dealing with procedure of Searches and seizures, Confiscation of property and Sequestration of property in criminal justice process. Under Article 32 the Criminal Procedure Code deals with search and seizures by police investigator during investigation. Article 211 and 212 of the criminal procedure code stipulate the procedures to be applied in the Sequestration of property of criminal sentenced in his/her absence and confiscation of property of criminal according to Criminal Code subsequently.

As we understand from the definition given in chapter two of this paper Asset recovery (AR) refers to the objective of gaining control over proceeds of crime by seizing them.⁶⁶ When these assets are located in a foreign jurisdiction, such processes take several steps. First, the assets in question must be identified and traced, which may involve cross-border cooperation when the funds are located abroad. Second comes the freezing of assets, which might again involve multiple jurisdictions. The third step is the completion of the procedures chosen in each case, which might be based on civil law (non-conviction based forfeiture) or a confiscation that concludes criminal proceedings. This step of course depends on the gathering and – in cross-border cases – exchange of evidence. Finally, international cases raise the questions of if and how funds will be returned (repatriated) to the country of origin. This shows to us that stolen asset recovery is more of a procedural matter. It is the procedure starting from asset identification to recovering or returning back to country.

When we critically look at to the 1961 Criminal Procedure Code of Ethiopia it is not fully capable of serving as a procedure of recovering stolen asset. It doesn't deal recovering of stolen asset which is hidden in foreign countries. It doesn't contain procedural provisions dealing with international cooperation, which are very important for recovering stolen asset from abroad.

⁶⁶ Lohaus (n 10) 3

Though it contains few procedural provisions it does not cover whole process of recovering illicit proceeds from all crimes and returns them to their owners.

3.3.3. Anti Corruption laws

The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation no.434/2005 (As amended by Proclamation no.882/2015), The Revised Anti Corruption Commission Establishment Proclamation no.433/2005 (As amended by Proclamation no.883/2015) and A Proclamation to Provide for Corruption Crimes no.881/2015 are Anti Corruption laws in Ethiopia. These laws are dealing about substantive and procedural issue of corruption crime.

These laws have some provisions relating to stolen asset recovery.

3.3.3.1.The Revised Anti Corruption Special Procedure and Rules of Evidence

Proclamation No. 434/2005 (As Amended by 882/2015)

The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation in its section three and four, that is, from Article 8 to 34 deals with some process of recovery stolen asset acquired through corruption crime. The procedure for obtaining restraining order on any property acquired by the commission of corruption crime and other property is provided in the proclamation.⁶⁷ Effective stolen asset recovery process starts from intelligence and evidence gathering followed with tracing of asset then goes to getting restraining order. But this proclamation doesn't provide procedure of evidence gathering and tracing. It left out this key step and go directly to restraining order. As a procedural law this proclamation is expected to stipulate evidence gathering and tracing.

Under Article 12 of the proclamation the power of giving restraining order on proceeds of crime is given to court. But, exceptionally, the proclamation gives the power to the head of appropriate organ to restrain proceeds of crime temporally for 48 hours until the court give restraining order.⁶⁸ Under Article 2(3) of the proclamation "Appropriate Organ" is defined as "an organ

⁶⁷ The Revised Anti Corruption Special Procedure and Rules of Evidence Proc No. 434/2005, art 8 and 9, as amended, The Revised Anti Corruption Special Procedure and Rules of Evidence (Amendment) Proc No.882/2015

⁶⁸ Ibid art 8(4)

which is empowered to investigate and/or prosecute corruption offences.” The Federal Ethics and Anti-Corruption Commission was given the mandate or empowered to investigate and/or prosecute corruption offences by proclamation No.433/2005.⁶⁹ But this mandate is taken away from the commission and investigation mandate is entrusted to Federal Police commission and prosecution mandate is given to Federal Attorney General by proclamation no. 943/2016.⁷⁰ So, the head of Federal Police commission or Federal Attorney General may restrain proceeds of crime temporally for 48 hours. But there is no clear provision that shows us that the power is given to one of them.

The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation follows conviction based confiscation and civil action based confiscation mechanism. Art 29 of the proclamation⁷¹ stipulates conviction based confiscation, that is, confiscation after accused is found guilty. The Article read as follows:

“Where the accused is found guilty of corruption offence, the Court shall give a confiscation order on:

- a) Property obtained from corruption offences or fruits thereof or any property proportionate to the benefits obtained there from;*
- b) Property of the accused proportional to the benefit procured by another person or damage caused by corruption offences on private, public or State interest or advantage of public organization even where the accused has not obtained benefits for himself from such offence.”*

Confiscation through civil action is another mechanism of confiscation mechanism stipulated under The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation No.434/2005 (As amended by Proclamation no. 882/2015).⁷²

⁶⁹ The Revised Federal Ethics and Anti-Corruption Commission Establishment Proc No.433/2005, as amended, The Revised Federal Ethics and Anti-Corruption Commission Establishment (Amendment) Proc No.883/2015

⁷⁰ Federal Attorney General Establishment Proc 943/ 2016, art 22 (2) and (3)

⁷¹ Special Procedure and Rules of Evidence Proc (n 67)

⁷² Special Procedure and Rules of Evidence Proc (n 67) art 32

Article 32 Recovery of Property by Civil Action

- 1. Without prejudice to the provisions of Article 29 of this Proclamation, the appropriate organ may institute civil action for purposes of confiscation of property obtained through corruption offences, or fruits thereof, or property proportionate therewith, or property proportionate to the damage caused thereby even where the criminal proceedings were terminated or no conviction was obtained for any reason.*
- 2. The appropriate organ may institute a civil action in situations other than those mentioned under sub-article (1) of this Article for purposes of payment of compensation proportional to property obtained as a result of corruption offences, or fruits thereof, or property proportionate therewith, or property proportionate to the damage caused thereby.”*

The civil action mechanism to recover a stolen asset incorporated under The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation is an *in personam* proceeding, which is civil charge is brought against an offender, when a criminal prosecution is discontinued before conviction or when no prior criminal charge is brought against the offender. However, there is still loophole by the civil action mechanism followed this proclamation. Article 32 does not address issues relating to recovery of stolen assets when the offender dies prior to investigation or prosecution, or when the commission of the offense is known after the offender’s death; or where there is a property that is considered as proceed of corruption but the offender is unknown; these gaps remain unfulfilled under this proclamation.

Article 32 authorizes the appropriate organ to initiate a civil action to recover property or benefits derived from by corrupt act of the accused or a claim amount from personal property of the accused to compensate the damage caused by the accused where the criminal proceeding is discontinued or not initiated at all for any reason. The question here is how is the appropriate organ? Which institution is mandated? As mentioned above Article 2(3) of the proclamation defines "Appropriate Organ" as “an organ which is empowered to investigate and/or prosecute corruption offences.” The Federal Ethics and Anti-Corruption Commission was given the mandate or empowered to investigate and/or prosecute corruption offences by proclamation no.

433/2005.⁷³ But this mandate is taken away from the commission and investigation mandate is entrusted to Federal Police commission and prosecution mandate is given to Federal Attorney General by proclamation no. 943/2016.⁷⁴ So, which institution is mandated is not clearly set out. One may argue that it is Federal Attorney General who is mandated to bring civil charge since it is the one who is responsible to brought criminal charge. But what if offender dies before investigation or prosecution, or when the commission of the crime is known after the death of the offender? Who is proper organ in this case is unclear.

The proclamation does not provide an international cooperation issue which is the very important point to recover stolen asset from abroad and does not mandate single institution for undertaking international cooperation.

