

**International Association of Prosecutors
Ninth European Regional Conference 2009
‘Following the Money’**

International Asset Recovery: the Challenges

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International Centre for Asset Recovery (ICAR)

- Founded in 2006, with seed funding from Switzerland, Liechtenstein and UK
- Non-profit making
- Mission: Provide assistance to developing and developed countries alike in improving their capacity to trace, confiscate and repatriate assets stolen through corruption and related crimes:
 - Capacity development in asset recovery and MLA
 - Case assistance
 - Policy dialogue and research
 - Knowledge dissemination www.assetrecovery.org
 - Practical tools (e.g. IT case management systems)

ICAR - Partners

- International community: Bilateral donors, MDBs (World Bank, Asian Development Bank, African Development Bank, IADB...), UNODC, StAR Initiative, etc.
- Regional Initiatives (Asia-Pacific Anti-Corruption Initiative, POGAR – Programme on Governance in the Arab Region, etc.)
- Network of local experts (e.g. from Malaysia, Nigeria, Philippines, Singapore, South Africa, Argentina...)

ICAR – Programme of work

- Long-term commitment to capacity development programmes and case assistance in Bangladesh, Brazil, East Africa (regional), Indonesia, Madagascar, South-East Asia (regional), Tanzania, Bangladesh etc.
- Contribution to international policy dialogue (Lausanne IV, asset recovery publication, active contribution in UNODC and StAR policy processes, etc.)
- Continuous development of www.assetrecovery.org, e-learning and case management tools

Successful Recovery of Assets

So what is needed?

Five steps to recover assets

- **Identification of cases**
 - How to initiate cases?
- **Tracing**
 - How and where to find the assets?
- **Freezing**
 - How to freeze the assets?
- **Confiscation/Forfeiture – getting the evidence**
 - What does the requested and requesting state need to do to change ownership?
- **Repatriation – getting the proceeds**
 - To whom does the money belong?

First step: Case Identification

- **Challenges**

- ✓ Hidden transnational networks
- ✓ Lack of expertise/capacity/ technology
- ✓ Political interference

- **Solutions**

- ✓ Whistleblower systems
- ✓ Banking regulations (know your customer systems, suspicious transaction reports, politically exposed person PEPs)
- ✓ Investigative journalism
- ✓ Enforcement of investigation units

Second step: Tracing

- **Challenges**

- ✓ Ability of local law enforcement to act (execute raids, understand documentation)
- ✓ No evidence available
- ✓ Bank secrecy
- ✓ Problem of fishing expeditions

- **Solutions**

- ✓ Follow the money, or even the person
- ✓ Use of informal channels
- ✓ Amnesty agreements

Third step: Freezing

- **Challenges**

- ✓ Speed of money/delay of reaction
- ✓ Lack of expertise in victim countries
- ✓ Mutual legal assistance requests

- **Solutions**

- ✓ Stronger FIU cooperation
- ✓ Informal channels
- ✓ Coordinated investigations in the requesting state
- ✓ Provisional seizure within 24 hours

Fourth step: Forfeiture/Confiscation

■ Challenges

- ✓ Mutual legal assistance requests
- ✓ Delay in criminal proceedings due to legal problems
- ✓ Difficulty to establish evidence/ability of local courts
- ✓ Huge costs

■ Solutions

- ✓ Easing burden of proof
- ✓ Use of anti-money laundering law in requested states
- ✓ Use of civil actions
- ✓ Voluntary repatriation – out of court settlements

Fifth step: Repatriation

■ Challenges

- ✓ National interest in requested states
- ✓ Lack of confidence in the rule of law in the requesting jurisdiction
- ✓ Conditions
- ✓ Third parties interests

■ Solutions

- ✓ Asset sharing agreements
- ✓ Well prepared monitoring
- ✓ Early release through escrow accounts

