



## Session Report

*Please know you may design the structure of this report to better suit the session. It's important to capture the key outcomes and solutions proposed for the future.*

**Session Title:** Implementing the Common African Position on Asset Recovery and Return

**Date & Time:** Friday, 9.12.2022, 3:30 pm – 5:00 pm GMT -5

**Report prepared by:** Mark Faison, Chief Superintendent, ICPC Nigeria

**Coordinated by:** Oladipo Johnson, Secretariat of the African Union High Level Panel on Illicit Financial Flows from Africa

**Moderated by:** Akere Muna, Member, African Union High Level Panel on Illicit Financial Flows from Africa

### Panellists:

- Bolaji Owasanoye – Chairman, ICPC Nigeria
- Don Deya – Chief Executive Officer Pan African Lawyers Union (PALLU), Member CAPAR Working Group
- Esa Onoja – Chief of Staff, ICPC, Nigeria
- Roger-Claude Liwanga – Albany State University, Georgia, USA
- Stephen R. Karangizi – Past Director and CEO of the African Legal Support Facility (Member CAPAR Working Group)

## Share the thematic focus of the session, it's purpose and corruption risks?

### Background

African countries continue to lose huge proportions of their resources through illicit consignment of financial and other assets to foreign jurisdictions, thus making the continent a net creditor to the rest of the world. These resources, if harnessed properly, could make huge differences in Africa's development. However, the conversion of these assets for productive use in Africa would require definite and coordinated actions by African countries.

Return of assets is a fundamental principle under Chapter V of the United Nations

## Convention Against Corruption (UNCAC)

Facilitated by African Union Champion, President Muhammadu Buhari, the African Union (AU), the AU-Advisory Board on Corruption (AU-ABC), Consortium to Stem IFF from Africa, and the Coalition for Dialogue on Africa (CoDA), the Common African Position on Asset Recovery (CAPAR) was adopted by the African Union Executive Council at its 36th Ordinary Session on 7 February 2020 and adopted by the Assembly of African Union Heads of State and Government at its 33rd Session on 9 February 2020.

CAPAR is a political, policy, and advocacy instrument to assist in identifying, repatriating and effectively managing Africa's assets for the common good of citizens, in accordance with Africa's development agenda, domestic laws and other legitimate government purposes in a manner that respects the sovereignty of Member States.

The Session was a collaborative effort of the High-Level Panel on Illicit Financial Flows (IFFs) from Africa and its Secretariat - Coalition for Dialogue on Africa (CoDA), with the Working Group on the Implementation of the Common African Position on Asset Recovery (CAPAR), The Independent Corrupt Practices and Other Related Offences Commission ICPC, Nigeria and Albany State University, Georgia, USA.

The aim of the session was to bring a stronger understanding of the CAPAR and the African asset recovery agenda to global stakeholders while highlighting their roles in its successful implementation.

## Summary of panellists' contributions & discussion points (please be as detailed as possible)

### **Barrister Akere T. Mona, Member, African Union High Level Panel on Illicit Financial Flows**

In his opening statement as the Chair of the workshop, Barrister Akere T. Muna, member of the High-Level Panel on IFFs from Africa and Co-Chair of the CAPAR Working Group highlighted the importance of holding this conversation at this time and using this global forum given the necessity for cooperation and self-awareness by Africa's international counterparts in ensuring the legal recovery of its assets. He welcomed all participants and attendees noting that the commitment of the global north to supporting the recovery of Africa's assets is a stipulation that cannot be ignored or done without. Furthermore, the continued narrative of corruption in Africa without addressing the role of non-African entities in enabling this should not continue. He particularly noted the recent Glencore scandal and the ensuing investigation which highlights the major role played by multinationals in facilitating corruption on the African continent.

### **Prof. Bolaji Owasanoye, SAN, OFR, Chairman, ICPC Nigeria**

Professor Bolaji Owasanoye, Chairman of the Independent Corrupt Practices & Other Related Offences Commission (ICPC) which represented the government of Nigeria in its role as the Champion for anti-corruption on the continent began by

acknowledging the collaboration for this particular panel.

He stressed that the trajectory of advanced economies which have developed largely on domestic public resources indicates that leaving IFFs from Africa unattended is an existential issue. This was most evident during the Covid-19 pandemic which was the most recent illustration that domestic public resources are critical to African countries meeting their own needs through the central role of the state.

He added that on the one hand Africa is carrying a debt burden and in search of cheap loans and Official Development Assistance (ODA), yet there is this huge leak of much needed resources from IFFs which has been ongoing since pre-colonial periods and still exists till today.