3.3.3.2.The Revised Anti Corruption Commission Establishment Proclamation No. 433/2005 (As amended by 883/2015)

The Revised Anti Corruption Commission Establishment Proclamation no. 433/2005 (As amended by Proclamation no.883/2015) under sub-article 3 and 4 of article 7 the power to investigate and prosecute corruption case is given to the Federal Ethics and Anti-Corruption Commission. This proclamation under article 7 (6) gives the power to freeze, by court order, the assets of any person who may be under investigation for corruption; and cause, through court order, the forfeiture of any assets and wealth obtained by corruption or its equivalent to the state or dispose same by or without public auction; under article 7 (19) the power to liaise and cooperate with national, regional and international bodies with similar objectives is given to This includes international cooperation on recovering stolen asset. In addition to this under 12(2)/g/ of the proclamation the commissioner is entrusted with the power to issue warrants to search and obtain information there from, of any bank account of any person or organization if there is reasonable suspicion that such is relevant to a case under investigation. UNCAC indicate the States establish institution with the mandate of stolen asset recovery. The power given to the Commission by its establishment proclamation mentioned above seems that the Commission was

⁷³ Federal Ethics and Anti-Corruption Commission Establishment Proc (n 69)

⁷⁴ Attorney General Establishment Proc (n 70)

the stolen asset recovery authority for crimes of corruption. But it was not fully mandated. Because, for example, the power of managing recovered stole asset was not given to it.

As per article 8 sub-article 2 (b) of Federal Attorney General Establishment Proclamation No. 943/2016 the power related to investigation and prosecution given to the Commissioner is transferred to Attorney General. So, that means the power to issue warrants of searching and obtaining information there from, of any bank account of any person or organization is transferred to Attorney General. Proclamation No. 943/2016 under article 22 (2) and (3) transfers the power of prosecution and investigation of the Federal Ethics and Anti-Corruption Commission to Federal Attorney General and to Federal Police Commission respectively. The power given to the commission under sub article 19 of article 7 of the proclamation⁷⁵ is not clear to whom it is transferred. This is because liaising and international cooperation may require at investigation and at prosecution stage as well as at execution of judgment or after prosecution stage. International cooperation always involves foreign state when the stolen asset is hidden abroad. But we may argue that under proclamation 943/2016 Federal Attorney General is given power and duty to undertake international relation and cooperation in criminal and civil matters.⁷⁶ This power of undertaking international relation and cooperation in criminal include cooperation in stolen asset recovery. This includes cooperation during investigation, prosecution and execution of judgments. Even though the power liaising and international cooperation given to Federal Ethics and Anti-Corruption Commission is not clearly transferred to Federal Attorney General Office the author of this paper is believe that Federal Attorney General Office is mandated as per article 6 sub- article 12 of its establishment proclamation.

3.3.3.3. Corruption Crimes Proclamation No. 881/2015

Corruption Crimes Proclamation no. 881/2015 is a comprehensive legislation which stipulates what acts amount to corruption crimes. The proclamation categorize as corruption acts of bribery, embezzlement and other similar acts committed by the private sector, in addition to public sector, as the United Nations Convention Against Corruption and the African Union

⁷⁵ Federal Ethics and Anti-Corruption Commission Establishment Proc (n 69)

⁷⁶ Attorney General Establishment Proc (n 70) Art 6(12)

Convention on Preventing and Combating Corruption which are ratified by Ethiopia impose such obligation on Member States.⁷⁷

It contains those lists of crimes of corruption, which is the substantive part of the law. These Crimes are the basis for tracing, restraining and confiscation procedures, which is stolen asset recovery process.

Like the Criminal Code, Corruption Crimes Proclamation stipulate conviction based confiscation only. Under article 4 (3) /b/ of the this proclamation stated that criminal who convicted of corruption crime in addition to punishment under infringed provision the property and the fruit of it is confiscated. So, when critically look this proclamation from stolen asset recovery point of view it has the gap similar to criminal code which I mentioned under section 3.6.2. above. But one may argue that this proclamation provide for civil confiscation under article 7. This provision state that conviction or acquittal according to this proclamation doesn't mean the accused is free from civil or administrative liability. Civil liability does not mean it is civil based confiscation. Civil based confiscation is *in personam* or *in rem* action or both against the person accused of stilling public property or stolen property itself. Whereas civil action is an action brought against the person for the damage caused or for liability incurred. So, the proclamation doesn't provide civil based confiscation mechanism to recover stolen asset.

3.3.4. The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation No.780/2013

Money laundering denotes the act of concealing the origins of money linked to crime or otherwise attempting to diminish the connection between property and some criminal undertaking.⁷⁸ Anti-money laundering measures, refers to sets of laws, practices and policies that have arisen chiefly to detect, to deter and to permit the forfeiture of property tainted by criminality.

⁷⁷ Corruption Crimes Proc No. 881/2015, Preamble Para 3

⁷⁸ Michelle Gallant, 'Money laundering consequences' [2014] Vol. 17 Iss 3 Journal of Money Laundering Control 296 - 305

The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation number 780/2013 is much compressive when we compare to the laws discussed above. This proclamation basically stipulated conviction based⁷⁹ and civil action based confiscation⁸⁰ mechanism. What is new about the conviction based confiscation in this proclamation is the widest scope of properties it subjects to confiscation. In addition to the proceeds of crime and other associated properties, confiscation of instrumentalities of crime is allowed under Art. 35(1) (a), (b) and (c). Proclamation 780/2013 provide that any proceeds of crime, incomes derived from the investment of proceed of crime and properties intermingled with proceed of crime are forfeitable.

The civil action based confiscation under art 35(3) of this proclamation brought only upon three conditions: - when the perpetrator is unknown, has fled from justice or is dead. When these conditions materialize and the court is convinced that the evidence is sufficient the property is confiscated and recovered. But authors argue that there is a debate whether this provision provide civil confiscation or not.⁸¹ The provision provides that, if, in case where an offence involving money laundering or predicate offences, or financing of terrorism, is established by the court and the perpetrator thereof cannot convicted because of he is unknown, he absconded or died, the court may nevertheless order the confiscation of seized funds or property if sufficient evidence is adduced that it constitutes proceeds of crime or instrumentalities. Here the questions are that whether the court can use criminal or civil degree of evidence to establish offence of money laundering or predicate offences, or financing of terrorism, before going to confiscate? Whether the court follows civil or criminal procedure? According to Biniam the provision is unclear and it needs amendment⁸². But the author of this paper argues that the provision provides for civil confiscation. This is because the legislator provides conviction based confiscation under sub-article 1 and 2 of article 35. Had the legislator want to make it conviction based confiscation they include it under sub-article 1 and 2 and does not make it separate under sub-article 3. And also the provision provides that the accused is not convicted. Had it been criminal proceeding the

⁷⁹ Prevention and Suppression of Money Laundering and Financing of Terrorism Proc No. 780,/2013, art 35 (1) and (2)

⁸⁰ Money Laundering and Financing of Terrorism Proc (n 79) art 35 (3)

⁸¹ Shiferaw (n 22) 11

⁸² Ibid

crimes provided under art 35 (3) is seen by court in absentia according to art 161 of criminal procedure code and convicted accordingly. This shows us there is no criminal proceeding rather civil proceeding. So, court uses civil proceeding procedure and degree of evidence evaluation.

