

**MEETING OF EXPERTS ON COOPERATION WITH RESPECT TO THE
DENIAL OF SAFE HAVEN TO CORRUPT OFFICIALS AND THOSE WHO
CORRUPT THEM, THEIR EXTRADITION, AND THE DENIAL OF ENTRY
AND RECOVERY OF THE PROCEEDS OF CORRUPTION AND THEIR
RETURN TO THEIR LEGITIMATE OWNERS**

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*The Return of Plundered State Assets:
The Report of the Commission for Africa 2005*

**by
Professor Bill Gilmore
Professor of International Criminal Law and
Dean of the School of Law, University of Edinburgh, Scotland**

I BACKGROUND

- The Commission for Africa was launched by British Prime Minister Tony Blair in February 2004;
- There are 17 members of the Commission (9 of whom are African). All work in an independent capacity;
- Its central purpose was to generate new ideas and action for a strong and prosperous Africa;
- The timing of its work is intended to seize the political opportunity presented by the UK's chairmanship in 2005 of both the G-8 and the European Union;
- Why Africa?

“Africa is the only continent in the world where, in the past two decades, income per capita has been in decline. At a time when the rest of the world - including the rest of the developing world - has experienced rapid economic growth, most of the people of Africa have been left behind, with nearly half its people living on less and \$1 a day.”

II THE REPORT

- *Our Common Interest: Report of the Commission for Africa* published 11 March 2005.
www.commissionforafrica.org
- This report contains both analysis and recommendations for action in the following key spheres:
 - Governance and Capacity - Building;
 - Peace and Security;
 - Investing in People;
 - Growth and Poverty Reduction;
 - Trade;
 - Resources.

- The analysis of the problem of **corruption** and the Commission's recommendations to address it are contained in the section on governance and capacity building ("Corruption is a by-product of weak governance"). Three areas are subject to particular attention:
 - Procurement;
 - Export Credit Agencies;
 - Stolen Assets.

III STOLEN ASSETS AND THEIR REPATRIATION

a) The scale of the problem in Africa

The total sums taken illicitly from Africans countries are, like many financial crime estimates, of questionable validity. That said, however, few would disagree with the Commission where it concludes that: "The scale of the problem is huge... in the most egregious cases, amounts held in individual foreign accounts run into billions of dollars".

While Africa provided only 2 of Transparency International's March 2004 Top 10 list of the most notorious embezzlers of state funds (Mobutu and Abacha) the continent has a lengthy roll call of infamy in this context.

Disturbingly, Africa's own top 10 involves no less than 9 separate victim countries.

Notwithstanding the increasing recognition over recent years by rich countries of the importance of the issue and that significant proceeds of grand corruption are held in accounts in the major financial centers "the amount of stolen money returned to African countries is still relatively small".

b) The analysis of underlying difficulties

In the view of the Commission the basis for securing progress is to be found in taking action in four linked areas:

- 1- Introducing measures to PREVENT the theft of assets at source;
- 2- Improving systems to IDENTIFY funds that have been acquired illicitly;
- 3- Facilitating the power of relevant national authorities to FREEZE AND CONFISCATE ASSETS; and
- 4- Creating instruments to HAND BACK FUNDS to the jurisdiction from which they were looted.

At the March 2005 Report notes:

"Failure by African gouts to recover stolen assets has resulted from obstacles in each of these areas... There are actions here both for countries where the financial centres are located and African countries..."

While a detailed exposition of the Commission's views in these areas lies beyond the scope of this address it should be noted that the Report articulates a number of key messages:

- 1) There is a clear recognition (both explicit and implicit) that progress in prevention and in the recovery of proceeds of Grand Corruption are bound up inextricably with international and African efforts to combat money laundering and the financing of terrorism. This is well illustrated e.g. by the acknowledgement of: i) The utility of enhanced due diligence in respect of the accounts of "Politically Exposed Persons" (PEPs) and the mandatory reporting of suspicious transactions by banks and other financial institutions; ii) The importance of the international exchange of "suspicious transaction report" (STR) information through "Financial Intelligence Units" (FIUs); and iii) The need to strengthen or create African Regional bodies associated with the "Financial Action Task Force on Money Laundering" (FATF).
- 2) The report fully acknowledges that the 2003 UN Convention Against Corruption (UNCAC) constitutes a new and potentially valuable agreed minimum standard around which the International Community can seek to build. However, it was also clear to the Commission that UNCAC will fulfill its potential contribution to the resolution of difficulties in this sphere (and particularly in respect of the repatriation of stolen assets) only if it is widely and promptly ratified and effectively implemented not just by the states of Africa but by those countries in whose jurisdictions the funds emanating from corruption are most frequently deposited.
- 3) The Commission underlines the need for the developed world to assist African nations to develop the capacity to take advantage of new structures and processes. Experience clearly shows, for instance, that law making is a necessary but not sufficient condition for progress. It has to be capacitated by the pressure of appropriate numbers of competent staff and the financial and technical resources to enable them to perform their functions to a sufficient standard.
- 4) Finally, for present purposes, the Commission emphasizes the need for States to show the necessary political will to overcome existing blockage, in its words:

"The same vigor as was exercised in developing controls against terrorist financing... should be applied to tracking and returning stolen state assets. The theft of billions of dollars from an African country undermines standards and leads to a collapse of public services that can have as devastating an effect as a terrorist incident there".

c) Recommendations

From its analysis the commission has formulated central recommendations:

- ***“Countries and territories with significant financial centres should take, as a matter of urgency, all necessary legal and administrative measures to repatriate illicitly acquired state funds and assets. We call on G8 countries to make specific commitments in 2005 and to report back on progress, including sums repatriated, in 2006”;***
- ***“All states should ratify and implement the UN Convention Against Corruption during 2005”.***

IV THE G-8

a) Past G-8 engagement with the issue of the repatriation of plundered state assets.

