
Gordian knot: A panoramic perspective on stemming illicit financial flows from Africa

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Preamble

Pushing this strand of research brings a certain feeling of trepidation. It comes from recognizing that by openly elaborating on how to catch or deter a criminal, you thereby confer an undue advantage on the criminal through forewarning. Obtaining a head start in the race to prevail, they (criminals) are able to consider and possibly devise an effective circumvention strategy. But if the criminal must not see it coming then, what aspects of how to stop a thief shall we and shall we not reveal or discuss openly amongst all? There are no easy answers to the conundrum. For instance, one has to consider the signaling value of openly engaging in discussions on how to stop criminal activities and then, balance that benefit against the paradox of empowerment. The balancing act is important because some aspects of the preventive remedies can unintentionally enable the very thing which society is striving to prevent.

Weighing in on the side of the signaling value is the incentive perspective according to which a clear signal that corruption should not pay and will not pay is essential. “By putting corrupt leaders on notice that stolen assets will be traced, seized, confiscated, and returned to the victim country,” Stolen Assets Recovery (hereinafter StAR) initiative “would constitute a formidable deterrent to corruption” (UNODC and World Bank, 2007, p.3). Additionally, it has been claimed that “taking their money...‘hits them where it hurts.’ The arrest of gatekeepers, business associates and relatives that launder the proceeds of corruption and the freezing of assets disrupts the flow of funds, deters political collaborators and undermines the patronage structures that sustain corrupt officials’ political support. A combination of asset recovery and criminal prosecution can also have a deterrence effect.” (UNODC and World Bank, 2009, p.6).

As a counterpoint, we should first acknowledge that a credible threat of asset recovery is a deterrence to potential criminals. We question only whether the instrumentality for carrying out this threat should be laid out openly. Would such an open disclosure constitute a crucial part of a commitment device in being an essentiality of that which renders the threat credible? It may well be that threatening to catch and jail a criminal

has a bite only if the criminal knows that the fox-catcher has all the bases covered. In such a case, much time and effort can be saved by all parties. Economists tell us that in (strategic) relationships where the parties are trying to figure each other out (i.e. a signaling game), communicating strategically requires that information upon which people are expected to condition their decision be made available. People will choose the alternative intended for them only if it is the best for them in the set of alternatives offered, given what they know.

1. Subject and basis of this brief

In outlining the many facets of the problems of capital flight, this paper focuses on grand corruption because as will be argued below, the problem of capital flight, of the order of magnitude currently bandied, is a clear sign of a fundamental problem of gnarled governance.¹ Thus, highlighting the nexus of grand corruption, governance and illicit financial flows shall be our forte.

We begin by defining capital flight in order to clarify terms and locate the discussion within the broader context of illicit financial flows. Next we motivate grand corruption as the root cause of illicit financial flows in Africa. Furthermore, we argue that to allow grand corruption to take root in a society is equivalent to indirectly attacking the two pillars of governance namely, political accountability and political order. For whereas the enterprise of grand corruption requires diminished accountability and a predatory state to flourish, eliminating grand corruption on the other hand is complementary to transparency and empowerment of the polity. We conclude by highlighting the knotty challenges of restoring order.

¹ See Ndikumana, Boyce, and Ndiaye (2015), p.24 for a discussion and analysis of the scale of capital flight.

2. Illicit financial flows (IFF) and how the enterprise works

Capital flight has been defined as “capital flows from a country that are not recorded in the official records of the transactions between [that] country and the rest of the world” (Ajayi and Ndikumana, 2015, p.3). By these authors’ definition, “missing money” in the balance of payments accounting of a country is indicative of capital flight although such missing monies may not necessarily be illicit.² Then the questions that must be asked include whether or not capital flight is bad because it has taken flight or because of why it flies or how it flies? In the discussion that follows, we address these questions within the broader concept of IFF.

What are illicit financial flows?

