

**PROSECUTING CRIMES AND RECOVERING ASSETS  
WORKING GROUP SESSION**

**Mantra: B – Group 5.  
Tuesday 12th October 2004**

**Rapporteur Report**

Panel: The panel was incomplete. The first presenter, Kenneth Mwige, was absent. The rest of the participants were as per the programme.

Topics discussed:

- Fighting impunity and the role of criminal prosecutions;
- Civil action;
- Fighting money laundering;
- Tracing and recovering assets;
- International mutual assistance in asset recovery.

Main points were:

Governments fighting corruption should observe the 5Ps. This means;

1. They should be prepared. Investigation units should be set up in advance or established to conduct investigations and make recommendations.
2. They should have a plan. The plan should include evidence gathering and the possibility of seeking and obtaining international mutual assistance.
3. They should be patient: The process of recovering assets can be slow and laborious. Where it exists, those implicated in corruption efforts will use all available legal means to resist the process.
4. They should be persistent. In spite of resistance, public perception and the slow pace of achieving results, the governments must be committed to following through their efforts.
5. They should be pragmatic. Where alternatives exist to fight corruption without prosecuting, they should be considered without rewarding impunity.

**Quotations:**

‘The main obstacle in tracing money is that it is like a jigsaw puzzle. You only get bits of it at a time. You cannot see the big picture at once.’ -Colin Joseph.

‘Restitution and asset forfeiture do not have historic experience in Kenya. We have the political goodwill but not the legal and institutional experience. We have to establish

legal principles and new institutions and ensure these are followed through to success.’ - Lawrence Rue, Department of Governance and Ethics.

The system for international mutual assistance in asset tracing and recovery takes too long. Political goodwill within a country tends to have a shorter time span to use the window of opportunity.’ Lawrence Rue.

Legal expertise and experience as well as costs are needed to trace looted assets. It is a question of capacity. Capacity is where the rubber hits the road, and then when it does, you discover you do not have it.’ - Oby Ezekwesili, Nigeria.

‘We should separate fighting money laundering from daily politics. It is important to do so in order to protect the exercise from political vagaries. What is needed is to develop professional standards.’ -Peter Eigen, TI.

### **Lessons learnt and conclusions:**

- The challenge with delivery is to be proactive, persistent and to come up with appeals to international mutual assistance to shorten processes. Currently, international mutual assistance is laborious, bureaucratic and very slow.
- Establishing functional financial asset tracing and forensic units is integral to expertise building, sharing banking information, and adequate legislative cover.
- Civil society should be involved with the national processes and international initiatives. Their advocacy should ‘socialize’ anti-corruption so that it is not an expert or police issue. They should monitor how recovered assets are used.
- Resistance to anti-corruption efforts benefits from legal loopholes and a sympathetic judiciary that has been part of a corrupt system. Judicial reform is integral to the success of any initiatives.
- There is a dichotomy during implementation and apparent conflict between asset recovery and criminal justice. Prosecuting and securing convictions against culprits may not guarantee results. Alternatives to prosecution should be considered, for instance civil action, without rewarding impunity.

### **Recommendations:**

1. Asset recovery and prosecution should be pragmatic according to the circumstances. The essential principle must be to not reward impunity. Plea bargaining to arrive at judicial settlements and civil action should be utilized.
2. Judicial reform must be implemented.
3. Forensic investigative, intelligence and asset recovery units should be established.
4. Criteria regarding tax policy should be harmonized with the possibility of removing differences in standards dealing with tax cheating between different states.
5. Countries receiving suspicious money deposits should notify authorities in the countries of origin.

6. International advocacy should consider developing a toolkit for preparedness dealing with basic legislative and policy measures to be put in place and adopted by new regimes in order to recover assets.

Winluck Wahiu, Rapporteur

2004-10-12

Short Report