Confiscation proceeding inevitably involves procedures like identification, freezing/seizure judicial procedures and court decision of confiscation, enforcement of the confiscation order/decision against particular assets and management of confiscated assets. The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation did not provide sufficiently procedures like identification, tracing, freezing/seizure and management clearly. It only allows crime investigation authorities, with permission of court, for the purpose of obtaining evidence of money laundering or financing of terrorism or tracing proceeds of crime, which is for a specific period, to monitor bank accounts and other similar accounts, to access computer systems, networks and servers, to place under surveillance or to intercept communication, to take audio or video recording or photographs of acts, behaviors and conversations, and to intercept and seize correspondence. Article 36 sub article (1) of this proclamation also deals about freezing and seizing of proceed of the crime during prosecution stage. It doesn't deal freezing and seizing during investigation stage, which is crucial to recover stolen asset. It reads as follow

“The court may, either at its own initiatives or at the request of the public prosecutor, issue order of freezing or seizing, including other appropriate provisional measures, intended to preserve availability of funds or property and instrumentalities that may be subject to confiscation in accordance with Article 35 of this Proclamation.”

Once assets have been secured through provisional measures like seizure and freezing as well as confiscation through either through conviction based or civil based, authorities will need to ensure the safety and value of the assets until they are eventually used for the purpose of public interest.⁸³ In order to have a robust asset management system, the starting point is to have appropriate legal legislations that enable the preservation of the economic value of assets in an

⁸³ Jean-Pierre Brun and others, *Asset Recovery Handbook* (The International Bank for Reconstruction and Development / The World Bank, UNODC 2011) 108

efficient, transparent, and flexible manner.⁸⁴ When we look the Ethiopian context, a law enforcement agency seizes and stores property that is evidence of crime as an exhibit for evidence purpose.⁸⁵ But, there is no law to handle this kind of issue. The systems are insufficient to deal with this issue.

Under chapter six of the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation number 780/2013 the issue of international cooperation is stipulated. But international cooperation provided under this proclamation is only related to mutual legal assistance for extradition and criminal investigation as well as proceeding for money laundering and terrorism financing.⁸⁶ The proclamation do not for other stolen asset recovery process like direct recovery, as stipulated under article 53 of UNCAC, information sharing, and return of recovered asset to Ethiopia from foreign country.

3.4. Legal Framework for Stolen Asset Recovery in Some Selected Countries and Comparison with Ethiopian System

To draw lessons and experiences from other jurisdictions examining countries legal system is necessary. For these purpose, Nigeria's and Rwanda's experiences will be analyzed and compared with Ethiopian legal system briefly here under. Nigeria and Rwanda is selected for comparison for three reasons. First, both countries face similar problem, with Ethiopia, i.e., losing their large amount of asset by theft of their past and current officials and their affiliates and hidden in a Foreign countries. Second, both countries legal system is similar with Ethiopian legal system. Third, both countries have strong stolen asset recovery legislation.

3.4.1. Nigeria's System

Nigeria is among those developing country which lost its large amount of asset by theft of it past and current officials and their affiliates and hidden in a Foreign countries.⁸⁷ For example General Sani Abacha, who had governed Nigeria for five years from 1993 to 1998, have looted estimated

⁸⁴ Ibid

⁸⁵ Shiferaw (n 22) 15

⁸⁶ Money Laundering and Financing of Terrorism Proc (n 79) art 38 (1)

⁸⁷ StAR, 'Challenge, Opportunities and Action Plan' (2007) The International Bank for Reconstruction and Development/The World Ban 18

amount of \$3 billion to \$5 billion over the five years of his rule.⁸⁸ Despite many challenges, Nigeria relatively has recorded successes in the recovery some of its stolen assets.⁸⁹ After a series of negotiations, which led to the selection of the World Bank as a bona fide third party for the monitoring of recovered assets of Sani Abacha, a total of \$505.5 million recovered from Swiss to Nigeria 2016.⁹⁰

In Nigeria, before enactment of The Proceeds of Crime Bill of 2017, the law and practice on forfeiture and recovery of proceeds of unlawful activities were varies greatly and depends on the kind of crime and the statute being enforced and there was no single legal framework for the recovery and management of the proceeds of crime.⁹¹ Although there were some provisions in those scattered statutes that allow the government to recover the proceeds of crime, they are in the main, disjointed, underused and ineffective.⁹² Criminals were tried and convicted; yet still they manage to hold onto their ill-gotten gains.⁹³ Property that has been frozen by order of the court in the past has been allowed to languish and rot, businesses have been allowed to die and any value in these things that should be properly returned to the people is amount to nothing.⁹⁴ Even when assets have been recovered they have been dissipated, lost, or in any event, not properly accounted for.⁹⁵ This makes the past Nigerian system similar with current Ethiopian system.

⁸⁸ Ibid

⁸⁹ TUGRA 'Policy Brief on A Framework for Asset Recovery and Management in Nigeria' <www.tugar.org.ng> accessed 18 January 2020

⁹⁰ StAR (n 87) 19

⁹¹ Adedeji Adekunle, 'Proceeds of Crime in Nigeria: Getting Our Act Right' (2011) the Nigerian Institute of Advanced Legal Studies

⁹² Ibid

⁹³ Abdullahi Y. Shehu, 'Key Legal Issues and Challenges in the Recovery of the Proceeds of Crime: Lessons from Nigeria' [2014] Vol. 3, No. 1 International Law Research 186

⁹⁴ Godwin Iheabunika, 'An Overview of the Proceed of Crime Bill: A Legislative Drafting Perspective' <https://www.academia.edu/16357192/AN_OVERIEW_OF_THE_PROCEEDS_OF_CRIME_BILL_2014> accessed 10 January 2020

⁹⁵ Ibid

Since the year 2011, the Inter-Governmental Action Group Against Money Laundering (GIABA) have advised Nigeria Government to enact a standalone Asset Recovery and Confiscation law to address the weakness in the existed laws, which led to the enactment of the Proceeds of Crime Bill of 2017.⁹⁶ The main weakness of the existed laws, in addition to being scattered, they were not covered the whole process of asset recovery and were not able to create strong uniform system.⁹⁷

The Nigerian Proceeds of Crime Bill of 2017 provides a legal and institutional framework for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds derived from unlawful activities; and instrumentalities used or intended to be used in the commission of unlawful activities.⁹⁸ Unlike The Nigerian Proceeds of Crime Bill of 2017, the Ethiopian legislations do not provide single legal and institutional framework. This creates lack of applying uniform law for proceeds from different crimes. The anti-corruption laws apply only for proceed from corruption crimes, the anti-money laundering apply only for predicate crimes and money laundering crime proceeds only and the criminal code and criminal procedure code apply for other crimes proceeds. This creates inconsistence and lack of uniformity in the system.

The Bill seeks to harmonize and consolidate the existing legislative framework on the recovery of proceeds of crime and related matters in Nigeria.⁹⁹ The Bill seeks to bring about a unified procedure for recovering, managing, restraining, confiscating and forfeiting the proceeds of crime in Nigeria. But the current Ethiopian legislations on asset recovery do not harmonized and consolidated rather scattered and found in different laws like the Nigeria legal system before enactment of The Proceeds of Crime Bill of 2017.

Unlike The Nigerian Proceeds of Crime Bill of 2017, which provide the full process or procedure of stolen asset recovery, Ethiopian current legal set up on stolen asset recovery, the laws which discussed above, provide incomplete procedure. They do not cover the process starting from

⁹⁶ GIABA, 'Mutual Evaluation Implementation Action Plan: Anti-Money Laundering and the Financing of Terrorism of Nigeria' (2011) 3

⁹⁷ Ibid

⁹⁸ Iheabunika (n 94) 4

⁹⁹ Ibid

intelligence gathering and tracing to the final recovery and return the recovered assets back to home.