He further underlined that Recovery effort is currently hindered by complex legal proceedings, absence of civil recovery framework in some countries, multiple legal jurisdictional challenges including quality of evidence admissible in court, absence of cooperation in the MLAT process, power imbalances between requesting and requested states, prohibitive cost of recovery and unjustifiable high cost of administrative charges by requested states, demands by requested states that undermine sovereignty of requesting state, etc.

Also, the refusal of developed countries to automatically share information or involve victim countries in high level investigation of bribery or foreign public officers, snr entities by MNCs, for example, Glencore; or return of recovered assets and proceeds of settlement or plea bargain to victim countries as contempt by UNCAC; etc.

As a way of recommending solutions, he noted that African countries need to bring together their resources, and their power in order to push for solutions that have been identified by many different studies and many different processes. This is because without dealing with IFFs, Africa cannot and will not achieve SDGs as well as control its development priorities.

#### **Esa Onoja – Chief of Staff, ICPC, Nigeria**

Dr. Esa Onoja, delivered an overview of the CAPAR. After delivering details on the journey which led to the development and adoption of the CAPAR including the fact that it was founded in the AU Special Declaration on IFFs and also stemmed from the AU's assembly theme for 2017 on Winning the Fight Against Corruption.

He went on to highlight the necessity for the CAPAR stating that, loss of African resources and assets over the centuries, to IFFs makes Africa a net creditor to the rest of the world. He pointed out that IFFs and illicit consignment of African assets to foreign jurisdictions would continue to inhibit Africa's development goals and aspirations, Post-2015 Agenda and Agenda 2063, unless action is taken by the global community and AU Member States, speaking with one voice and acting in unity, to ensure that Africa's voice is heard and fully recognized in the shaping of global ecosystem of asset recovery.

Following his explanation of the four pillars of CAPAR, he highlighted the policy recommendations proposed to include the need to prioritize cooperation and partnerships towards recovery of assets by advocacy and engagement at regional and global levels.

**Stephen R. Karangizi – Past Director and CEO of the African**

Steve Karangizi, former Director of the African Legal Support Facility and member of the CAPAR Working Group pointed out that one of the major challenges with the process of asset recovery and return was the fact that, even when assets had been traced to a particular destination, such assets are mostly with the banks, who insist on keeping the funds until the matter is concluded. In the process the value of such asset is lost.

He stressed the need and process of establishing a regional escrow account which is a key element of the CAPAR. He further indicated that select institutions that can host Escrow Account, such as Africa's continental and regional development Banks, exist for such a purpose. He stated that, benefits of enacting such accounts include increased credibility of the asset recovery process as well as the minimization of value erosion of the assets in question.

Finally, Mr. Karangizi underlined that the CAPAR and its ensuing proposed frameworks for implementation recommend innovative ways in which an escrow account or multiple escrow accounts could be established to preserve and grow assets of African origin kept outside the respective countries at great loss and to the detriment of development aspirations of African States.

**Roger-Claude Liwanga – Albany State University, Georgia, USA**

In his intervention, Prof. Liwanga, spoke on whistleblower protection as a necessary instrument for the implementation of the CAPAR. He stressed that corruption is more attractive where the possibility of detection and investigation is minor and as such, it is imperative to encourage whistleblowers to make disclosures about the assets that were or are being illicitly removed from Africa. He further noted the troubling reality faced by whistleblowers in many countries where enacted penal codes containing broad definition of defamation exposes them to the high-risk of criminal prosecutions. Emphasizing the need to address inconsistent whistleblower protection across the African continent, he stated that the African Union needs to adopt its own continental whistleblower protection policies which cater for the protection of whistleblowers who report violations thus increasing the accountability of companies and preventing them from retaliating against whistleblowers among other policies.

**Donald Deya – Chief Executive Officer Pan African Lawyers Union (PALLU), Member CAPAR Working Group**

Advocate Donald Deya, lamented the continued hypocrisy and duplicity of governments of the west who make rhetoric about asset recovery but do not support the implementation. He therefore stressed the need for governments of the west to match their words with action.

He spoke on the crucial role of civil society to the process of implementing the CAPAR. He highlighted that this role is applicable for both African and non-African civil society given the need for all-inclusive action on the asset recovery agenda. He went on to emphasize the work of the civil society in driving action to the anti IFFs agenda since the release of the HLP report and even prior to that. This has led to increased awareness at the policy making level as well as change in national, regional and global laws which now support improved financial regulation in favor of developing nations.