Approaches to the Challenges

- **Political will**

- ✓ Ratification of UNCAC
- ✓ Willingness and ability for legislative reform
- ✓ Accountability and transparency
- ✓ Prosecution of former public officials
- ✓ Effective cooperation of requested states

- **Capacity constraints**

- ✓ Building institutional capacity
- ✓ Education and training of staff

Approaches to the Challenges

- **Conventions and Agreements**

- ✓ UNCAC
- ✓ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- ✓ FATF 40+9 Recommendations on Anti-Money Laundering and Combating the Financing of Terrorism

- **Multilateral**

- ✓ Conference of States Parties of UNCAC and Working Group on Asset Recovery
- ✓ WB/UNODC: Stolen Asset Recovery Initiative (StAR)
- ✓ ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Approaches to the Challenges

- **Bilateral**
 - ✓ Numerous Donor UNCAC Projects
 - ✓ Anti-corruption in Good Governance
 - ✓ Capacity development

- **Non-state actors**
 - ✓ International Centre for Asset Recovery (ICAR) at the Basel Institute on Governance

International Measures: Focus on UNCAC

- Structure of UNCAC
- UNCAC Provisions (Chapter II – VI)
- The OECD Convention
- Future of the OECD Convention

UN Convention against Corruption – What is it? An Overview

- Global anti-corruption treaty
- International consensus
- Responding to corruption as a „... *trans-national phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential*“ (Preamble)
- Prevention and criminalisation of corruption
- International cooperation and asset recovery
- Structure - 8 Chapters, 71 Articles
- UNODC Legislative Guide, Technical Guide

Structure of Provisions

- **Mandatory requirements**
 - Obligation to take legislative measures
 - Obligation to take other measures
- **Obligations to consider**
 - Measures that state parties must consider to apply or endeavour to adopt
- **Optional measures**
 - Measures state parties may wish to consider