3.4.2. Rwanda's System

Rwanda has a sound legal framework on assets recovery which is a specific law to recover crime-related assets.¹⁰⁰ Articles 5-9, 15-17 of the Law on assets recovery authorizes the seizure, confiscation and management of offence-related assets. The 2015 law on assets recovery also determines the framework for cooperation between Rwanda and foreign states in the process of recovering of such assets.¹⁰¹

The Rwandan 2015 law on the recovery of offense-related assets was enacted to complement other legal provisions on assets recovery such as the law on criminal procedure and the penal code.¹⁰² This law has applied a “list approach” by which only 18 crimes listed in article 3 are understood to trigger the recovery of assets. However, article 3, sub article 19, of the same law, and emphasizes that “any other offence provided by the Law committed with respect to public assets, assets of an organ or an individual” can trigger the assets recovery. Under The 2015 law on assets recovery, Assets to be seized can be grouped into three measure categories: instrumentalities, intermingled assets and derived proceeds.¹⁰³

The 2015 law on the recovery of offense-related assets aims at seizing, confiscating and managing offence related assets; laying down and enhancing powers and competences of the organs in charge of the tracing, recovery and management of assets and benefits provided under this Law; determining the framework for cooperation between Rwanda and foreign States towards recovery of assets and benefits provided under this Law.¹⁰⁴ But the Ethiopian laws deals with stolen asset recovery, which discussed above, do not provide seizing, confiscating and managing offence related assets as aim. And also do not determines clearly, all laws, framework for cooperation between Ethiopia and other countries.

¹⁰⁰ The Law No. 42/2014 of Jan. 2015(Rwanda) Official Gazette No. 07 of 16 February 2015

¹⁰¹ The Law No. 42/2014 (n 100) Art 18

¹⁰² Transparency International Rwanda, ‘Status of Assets Recovery in Rwanda’ (Ministry of Foreign Affairs 2018) <https://tirwanda.org/IMG/pdf/status_of_assets_recovery_in_rwanda.pdf> accessed 2 February 2020

¹⁰³ Ibid

¹⁰⁴ The Law No. 42/2014 (n 100) Art 1

Under the Rwanda law of recovery of offense-related assets allow confiscation of instrumentalities, intermingled assets and derived proceeds.¹⁰⁵ That means this law categorized confiscated property into three categories. However in Ethiopian some of the laws provide either of it or all of it. The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation no. 780/2013 provide all of them.¹⁰⁶ However the Ethiopian corruption laws allow confiscation of instrumentalities and fruit or proceeds of crime only.¹⁰⁷ They do not allow seizer of intermingled assets. Whereas the Ethiopian criminal code allows confiscation of any property which the criminal has acquired, directly or indirectly, by the commission of the crime for which he was convicted and may also apply to any property lawfully acquired by the criminal.¹⁰⁸ This means the criminal code do not provide for instrumentality confiscation and only allow intermingled assets and proceed of the crime.

The Rwanda law of recovery of offense-related assets allows and provides detailed process of international cooperation to recovery stolen asset.¹⁰⁹ Under this law Rwanda can cooperate with foreign States in recovering its assets in foreign countries and returning assets of foreign States on its territory.¹¹⁰ The cooperation ranges from investigation stage to return of stolen asset to the country of origin. Whereas, the Ethiopian laws on stolen asset recovery only Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation no. 780/2013¹¹¹ and The Revised Anti Corruption Commission Establishment Proclamation no. 433/2005¹¹² estipulate international cooperation issue. Proclamation no. 780/2013, under article 38(1), which provides international cooperation deals only with mutual legal assistance for extradition and criminal investigation as well as proceeding for money laundering and terrorism financing. Whereas The Revised Anti Corruption Commission Establishment Proclamation only gives the power of international cooperation and do not provide detail issues of international cooperation.

¹⁰⁵ Transparency Int Rwanda (n 102) 9

¹⁰⁶ Money Laundering and Financing of Terrorism Proc (n 79) art 35 (1)

¹⁰⁷ Corruption Crimes Proc (n 77) art 4(3) (b) and Special Procedure and Rules of Evidence Proc (n 67) art 29 (1)

¹⁰⁸ Criminal Code (n 63) art 98 (2)

¹⁰⁹ The Law No. 42/2014 (n 100 Chap V)

¹¹⁰ The Law No. 42/2014 (n 100) art 18

¹¹¹ Money Laundering and Financing of Terrorism Proc (n 79) Chap VI

¹¹² Federal Ethics and Anti-Corruption Commission Establishment Proc (n 69) art 7 (19)

So, one can simply conclude that, unlike Rwanda law, the Ethiopian laws on stolen asset recovery do not provide international cooperation properly.

3.5. Ethiopian Stolen Asset Recovery Legal Framework Vs International Instruments

There are different international legal instruments, which Ethiopia is signatory, deals with stolen asset recovery system.¹¹³ Among this UNCTOC and UNCAC are the basic once. As a signatory to the United Nations Convention against Transnational Organized Crime (UNCTOC)¹¹⁴, Ethiopia is obliged to adopt measures to enable the confiscation of the proceeds of crime¹¹⁵ among others¹¹⁶ as may be necessary to enable the identification, tracing, freezing or seizure of the proceeds of crime.¹¹⁷ Article 12 makes provision for confiscation and seizure while Article 13 imposes an obligation upon a State Party to act in response to requests for confiscation from other states “to the greatest extent possible within its domestic legal system”. That means it provides for international cooperation for the purposes of confiscation. The disposal of confiscated proceeds of crime or property is covered by Article 14. These provisions of the convention lay down international standards for the confiscation and seizure of the proceeds of crime¹¹⁸.

The Ethiopian legislations on stolen asset recovery, which discussed above, provides for confiscation of proceeds of crimes. But they are not uniform in providing confiscation mechanism. Some of them provide only for conviction based confiscation others provide for conviction based as well as NCBC. In addition to they do not provide the full process of asset recovery, which are identification, tracing, freezing or seizure of the proceeds of crime, stipulated under article 12 (1) of UNCTOC. The Prevention and Suppression of Money

¹¹³ Daniel Thelesklaf, ‘Asset Recovery’ Visiting Experts’ Papers

<https://www.unafei.or.jp/publications/pdf/RS_No83/No83_05VE_Thelesklaf.pdf> accessed 22 March 2020

¹¹⁴ Ratified by Proclamation No. 526/2007

¹¹⁵ Crimes covered by the Convention include: participation in an organized criminal group (art 5), laundering of the proceeds of crime (art 6), corruption (art 8) and obstruction of justice (art 23)

¹¹⁶ UNCTOC art 12 (1)

¹¹⁷ Ibid art 12 (2)

¹¹⁸ Article 5 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention) provides a similar provision as section 12 UNCTOC albeit the offences covered by both Conventions differ to some extent.

Laundering and Financing of Terrorism Proclamation and the Revised Federal Ethics and Anti-Corruption Commission Establishment proclamation deals with international cooperation for the purpose of confiscation. However the Revised Federal Ethics and Anti-Corruption Commission Establishment proclamation do not provide the detail process of international cooperation rather only give mandate to deal with international cooperation.

One of the truly innovative aspects of the UN Convention Against Corruption is the fact that it declares the return of assets a “fundamental principle of this convention” and that states commit to affording each other the widest measure of cooperation and assistance to achieve this.¹¹⁹ UNCAC also provides for the recovery and confiscation of the proceeds of crime.¹²⁰ Chapter five of the convention is all about asset recovery and return to country of origin. UNCAC like other international treaties impose obligations on signatory states. Ethiopia is a signatory to this convention and ratified it in 2007.¹²¹

Under Article 53 of UNCAC direct recovery of property is set as a key issue. It deals with the domestic legal framework needed by states parties to satisfy their obligations under the convention with regard to measures for direct recovery by another State Party claiming its rights as the legal entity legally entitled to property or to compensation or damages. However there is no law in Ethiopia which allows a foreign country to seek direct recovery in Ethiopia to recover its stolen asset. Article 53 of UNCAC also permits recovery, by means of procedures like civil suits, judicial orders providing for compensation or damages to another State Party; restitution awards in connection with criminal sentencing and acceptance of a claim by State Party as a lawful owner of property obtained through the conduct of an offense in a confiscation proceeding. Again in Ethiopian laws dealing with stolen asset recovery do not provide or allow foreign countries to bring an action to recover an asset or claim damage.