## Main outcomes of session (include quotes/highlights and interesting questions from the floor)

1. Movene Ginese, from Mali, affirmed that what was being done in Mali at the moment was what CAPAR actually advocates. He disclosed that in a study done by his country, findings revealed that 30% of what was being stolen in corruption from the country was taken to destinations outside of Mali. He suggested the need to get tools that will support the implementation of the speeches and discussions around CAPAR. He therefore sought to know what is being done to make CAPAR a Convention of the A.U?
2. Esther Kulibali from Côte D'Ivoire – sought to know if her country was part of the movement on CAPAR. She also asked, if CAPAR was to be implemented through the A. U, under what framework would that happen?  
**Responding**, Prof. Bolaji Owasanoye, Chairman of ICPC, Nigeria, pointed out that CAPAR is a political and economic instrument which simply calls attention to what needs to be done by the various countries. It encourages that members should build capacity of their officers to know what they are looking for. It encourages member states to take a look at the adequacy of their laws to address the issues, and if there is need for improvement, they can then do so. It encourages member states to develop capacity to be able to trace the assets; adding that this was dependent on the level of understanding and the legal framework in place for use.
3. Nnamdi kalu, sought to know the place of ECOWAS and other sub-regional bodies in the CAPAR project.  
**Responding**, Stephen said that there is need for the involvement of Regional bodies in the movement, as they had a critical role to play for CAPAR to succeed.
4. Deji Olare of USAID, asked if the discussions on whistleblowing and whistleblower protection were restricted to the IFFs or included other issues in Africa.  
**Responding**, Prof. Liwanga said, whistleblowing was a major issue of interest in Africa, disclosing that South Africa had one of the most comprehensive policies on whistleblowing. He pointed out that the importance of whistleblowing and whistle-blower protection was not limited to the tracing of IFFs but most importantly for preventing the stealing of the assets in the first place.



5. Baji Kulibali of Mali, requested the kind indulgence of Dr. Esa to explain how asset auction could be handled under CAPAR.  
**Responding,** Dr. Esa Onoja responded noting that, the auction of assets was a core policy of CAPAR which encourages States not only to manage the assets but also the transfer of such assets. Sharing the ICPC experience in this regard, he said that the commission had developed a guideline to ensure integrity in the process for auctioning of recovered assets; adding that individual states could develop similar guidelines.

## Key recommendations for the future and concrete follow-up actions

1. The continued narrative of corruption in Africa without addressing the role of non-African entities in enabling this should be discontinued.
2. African countries need to bring together their resources, and their power in order to push for solutions that have been identified by many different studies and many different processes.
3. There is need to prioritize cooperation and partnerships towards recovery of assets, by advocacy and engagement at regional and global levels.
4. There is the need for establishing a regional escrow account to preserve and grow assets of African origin kept outside the respective countries at great loss and to the detriment of development aspirations of African States.
5. There is need to address inconsistent whistleblower protection across the African continent. Therefore, the African Union needs to adopt its own continental whistleblower protection policies which cater for the protection of whistleblowers who report violations thus increasing the accountability of companies and preventing them from retaliating against whistle-blowers among other policies.
6. Both African and non-African Civil Society should play a central role to the process of implementing the CAPAR, given the need for an all-inclusive action on the asset recovery agenda.
7. States should not only create and maintain an agreed framework for management of recovered assets; but also developed a guideline to ensure integrity in the transfer of such recovered assets

## What can be done to create opportunities for scaling up the solutions discussed in the session? And by whom?

1. African countries need to bring together their resources, and their power in order to push for solutions that have been identified by many different studies and many different processes.
2. President Thabo Mbeki recently identified three principal challenges to addressing IFFs which requires that AU should take action in the following areas:-
  - i. build capacity to combat illicit financial flows at national and continental

- levels;
- ii. establish global coherence on agreed actions between African countries with a common position on the Mbeki Report, the AU Special Declaration of 2015 on the Report and non-African countries;
  - iii. develop global mechanisms to ensure adherence to implementation of whatever is agreed as solution.

**Is there a specific call to action to key stakeholders, such as governments, businesses, funders, civil society, young people, journalists or any other stakeholder that should be noted?  
Please specify if relevant.**

The CAPAR working group is committed to working with the international community and looks forward to a UN led multilateral Tax convention or treaty.

We also call on African countries to take serious, the CAPAR as a necessary step in enhancing desire to improve domestic resource mobilization and asset recovery for sustainable development. Concomitantly, we must keep providing more capacity building and technical assistance to developing countries.

**Rapporteur's name and date submitted**

Mark Faison, 12.12.2022