Baker (2005, p. 23) defines illicit financial flows as “dirty money,” and dirty money as “money that is illegally earned, illegally transferred, or illegally utilized.” He argues that “[i]f it breaks laws in its origin, movement, or use, then it properly merits the label.” In this sense, if the resulting flow from change in ownership or control is illegitimate, then the flow regardless of whether it is contained within national boundaries or crosses national borders is considered illicit. The economic consequences may differ in both cases but that is not germane to a proper definition of what constitutes illegality.

It is useful to make a careful distinction between the broader concept of dirty money elaborated above and a narrow construction of illicit financial flows for the purpose of policy prioritization (given limited resources) and the selection of appropriate intervention strategies. Having appropriate conceptual understanding of the typologies of illicit financial flows and their characteristics is also important in gauging the accuracy

² For an elaboration on likely sources of discrepancy in a country’s balance of payments accounting, see Figueira and Hussain (2006) as well as Fierantino and Wang (2007) for the case of the United States. It would be of concern to attribute all discrepancies in the BoP and trade data to illicit cross-border movements notwithstanding other equally plausible explanations for those discrepancies. It would be comforting to demonstrate or at least motivate why illicit cross-border flows would be the dominant explanation. On the other hand, those who see predominantly statistical discrepancies should be at pains to explain how errors of such magnitude can persist or become systematic without much obvious effort to rectify the root causes.

of estimates of the magnitude of the different facets of the flow, particularly as there are very limited means of judging the robustness of the estimates.

In their seminal contribution to the dirty money literature, Reuter and Truman (2004, p. 1) do not define dirty money explicitly. Instead, they refer to its obverse, money laundering, which they define as “the conversion of criminal incomes into assets that cannot be traced back to the underlying crime.” Thus, illegality (provenance or why you move money) rather than flows (or how you move money) is of essence in their characterization. According to this view, where the funds are located is perhaps not as crucial as the source of the funds. Within this genre of authors who adopt a narrow construction of illicit financial flows, we locate Dev Kar (2011, p.3) who defines it as involving “the cross-border transfer of the proceeds of corruption, trade in contraband goods, criminal activities, and tax evasion.” Dev Kar’s definition is relevant because it leads into an even narrower class of illicit flows which in our view is pernicious—***stolen public money***, whether or not such monies are located within national borders, transferred abroad through legitimate channels or otherwise. The taking of public money such as we describe has been variously labeled as grand corruption or asset stripping.

In spite of the diversity of views on the nature of illicit financial flows, there is some agreement in the literature around the scope of illicit financial flows in Africa, emphasizing two critical parameters identified in Dev Kar (2011) namely, cross-border movements and the nature of the money. In other words, the provenance of the money and how it is moved are important for Africa. To the extent that the origin of the money can be expected to influence the decision on how the money is moved, such pattern of behavior reflecting both the provenance and the transfer mode is informative in trying to establish the nature of a financial flow. These ideas and their implications for the classification of financial flows and the identification of IFF are summarized in Table 1.

Table 1: Classification of Financial Flows

| | | Why one moves money (Provenance) | |
|---|----------------------------------|---|------------------------------------|
| | | <i>Legitimately acquired</i> | <i>Illegitimately acquired</i> |
| How one moves money (Type of transfer) | <i>Legally transferred</i> | Good Money | Dirty Money |
| | <i>Illegally transferred</i> | Dirty Money | Dirty Money |