Article 54 of UNCAC strengthens the statutory forfeiture provisions by requiring states parties to consider implementing NCBC. But when we look at the Ethiopian laws, as mentioned while discussing Ethiopian laws above, some of them have provisions for NCBC and others do not.

¹¹⁹ The StAR Quarterly, ‘Setting norms for the return of assets’(2019) Stolen Asset Recovery Initiative <<https://star.worldbank.org/content/star-newsletter-april-2019>> accessed 25 May 2020

¹²⁰ UNCAC (n 6) chap V

¹²¹ Ratified by Proclamation No. 526/2007

And also Article 54 of obliges states to take measures necessary to permit its authorities to give effect to a foreign confiscation order, take such measures to permit domestic authorities having jurisdiction, to order confiscation “by adjudication of an offence of money laundering or such other offence” and to consider taking measures to permit confiscation of property without a criminal conviction in certain cases. Under Article 56 the concept of spontaneous information sharing is introduced, encouraging states parties to advise each other of information that could lead to investigations, judicial proceedings or requests for assistance to recovering the proceeds of corruption. However, as mentioned in chapter four of this paper, there is no single authority or institution in Ethiopia to undertake this obligation. There is no domestic law which clearly mandates authority to undertake this obligation in Ethiopia.

UNCAC under Article 55 seeks to place an obligation upon the State Party to create specific procedures to be used upon receiving a request for recognizing and enforcing foreign confiscation orders and foreign provisional measures. These measures should be extended not just to the proceeds of crime but also property, equipment and even other instrumentalities that have been used in the commission of the offences. But Ethiopian corruption laws do not lay down specific procedures to be used upon receiving a request for recognizing and enforcing foreign confiscation orders and foreign provisional measures. However, the Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation try to put the procedure¹²² but limited to cooperation for extradition, investigation and judicial proceedings.¹²³ And it does not extend to, as required by convention, recognizing and enforcing foreign confiscation orders and foreign provisional measures.

Article 57 codifies international practice in allowing states parties to return the confiscated proceeds of corruption and the money laundering proceeds to their rightful owner, with the deduction of reasonable expenses.¹²⁴ In the case of all other offenses, the convention requires that assets be returned if the requesting state establishes prior ownership or if the requested state recognizes damage to the requesting state. However Ethiopian stolen asset recovery legislations

¹²² Money Laundering and Financing of Terrorism Proc (n 79) Chap VI

¹²³ Money Laundering and Financing of Terrorism Proc (n 79) art 38

¹²⁴ Thelesklaf (n 113) 7

do not give place, under domestic laws, return the confiscated asset, which is crucial and last step of stolen asset recovery process from foreign countries.

So, one can simply concluded, by looking the above discussion, that the existing asset recovery legislations of Ethiopia is not go in line with the obligation of Ethiopia under international instruments, which Ethiopia is signatory.

Chapter Four

Institutional Framework on Stolen Asset Recovery

4.1. The United Nation

On 31 October 2003 UNGA United Nations resolution 58/4 adopted the UNCAC. The Convention makes clear reference to the need to rely on anti-corruption organizations.¹²⁵ Despite this fact, when addressing the issue of stolen asset recovery, vague reference is made to the competent authorities in each state for carrying out this task (reference is also made to the international cooperation between them, staff training, etc.), without explicitly naming the organizations for asset recovery. The convention left out explicit naming of such institution may be because of thought that establishing such organizations was an internal issue of each State. The United Nations, however, has tremendous international influence in this matter. It is convenient that just as the United Nations points to the need for FIU in the international agreements¹²⁶, it will make a pronouncement on the establishment of institution for recovery of stolen asset. When appropriate, this institution should not concentrate exclusively on the proceeds of corruption, as proposed in this paper, but on any offence.

4.2. General Barriers and Institutional Issues

4.2.1. Lack of a Comprehensive Asset Recovery Policy

The absence of clear comprehensive policy and strategy as a barrier exist in many developed and developing jurisdictions.¹²⁷ A country with a practical game plan for recovering stolen assets will have policy that provides the relevant institution with clear objectives and sufficient resources, and also provides an incentive mechanism for practitioners to prioritize cases of recovering stolen assets. In such an environment, practitioners can find legal innovative and inventive ways to resolve any obstacles that are present in the system to claim any measure of justice.¹²⁸

¹²⁵ UNCAC (n 6) art 36

¹²⁶ UNTOC Art 7 (1) /b/ See also UNCAC art 14 /1/ /b/

¹²⁷ Stephenson (n 45) 24

¹²⁸ Ibid

Many jurisdictions do not sufficiently emphasize asset recovery cases. Some countries see asset recovery as a penalty within the context of a sentence for a predicate crime; this approach raises concerns about the proportionality of asset recovery as a penalty.¹²⁹

Asset recovery policies should have clear objectives, high-level commitment, and sufficient resources. The policies should include commitments to improve legislation, institutional capacity, domestic coordination, and international cooperation and to increase the number of cases undertaken and the value of assets frozen or confiscated.¹³⁰

4.2.2. Lack of Trust

At any stage of asset recovery process, whether it is for intelligence collecting and sharing, evidence collection or freezing, seizure, confiscation, and repatriation of the proceeds of crime trust between countries is very important.¹³¹ If there is no trust between states it may result delays or even refusal to provide cooperation to recover stolen assets. In cases involving urgent matters or where the jurisdictions have very different legal, political, or judicial systems, a lack of trust can be particularly problematic.

Absence of trust may also be an obstacle to MLA between states with substantial different political, judicial, or legal systems. When a requested country looks it due process requirements, domestic legal frameworks of general application, or human rights guarantees the requesting country may consider as impediment of cooperation. For example, one state may decline to allow extradition if requested country belief that the requesting state will grant defendants with due process of law.

To develop trust, requested jurisdictions should try to avoid denying MLA only on the ground of differences in the legal system, except where precise and strong domestic legal grounds require such a refusal. If such a refusal is required, the originating jurisdiction should be informed and

¹²⁹ Ibid

¹³⁰ Gray (n 53) 33

¹³¹ Conference of the States Parties to UNCAC, 'Report on the meeting of the Open-ended Intergovernmental Working Group on Asset Recovery' (2018) See also its Resolution 1/4, Resolution 2/3, and Resolution 3/3

given an opportunity to show there is no such reason to deny the request, as required by UNCAC.¹³²

4.2.3. Lack of Effective Coordination

One of the obstacles identified in FATF study¹³³—lack of coordination among relevant stakeholders—applies equally at the international and domestic level. The lack of international coordination, particularly where criminal assets are located in many countries, could harm the cases. Criminals definitely understand that globalization helps them to travel across borders more quickly and distribute illegal funds and other properties through numerous jurisdictions. They also clearly recognize that lack of international cooperation and collaboration in identifying, tracing, recovering and returning those assets may secure at least some of those stolen asset.¹³⁴

Absence of effective coordination between domestic institutions can also hinder mutual assistance and asset recovery. Joint working arrangements facilitate domestic coordination and cooperation, avoid redundancy of effort, and provide a mechanism for discussing and agreeing on responding to MLA requests. A domestic task force can be established as standing interagency group dealing with MLA requests or on a case-by-case basis as significant international requests for assistance warrant. Whether the task force is permanent or ad hoc, a lead agency that is responsible for monitoring the progress and reporting on the status of requests is essential. The terms of reference of any multiagency group should also spell out the role and responsibilities of task force members and outline arrangements for task force meetings and reporting.