As was noted earlier an explicit consideration in the timing of the creation of the Commission was to take full advantage of the British Presidency of the G-8 in 2005. In short, it has been the expectation from the outset that the Report and its Recommendations would be placed before relevant Heads of State and Government at their Summit to be held at Glenagles, Scotland in July.

The G-8 has, of course, a lengthy history of engagement with financial crime issues in general and with money laundering in particular. It was this grouping, for instance, which at the Paris Summit in 1989 created the FATF.

More recently the leaders of the world’s richest nations have used the same forum to highlight the need for concerted international action in respect of stolen state assets. For instance, in their July 2000 report to Heads of State and Government meeting in Okinawa, Japan, finance ministers identified “the clandestine diversion of public assets” as one of four money laundering related issues requiring priority attention by the FATF in revising its 40 recommendations.

In the final analysis and partly as a consequence of the ongoing UN negotiations for the Corruption Convention, the June 2003 amendments to the FATF package of counter-measures did not treat this matter either directly or in detail. However, some substantial progress was recorded.

In particular the Recommendations now require that “corruption and corruption and bribery” be designated as money laundering predicate offences (Rec. 1). This, in turn, has the effect that countries must provide for the availability of provisional measures and confiscation in corruption and bribery cases (Rec. 3). This embraces:

- Laundered property;
- Proceeds from laundering; and
- Proceeds from the predicate offences.

Furthermore, within the structure of the structure of the FATF Recommendations, international judicial and administrative cooperation is to be provided in such cases. In so far as “prevention” is concerned the 2003 amendments include a requirement for financial institutions to introduce a system of Enhanced Due Diligence in respect of PEPs (Rec. 6).

More recently the G-8 has extended the scope of its engagement in this area. It will be recalled in particular that at their Washington, DC meeting in May 2004 G-8 Justice and Home Affairs Ministers agreed a plan of action on Recovering the Proceeds of Corruption, this has two main themes:

1- Helping victim States recover illicitly acquired assets.

This is essentially a capacity building and enhancing initiative. It envisages:

- G-8 Accelerated Response Teams;
- G-8 Asset Recovery Case Coordination; and
- G-8 Asset Recovery (Regional) Workshops.

2- Ensuring G-8 countries have laws and procedures to detect, recover and return proceeds from corruption.

This envisages:

- Implementation of enhanced due diligence for PEPs (by summer 2005);
- Implementation of the special FATF recommendation on wire transfer originator information (by December 2004);
- Using the Lyon/Roma Group of G-8 experts to generate best practice guidance in critical areas relevant to Asset Recovery.

At the same meeting Ministers called for the rapid ratification and implementation of UNCAC.

These developments were, in turn, endorsed by Heads of State and Government at the Sea Island Summit in June 2004. At the same time, the G-8 concluded several “Compacts to Promote Transparency and Combat Corruption” – One of which was with Nigeria.

Given this context and the nature of the recommendations of the Commission for Africa it would be surprising if this aspect of its work is not endorsed at Gleneagles in July 2005.

b) The July 2005 Gleneagles, Scotland Summit

That said the manner in which the G-8 elects to move forward on this issue is of considerable practical importance.

One option which holds out the promise for securing early progress would be for the Summit to signal the need for issues of prevention, confiscation and recovery of plundered state assets to be afforded an increased priority in the international anti-money laundering system.

For instance, the FATF, the FATF-Style Regional Bodies (FSRBs) and the IMF and World Bank are engaged in an ambitious procedure to assess the effectiveness of

individual state compliance with Anti-Money Laundering (AML) and Combating the Financing of Terrorism (CFT) standards which utilizes a common detailed methodology. While the revised FATF recommendations of June 2003 do not make specific reference to UNCAC (which they preceded) the issue of whether it has been ratified and fully implemented is an explicit element of the methodology for assessment (Rec. 6 – Additional Elements 6.6)

It would be of obvious value for action to be taken to ensure that the opportunities provided by this direct reference are realized in a harmonized manner among the different bodies concerned. Indeed, the possibility also exists for those AML bodies which so wish to supplement the agreed methodology with additional compliance criteria of their own choosing. For example, MONEYVAL has adopted this approach so as to generate adequate coverage of the implementation of the two EU Directives on money laundering and of the requirements of the 1990 Council of Europe Convention on money laundering and the confiscation of the proceeds of crime.

Other opportunities also exist to afford increased prominence to asset repatriation within an AML context:

- For the FATF to conduct joint typologies exercises with appropriate regional bodies as a first step in promoting a North – South dialogue on this and related issues;
- For the FATF to elaborate (perhaps in conjunction with the FSRBs) relevant best practice guidance thus building on the work being undertaken in the G-8 Lyon/Roma Group.

In these ways recovery and repatriation would become far more central to the routine activities of all of the relevant actors to the benefit of us all.