The criminal enterprise value proposition: How it works

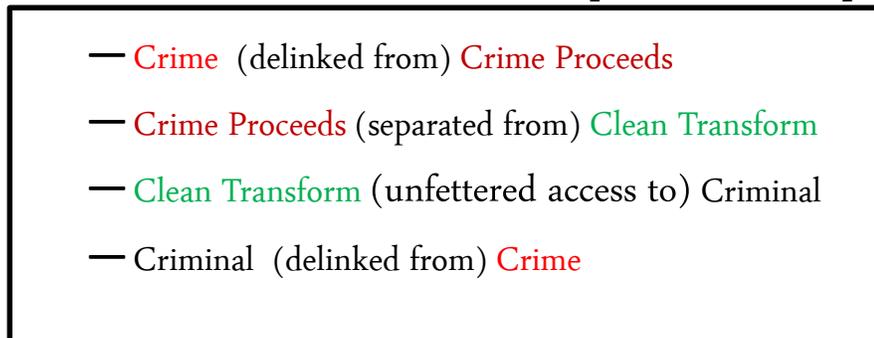
Money laundering and the predicate crimes of corruption and theft of public assets (hereinafter referred to as grand corruption) share three characteristics of devastating consequences for capital-scarce developing nations: (1) the huge amounts of wealth involved in these illicit schemes that sum to billions of dollars. Ideally this total would include estimates also of the amount of money lost by developing countries from the stealing of public assets by private individuals. For example, tax evasion of various kinds as well as conversion of public assets by private individuals. The World Bank estimates that the cross-border flow of the global proceeds from criminal activities, corruption, and

tax evasion is between \$1 trillion and \$1.6 trillion a year (UNODC and World Bank, 2007, p. 1).

(2) The rapidity with which funds can be moved around the world nowadays makes it difficult to identify and freeze or restrain stolen assets long enough to initiate the recovery process with a reasonable and fair chance of recovering them. Mark Pieth, President of the Board of the Basel Institute on Governance argues that asset recovery is a promising strategy against graft, the embezzlement of public funds, and corruption, but that effective asset recovery requires asset tracing. This in turn requires the cooperation of banks, other non-bank financial intermediaries, and lawyers (collectively known as “gatekeepers”), as well as Financial Intelligence Units, law enforcement agencies, and forensic specialists. Pieth notes particularly that it is so “fundamental to ensure that funds can be blocked on a provisional basis in just a few hours after detection” that any jurisdiction missing this requirement “has to be considered a safe haven for those committing graft” (Basel Institute on Governance, 2009, p. 7).

(3) The increasingly sophisticated and readily accessible modalities for camouflaging the assets or their transform enable criminals to (a) easily distance the proceeds of the crime from the crime; (b) separate the proceeds of the crime from its clean transform; (c) allow the criminals to have easy access to the benefits of the crime in its clean transform; and (d) conveniently delink the criminal from the crime thus apparently conferring legitimacy on the criminal.³

³ For more on these issues, see Baker and Shorrocks (2009) as well as Ndiva Kofele-Kale (2005).

Figure 1: A schematic of the Criminal Enterprise Value Proposition

Source: Author's rendition

The benefit to a criminal of a successful arrangement of the type outlined above and depicted in Figure 1 is obvious. And purveyors of these benefits have not been shy in hawking their trade. Although by no means exhaustive, the criminal enterprise value chain comprises the “hammers” who actually perpetrate the predicate crime whether physically by themselves or by proxy through ordering somebody else to do the job, cash smugglers, financial intermediaries including insurance companies, casinos and sundry gambling establishments; trusts, corporate service providers including lawyers and accountants; automobile dealers, real estate agents, travel agents as well as arts and precious stones dealers. The following excerpt is indicative of the power of the schema and the scope of work that needs to be covered in order to begin an effective fight against this scourge.

Tracking stolen funds in any given case often entails a “shell game” in which assets are hidden in a handful of business that comprise a small part of an intentionally complicated ownership structure involving possibly hundreds of companies domiciled in dozens of jurisdictions worldwide. Consequently, in order to locate stolen funds, investigators must gain access to the accounts of numerous shells before they finally locate the company that is actually holding the stolen assets. Obtaining access to the bank account records of any single company is time-consuming and demands showing proof of wrongdoing. The shell game requires investigators to have plenty of time and resources to locate the stolen assets (Open Society Justice Initiative, 2005, p.31).