4.2.4. Quick Trigger on Formal MLA Submission

For this paper the word “formal MLA” is used to refer a written request for specific legal assistance, a conventional process that involves some specified procedures, requirements, and conditions. According to the idea of the request, legitimate necessity may apply, including

¹³² UNCAC (n 6) art 46(26)

¹³³ FATF, ‘Report on Money Laundering Typologies’ (2003–2004) 24-26 <http://www.fatf-gafi.org/media/fatf/documents/reports/2003_2004_ML_Typologies_ENG.pdf> accessed 05 February 2020

¹³⁴ UNCAC (n 6) Art 40, 46, 49 and chap 5 See also FATF Recommendations 36,37,38 and 40

preconditions for of criminal charges, dual criminality, or mandatory grounds for refusal.¹³⁵ Furthermore, the procedure maybe lengthy, with delays caused by factors such as the violation of due process rights by investigation (often for valid reasons, but sometimes as process abuse) or by a lack of resources in the responding country. In many cases, these conditions may be valid and appropriate but a formal MLA request may not always be required.¹³⁶

Given the difficulties involved in obtaining assistance via formal MLA, initiating jurisdictions should first question what types of informal assistance are available and move forward with informal assistance whatever possible before continuing with a formal MLA application. Authorities in requested countries should be able to provide their international counterparts with some details and informal assistance, without asking a formal request for MLA. That is, assistance by means other than a formal written request for MLA, which several treaties and legislations often accept. Informal assistance concepts provide direct communication between the two countries: FIUs, police, prosecutors, or investigators sharing information or other assistance, with an expected formal MLA request.¹³⁷

Such informal aid is of tremendously importance for the entire asset recovery process. With less constraint, experts can gather information quicker than they can under a formal MLA request process, create the requisite concrete foundation for an eventual formal request, and establish a plan that better fits the advantages and disadvantages of the structures of both countries'. UNCAC and by FATF have stressed the importance of these informal channels of assistance and cooperation between counterpart agencies outside the MLA domain.¹³⁸

¹³⁵ Stephenson (n 45) 41

¹³⁶ Ibid

¹³⁷ The Egmont Group of Financial Intelligence Units, in its Statement of Purpose and Principles of Exchange of Information, encourages members to share financial information related to suspect money laundering and proceeds of crime. The Egmont Group in November 2004 issued a paper on Best Practices for the Exchange of Information Between Financial Intelligence Units <http://www.egmontgroup.org/library/egmont-documents> accessed 10 January 2020

¹³⁸ UNCAC (n 6) Art 46(4), 48, 50 and 56

4.3. The Ethiopian Context

To have effective stolen asset recovery system, specially hidden in a foreign country, requires strong and well-resourced institutions. Whatever modality countries select, it is important that their agencies have a clear mandate and sufficient powers and resources, and that they are adequately staffed with personnel who specialize in asset recovery cases and have expertise in financial investigation, forensic accounting, and conducting cases.¹³⁹ To ensure effectiveness, the competent authority must have the capacity to launch and conduct legal proceedings in domestic and foreign courts or to provide the authorities in another jurisdiction with evidence or intelligence for investigations (or both).¹⁴⁰

The United Nations Convention against Corruption makes express reference to the States' need to count on organizations or authorities specialized on the fight against corruption (article 36). But, on the issue of asset recovery the convention leaves it without explicitly naming the competent organizations or institution responsible for asset recovery. However, the United Nations have huge international influence in this matter. It is convenient that, just as the United Nations, in the international agreements, points to the need to have FIU¹⁴¹, it should make a pronouncement about the establishment of asset recovery organizations. Article 31(3) of the UNCAC requires States parties to adopt, in accordance with their domestic law, such legislative and other measures as may be necessary to regulate the administration by the appropriate authorities of frozen, seized or confiscated property covered by the Convention.

The European Commission has issued statements on the advisability of creating asset recovery bodies. In the Communication of 2004 on the fight against organized crime in the financial sector¹⁴² it pointed out expressly that “the creation of specialist bodies for asset recovery can be the cornerstone in the effort to deprive criminals of the proceeds of their crimes by any legal means available pursuant to criminal and/or civil law”.

¹³⁹ Gray (n 53) 33ff See also Stephenson (n 45) 31

¹⁴⁰ Brun (n 83) 2

¹⁴¹ UNTOC Art 7 /1/ /b/ See also UNCAC Art 14 /1/ /b/

¹⁴² Commission, ‘The Prevention and Fight Against Organized Crime in the Financial Sector’ COM (2004) 262final, point 2.4

Many countries established independent institution which is mandated to recover stolen asset hidden in the country or abroad. For example Nigeria established by law¹⁴³ “the Proceeds of Crimes Recovery and Management Agency” which is mandated with Identifying of proceeds of crime, injunction of assets, asset forfeiture and international cooperation.

The designation of a central authority by law in both the originating and requested states is essential to fostering cooperation. The law enforcement authorities of the originating jurisdiction can then communicate directly with the central authority in the requested jurisdiction.

4.3.1. The Criminal Justice Policy

The Ethiopian Government enacted the criminal justice policy (hereafter called the policy) in March 2011. The policy has seven section and cover a range of criminal policy issues starting from crime prevention to implementation of criminal sanction or judgment. Under section three sub-section 3.16.3 of the policy which is titled “Freezing and Confiscation of Proceed of Crimes” deals with some issues related to Freezing and confiscation.

The definition of “Assets recovery”, which I discussed in chapter two, tell us that the whole process of recovering illicit proceeds from all crimes and returns them to their owners which includes, the intelligence gathering and formal investigations for tracing and identifying assets, the process of preliminary legal actions of freezing or seizing assets, the confiscation process and at the last returning of the assets to its rightful owners. The policy deals only with regard to freezing and confiscation of property when required during a criminal investigation in order to secure the necessary evidence.¹⁴⁴

The policy is not considering stolen asset recovery either in its objectives or goals. It only deals with freezing and confiscation of property during a criminal investigation for the purpose of getting evidence. The Policy calls for the amendment of the Criminal Code and other relevant laws to accommodate the issues of forfeiture and management of frozen or seized assets efficiently.

¹⁴³ The Law on Forfeiture of Proceeds of Crime (LFPC Act) of 2005

¹⁴⁴ The FDRE Criminal Justice Policy, March 2011, 26

To have successful stolen asset recovery a country should have strong stolen asset recovery policy.¹⁴⁵ Asset recovery policies should have clear objectives, high-level commitment, and sufficient resources. The policies should include commitments to improve legislation, institutional capacity, domestic coordination, and international cooperation and to increase the number of cases undertaken and the value of assets frozen or confiscated.

By looking the above discussion it is possible to conclude that the policy does not deal about stolen asset recovery properly and its entirety. It doesn't deal about recovering stolen asset from abroad. It also does not indicate, as expected from policy, the establishment of strong and independent stolen asset recovery institution. So, one may conclude that Ethiopia lacks stolen asset recovery policy.

4.4. The Current Ethiopian Institutional Framework on Stolen Asset Recovery

Any state government exercise its power by establishing different institutions and giving them different powers and duties. In Ethiopia government institutions are established in different ways. Some institutions are established by constitution, some other institutions are established by legislators through proclamation and others by executive through regulation. These institutions are mandated with different powers by their establishment laws.