Final
Chapter VIII

Preamble

Definitions
Chapter I

COSP
Chapter VII

In force since 12/2005

Prevention
Chapter II

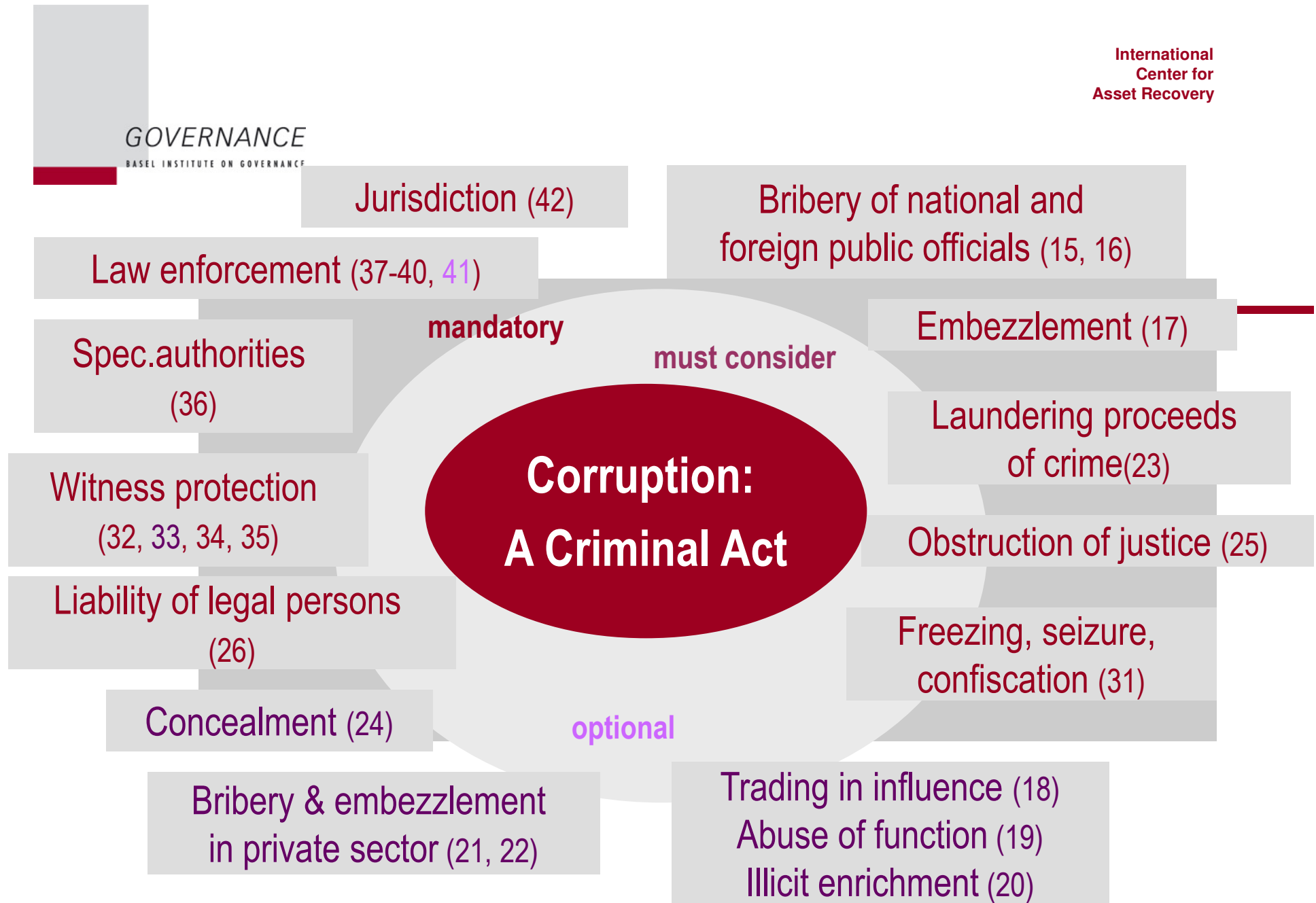
140 signatory states
109 ratifications

**Technical
Assistance**
Chapter VI

Enforcement
Chapter III

Asset Recovery
Chapter V

**International
Cooperation**
Chapter IV



Challenges Facing Those who Ratify

- Chapter II Prevention
- Chapter III Enforcement
- Chapter IV International Cooperation
- Chapter V Asset Recovery

Conclusion: The Challenges

- **Lack of an appropriate legal framework**
- **Overcoming jurisdictional issues**
- **Changing the mindset of law enforcement**
- **Increase Capacity/Expertise**
- **Increasing vigilance in Financial Centres**
- **Sharing and facilitating an improved exchange of information between countries**

Prominent Case Studies

Ferdinand Marcos - Philippines

Sani Abacha - Nigeria

The Case of Ferdinand Marcos

- **Estimated amount and countries involved**
 - ✓ Estimated US \$ 5 to 10 billion → mainly CH, US
- **Process of recovering assets**
 - ✓ 1986 Voluntary freezing of Marco's and his cronies' assets in CH
 - ✓ 1998 Transfer money to escrow account
 - ✓ 2003 Philippine Supreme Court forfeiture decision
- **Amount of recovered money, time frame**
 - ✓ \$ 658 million in 18 years
 - ✓ Public treasury – Agrarian Reform Fund

The Case of Sani Abacha

- **Estimated amount and countries involved**
 - ✓ Estimated US \$ 2 to 5 billion → CH, LIE, LUX, UK
- **Process of recovering the assets**
 - ✓ Decree 53 → amnesty → \$ 770 million
 - ✓ 1999 Nigerian request → CH froze \$ 670 million
 - ✓ 2004 CH repatriation order without judgement in Nigeria
- **Amount of recovered money, timeframe**
 - ✓ 2005/06 repatriation under conditions: \$ 505.5 million in 5 years
 - ✓ Monitoring: WB and NGOs

Contact Information

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