3. Grand Corruption and Governance

Grand corruption and governance

By all conservative estimates so far and given the magnitude of the numbers being bandied, there could be no doubt about the probable dire consequences of allowing resources of such magnitudes to continuously bleed out of regions desperately in need of developmental finance.⁴ The resource consequences of IFF is common knowledge. Given an overall resource envelope, the greater the proportion of resource outflow, *ceteris paribus*, the less is the balance available for domestic investment to fuel economic growth and development. This direct developmental nexus has been explored formally for Africa in the contributions each by Ajayi, Nkurunziza, and Weeks in the volume edited by Ajayi and Ndikumana (2015).

Unfortunately, the deleterious impact of grand corruption on governance is less well appreciated. As an antagonistic institution, grand corruption is the *silent governance killer*. It is deadly because it assaults governance insidiously. This feature enables corruption to spread more widely and become encompassing in its devastating social consequences.⁵ Its capacity for social imbedding makes grand corruption difficult to dislodge once it takes root. Hence it can establish as an alternative institution—gatekeeper for the preservation of vice—and one that is antagonistic to the desirable institutions of good governance. Presumably those who seek to benefit from bribery and corruption would first seek to induce poor governance if it does not already prevail.

By way of deepening our understanding of this phenomenon, we would like to introduce some insightful ideas from political science and economics. In particular, the partisan view of politics that stresses the role of the state in collectivizing private demands and sees policies as choices in response to organized interests. According to this view,

⁴ See estimates in Ibi Ajayi and Ndikumana (2015) and references therein, Gray, Hansen, Recica-Kirkbride and Mills (2014) as well as UNODC and World Bank (2007).

⁵ On the widespread social welfare impact of stolen public money, see UNODC and World Bank (2007).

government is a participant in the political game in which the incumbent government fights for its survival by shaping policies to satisfy political claimants and nullify political opposition. As an extreme case of this view, political elites can hijack the state in order to twist it into an apparatus for grand corruption rather than exploit it (the state) as an instrument for political survival. This would be the “dark side of the force” as in he who gets to rule gets the gold.⁶

An African proverb says that one who gathers firewood festooned with ants invite lizards to a fest. We see this proverb as analogous to North’s (1996, p. 346) argument that organizations, which arise in societies, reflect the opportunities provided by each society’s institutional settings. If the institutional framework rewards kleptocracy, for example, then thieving organizations will arise. The types of political, economic, and social organizations that are spawned as people compete for survival interact with the institutions that engendered them. It is all about incentives. Institutions are incentives and more to the point in what can be viewed as a process of institutional evolution, this interaction between organizations and related institutions in turn reshape the institutions over time. One such result can be the social imbedding of corruption. The concepts of interaction and institutional evolution are important in elucidating the relationship between governance and illicit financial flows.

Governance and IFF

Some illicit financial flows are the proceeds of crime whereas others are simply legitimate funds that have been illicitly transferred. Nonetheless since the provenance of many illicit flows are from drugs, organized crime, racketeering, murder, kidnapping, robbery, smuggling, embezzlement, cybercrimes, fraud, tax evasion, and transfer mispricing etcetera, a good grasp of IFF requires an understanding of the contours of these predicate crimes and the variety of schemes for camouflaging the proceeds. The elaborate ways and

⁶ For more on the economics of the dark side, see Hirshleifer (1994).

means through which the proceeds of crime are transformed to make them difficult to trace, as well as the varieties of avenues for enhancing the criminal's easy access to the clean form of the proceeds are a reflection of the opportunities provided by a country's institutional settings and thus implicates governance.

Borrowing from epidemiology, we depict governance as akin to the body's immune system and corruption like a disease that devastates it. Weakened, the body's defenses become vulnerable to opportunistic diseases. Whether weakened by corruption or already weak, a poor governance environment encourages opportunistic crimes. Granted that not all predicate crimes are directly due to weak governance institutions, a strong governance regime or quality institutions of governance certainly can be a moderating influence. So, how about we bet on the benefits of mending governance? That seems to be the way to go; better to love and have lost than never to have loved at all, so goes the saying.