Currently in Ethiopia there is no independent institution, which is established by law, with a mandate to recover stolen assets hidden in the country or abroad. The laws discussed above entrust the power to recover and confiscate criminal assets to different institutions. The absence of a single mandated institution for the recovery of criminal assets creates problems in recovering stolen assets from overseas where the criminals have hidden illicitly acquired assets. However Article 31 (1) of UNCAC mandates each State Party to adopt, in accordance with its domestic law, legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property.

¹⁴⁵ Gray (n 53) 33

As I mentioned earlier, the laws discussed above entrust the power to recover and confiscate criminal assets to different institutions. Having multiple mandated institutions create the problem of coordination, duplication of effort and conflict of mandate.¹⁴⁶

The Anti-Corruption commission was mandated by anti-corruption laws. But Proclamation No. 943/2016 under article 22 (2) and (3) transfers the power of prosecution and investigation of the Federal Ethics and Anti-Corruption Commission to Federal Attorney General and to Federal Police Commission respectively. Since stolen asset recovery is a process that is started from intelligence evidence gathering to return and manage the asset it is done during investigation and prosecution. So, according to article 22 (2) and (3) of Proclamation No. 943/2016 it seems the mandate is transferred to both Federal Attorney General and to Federal Police Commission.

Even though Federal Attorney General is not clearly mandated by its establishment proclamation and other laws to serve as stolen asset recovery institution when we look article 6 (12) of proclamation 943/2016 Federal Attorney General is given power and duty to undertake international relation and cooperation in criminal and civil matters. We may argue that international relation and cooperation in criminal matters include cooperation in crime investigation, prosecution and post judgment enforcement. This means it include cooperation in stolen asset recovery.

The fight against transnational crimes like money laundering and securing recovery of stolen asset, international cooperation may be required to identify and trace property, obtain documents, collect evidence, enforce provisional measures like freezing and seizure orders as well as confiscations. In addition, States should simplify information sharing in order to make exchanges as fast as possible so that dissipation of assets will be avoided. International cooperation is essential for the successful recovery of assets that have been transferred to or hidden in foreign jurisdictions. It will be required for the gathering of evidence, the implementation of provisional measures, and the eventual confiscation of the proceeds and instrumentalities of corruption. And when the assets are confiscated, cooperation is critical for their return. UNCAC, which Ethiopia party by ratifying it in 2007, under Article 51 makes cooperation and assistance mandatory, Article 53 requires each State Party to have a legal regime allowing another State Party to initiate

¹⁴⁶ Transparency Int Rwanda (n 102) 22

civil litigation for asset recovery in its jurisdiction or to intervene or appear in proceedings to enforce their claim for compensation and sets forth procedures for international cooperation in confiscation matters in Articles 54 and 55.

Under Ethiopian Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation international cooperation includes Mutual Legal Assistance (MLA), extradition, recognition of foreign judgments, transfer of sentenced persons and other mechanisms is stipulated.¹⁴⁷ This includes confiscation of funds or property, identifying or tracing the proceeds of crime or instrumentalities, or other things for evidential or confiscation is provide under the proclamation. However, who is mandated to do so under this proclamation is the question? Part six of the proclamation dealing with international cooperation starting from article 38 to 51 gives the mandate to competent authority. Article 2 sub article 22 define competent authority as to means “the Centre, National Intelligence and Security Service, the police, public prosecutor or other investigative body, the Ethiopian Revenue and Customs Authority or any concerned regulatory authority”. But since currently who investigate and prosecute all criminal matters, including money laundering and predicate crimes covered by proclamation no. 780/2013, are police and prosecutor we may say the competent authority are both Federal Attorney General and to Federal Police Commission.

So, from this one may conclude there is no single mandated institution established by the law to recover stolen asset, especially those hidden in foreign countries.

4.5. Institutional Framework for Stolen Asset Recovery in Some Selected Countries and Comparison with Ethiopian Framework

To draw lessons and experiences from other jurisdictions examining countries institutional framework is necessary. For these purpose, Nigeria’s and Rwanda’s experiences will be analyzed and compared with Ethiopian institutional framework briefly here under.

¹⁴⁷ Money Laundering and Financing of Terrorism Proc (n 90) Art 39 (2) (a) to (i)

4.5.1. Nigeria's Institutional Framework

As mentioned above in chapter three The Proceeds of Crime Bill of 2017 provides a legal and institutional framework for the confiscation, seizure, forfeiture, recovery and management of assets or proceeds derived from unlawful activities; and instrumentalities used or intended to be used in the commission of unlawful activities.

The Proceeds of Crime Bill of 2017 under Part VI establishes “the Proceeds of Crimes Recovery and Management Agency”. The Agency is mandated with the whole process of asset recovery in general and specifically, as stated in the Bill, it has to implement, enforce and duly administer the provisions of the Act; adopt measures for the effective investigation and tracing of proceeds of crimes; oversee the management of recovered assets; authorize and appoint private asset managers and ensure that assets managers are properly bonded and insured.¹⁴⁸ And also According to Clause 97, the Agency shall have the power to “co-ordinate and enforce all other laws on the investigation, identification, tracing and recovery of the proceeds of unlawful activities”.¹⁴⁹

However the Ethiopian laws deal with stolen asset recovery, which is discussed under chapter three, neither give power to single institution nor establish independent stolen asset recovery institution. Rather they give power to different institutions.

The Nigerian Proceeds of Crime Bill of 2017 provide for international cooperation to recover stolen asset, which is very crucial for recovering stolen asset hidden in a foreign country.¹⁵⁰ The Bill provides for collaboration with international government in the recovery of funds and assets, which seeks to facilitate and obtain mutual assistance in criminal matters between Nigeria and other countries. The bill mandates the Proceeds of Crimes Recovery and Management Agency to conduct international cooperation. Whereas, in Ethiopian some of the laws deal with stolen asset recovery provide for international cooperation but do not clearly mandate single institution to deal with it. The Prevention and Suppression of Money Laundering and Financing of Terrorism Proclamation under chapter six gives mandate in an unclear way competent authority. How is

¹⁴⁸ Iheabunika (n 94) 9

¹⁴⁹ Ibid

¹⁵⁰ The Proceeds of Crime Bill of 2017 Section 101(m)

competent authority? Under article 2 (22) define competent authority to mean different institutions, i.e. “the Centre, National Intelligence and Security Service, the police, public prosecutor or other investigative body, the Ethiopian Revenue and Customs Authority or any concerned regulatory authority”. Federal ethics and anti- corruption establishment proclamation was mandate Federal ethics and anti- corruption commission to do with international cooperation but the mandate of the commission was transferred to Federal police Commission and Federal Attorney General. While the power of the commission transferred to the two institutions the power to conduct international cooperation is not clearly transferred to one of the institution. So, in Ethiopia, unlike Nigerian the Proceeds of Crimes Recovery and Management Agency which is mandated to conduct international cooperation to recover stolen asset, there is no single mandate institution which conduct international cooperation.

4.5.2. Rwanda’s Institutional Framework

The Rwandan 2015 law on assets recovery does not establish single institution to asset recovery rather interested this power to different institution. Institutions in charge of assets recovery in Rwanda are the Ministry of Justice, the Office of the Ombudsman and the National Public Prosecution Authority, and Military Prosecution Department.¹⁵¹ This means in Rwanda, like the case of Ethiopian, there is no single mandated institutional. Even though the Rwandan 2015 law on assets recovery does not provide no single mandated institutional, this law, unlike the case of Ethiopia which do not clearly provide under the laws, clearly mandated those multiple institution. But lack of single mandated institution crated the problem of coordination in stolen asset recovery in Rwanda.¹⁵²

The Rwandan 2015 law on assets recovery determines the framework for cooperation between Rwanda and foreign states in the process of recovering of such assets.¹⁵³ Under article 23 of the Rwandan 2015 law on assets recovery stipulate that the Rwandan Minister of Justice is empowered to forward Rwanda’s requests for international cooperation and follow-up execution of that request and recovery of Rwandan assets in foreign countries. This law also mandates

¹⁵¹ Transparency Int Rwanda (n 102) 4

¹⁵² Transparency Int Rwanda (n 102) 15

¹⁵³ The Law No. 42/2014 (n 100) art 18

Minister of Justice to receive mutual assistance requests of other countries through Ministry of foreign affairs. The Minister of Justice also has the responsibility to consider the content of the requests or forward them to the concerned organs.¹⁵⁴ But when we look Ethiopian laws on stolen asset recovery they do not mandate any institutions clearly. However, Federal attorney General is mandated by its establishment proclamation 443/2016¹⁵⁵ to undertake international relation and cooperation in criminal and civil matters. We may argue that international relation and cooperation in criminal matters include request international cooperation and receiving mutual legal assistance request from other countries.

Regarding the administration of frozen and confiscated assets, the 2015 law on assets recovery under article 15 empowers the National Public Prosecution Authority or the Military Prosecution Department (depending on the nature of the offender) with the sole responsibility for the daily management of the seized assets and confiscated assets throughout the national territory.¹⁵⁶ But when we look the Ethiopian laws on stolen asset recovery it is only The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation which deals the administration of property on which a restraining order is issued in very limited way.¹⁵⁷ This proclamation does not mandate institution to administer property rather gives the power to the court to appoint a receiver of the property to administer it. So, unlike Rwanda, one may simply conclude that there is no institution mandated to administer frozen and confiscated assets in Ethiopia.

¹⁵⁴ The Law No. 42/2014 (n 100) art 23

¹⁵⁵ Attorney General Establishment Proc (n70) art 6(12)

¹⁵⁶ Transparency Int Rwanda (n 102) 12

¹⁵⁷ Special Procedure and Rules of Evidence Proc (n 67) art 17

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

As examined in this paper, Asset recovery is amongst the mechanisms used to fight and prevent economic crimes domestically and internationally. It plays a significant role in restoring stolen funds to their rightful owners. By taking the profit out of the crime, it deters the commission of further crimes. It sends the message to the community that crime should not pay.

Asset recovery plays a critical role in strengthening some of the key foundations of sustainable development, such as the rule of law and strong, transparent and accountable institutions. Every stolen dollar, siphoned away through corrupt activities, that is recovered can be invested for development through supporting backbone sectors for economic and social development, including health, education and infrastructure.

As mention earlier in this paper successful asset recovery, specially hidden in a foreign country, requires strong and comprehensive policy, legal framework and well-resourced institutions as well as the good will of foreign countries or banks which might cooperate to detect, trace and locate where the finance is deposited. But as examined in chapter three and four of this paper Ethiopia does not have a self-standing asset recovery policy, laws and institution which deal about stolen asset recovery.

The Ethiopian Criminal Justice Policy does not deal about stolen asset recovery properly and its entirety. It doesn't deal about recovering stolen asset from abroad. It also does not indicate, as expected from policy, the establishment of strong and independent stolen asset recovery institution. So, one may conclude that Ethiopia lacks stolen asset recovery policy.

The laws on the recovery stolen asset in Ethiopia are fragmented in some existing legislations including the Criminal Code, the Criminal Procedure Code, The Revised Anti Corruption Special Procedure and Rules of Evidence Proclamation number 434/2005 (As amended by Proclamation number 882/2015), The Revised Anti Corruption Commission Establishment Proclamation number 433/2005 (As amended by Proclamation number 883/2015) and A Proclamation to

Provide for Corruption Crimes number 881/2015. This shows us there is no single law in Ethiopia that provides for a uniform scheme for the forfeiture and recovery of criminal assets. Although there are some provisions in these laws that allow the government to recover the proceeds of crime, they are not comprehensive to deal with the whole process of stolen asset recovery. Those laws do not include the whole process of asset recovery which includes the intelligence gathering and formal investigations, identifying assets and tracing as well as freezing or seizing assets and confiscation process. And at the last step returning of the assets and managing it at all steps and finally returning to its rightful owners or use by government for public interest.

In addition they do not give much attention to recover stolen asset from foreign countries, i.e., they do not deal about international cooperation sufficiently. They also do not give much attention about the management of freezed or confiscated asset. Even when assets have been recovered they have been dissipated, lost, or in any event, not properly accounted for or managed.

In Ethiopia there is no independent institution, which is established by law, with mandate to recover stolen asset hidden in the country or abroad. Even, those laws which somehow related to asset recovery are found dispersed in different legislations does not mandate single institution to recover stolen asset. Rather they mandate different institutions in unclear and scattered manner. This means there is no single institution which works on gathering intelligence for identifying, tracing, secure freezing and confiscation as well as managing it until it is returned to rightful owner. In addition there is no clearly mandated institution to cooperate internationally to recover asset hidden in foreign countries.

The absence of single law which provide for uniform scheme as well as a single mandated institution for the recovery and forfeiture of criminal assets creates problems in enforcing the current laws on stolen asset recovery from overseas where the criminals may be hiding illicitly acquired assets.

5.2. Recommendations

Stolen asset recovery can play an important role in combating crime and sustaining development in a number of countries. The main recommendation of this paper rests on the adoption of a stolen asset recovery policy, law and institution. As discussed in the previous chapters, Ethiopia does not have self standing stolen asset recovery policy. The existing criminal justice policy does not deal cover the issue of stolen asset recovery. The Ethiopian stolen asset recovery law are found scattered in different Proclamations. Even those existed scatteredly are not properly covered the stolen asset process fully. Even worth there is no single mandated institution to deal with recovering stolen asset. This means the country has no independent policy, legislation and institution that deal with the issue of stolen asset recovery in general. In order to have a uniform and effective application of stolen asset recovery measures, the country needs to have a special and comprehensive policy and legislation as well as independent institution of assets forfeiture.

As mentioned in previous chapters, to have successful stolen asset recovery a country should have strong stolen asset recovery policy which has clear objectives. The international legal instruments, countries experience and thought of scholars, which discussed above in the body of this article, shows to us that countries should have strong and comprehensive law as well as strong and independent institution with full mandate of recovering stolen asset recovery specially hidden in foreign countries.

So the author of this article strongly recommends the following:-

1st Adopting Independent Stolen Asset Recovery Policy

The Ethiopian government must give due consideration to have independent stolen asset recovery policy and adopt it soon. The policy must have clear objectives of recovering stolen asset hidden at home and abroad. The policy also must have indicate the adoption of single and comprehensive law on stolen asset recovery to have uniform scheme all over the country. In addition the policy must indicate the establishment of independent institution with full mandate to recover stolen asset.

2nd Enacting Single and Comprehensive Stolen Asset Recovery Law

To solve the current problem of not having single and comprehensive stolen asset recovery law the government of Ethiopia must enact single and comprehensive law which allow for uniform scheme as well as provide all procedures of stolen asset recovery, which includes from initial inelegance gathering and tracing asset to management of asset until returned to rightful owner or used by government to public interest.

3rd Establishing Independent Institution with Full Mandate to Recover Stolen Asset

Having a comprehensive stolen asset recovery law does not by itself enough and guarantees the recovery of all stolen asset. The law needs to be implemented properly so that it can achieve the intended result. Therefore, an institution responsible for the implementation of the law must be established. In general, it is important to have independent institution mandated to work on stolen asset recovery issues.

So, establishing by law an independent institution with clear mandate of recovering stolen asset both hidden home and abroad is necessary to have effective result.

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