4. Game Changer: StAV as a fundamental solution to grand corruption

If "he who gets to rule will get the gold," but society prefers a pool of candidates who will not steal the gold then, society must devise a means to screen out undesirables from candidacy for top public offices. Often in circumstances characterized by precontractual private information, some of the privately informed parties (candidates for elective office for instance) would gain if they could make this private information known (i.e. reveal their types). Likewise the uninformed (voters in our case) would gain from learning this information. A politician who knows that she is honest would like the voters to know this as well particularly if the voters are looking for such a trait, and the voters will be happy to be informed as this would improve the quality of the pool of electable candidates. This mutual benefit creates incentives to find credible ways to express this information.

Screening is a self-selection mechanism that creates the opportunity for aspirants to elective office to distinguish themselves (i.e. self-select) along the dimension of interest to the polity. For this to work, we argue that the mechanism design must satisfy two self-selection constraints: (1) *ex ante* asset declaration as well as consent to an *ex post* lifestyle

audit *cum* confiscation of unexplained wealth. Such a seemingly austere measure is warranted because when cause and effect are unclear, the assignment of burden of proof can make a difference. Since the wealth builder possess private information about the sudden wealth during his or her tenor in public office, placing the burden of proof on the trustee rather than on the settlor to wit the public appears defensible. (2) The state must establish a credible regime of value recovery of stolen assets; effectively to protect the gold so that he who rules and takes the gold no longer gets to keep the gold. Let us therefore, explore value recovery of stolen assets and outline the prospects for its implementation.

5. StAV, implementation challenges and concluding remarks

Value recovery of stolen public assets is a less well known yet important concept for which we have invented the acronym StAV, both to relate and to distinguish it from the widely known initiative, *stolen asset recovery* (StAR). StAV is an extension of StAR in practice if not in principle. To provide context, we should note that although StAR was launched in 2007 as a joint project of the UNODC and the World Bank, the first global instrument to enshrine the practice of stolen asset recovery in international law is the United Nations Convention against Corruption (UNCAC, 2005).

Adopted by the UN General Assembly in 2003 and entered into force in 2005, UNCAC is the quintessential mechanism intended for the harmonization of asset recovery protocols worldwide. The UNODC is the custodian and the lead agency supporting the implementation of UNCAC as well as serving as the Secretariat to the Conference of State Parties to UNCAC. Another useful complement is the United Nations Convention against Transnational Organized Crime, (the Palermo Convention, 2000) which entered into force in 2003 as the main international instrument directed at combating international criminal organizations involved in the theft and laundering of public assets, among others (UNTOC, 2000).

On the other hand, value recovery can be conceptualized as a composite legal strategy requiring the investigation and the prosecution of the underlying criminality (the predicate offense) as well as the related offense of concealing the proceeds of a crime. Article 53(b) of the UNCAC is clear about the measures available for recouping losses from the illegal taking of public assets. It enjoins each State Party to “[t]ake such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences.” By this provision, we argue that state parties should not only seek the return of stolen assets to their owners or the compensation of the owners for the value of those stolen assets. Rather, they should pursue additional compensation for damages from all parties that contributed materially to the injury.

Value recovery recognizes that victims of grand corruption can recoup their losses through several channels that extend the course of action beyond those suggested by the narrower constructs of stolen asset recovery. In particular, State Parties can pursue recovery of their stolen assets by exercising several options, which include (1) identifying and tracing the proceeds of the particular stolen assets to where they are hidden; (2) instituting claims against various parties in the liability chain; and (3) all of the above. Therefore, value recovery is the operative concept.

It has been observed that it is customary for governments requesting other governments’ assistance in recovering stolen public assets to use the instrumentality of *mutual legal assistance* (MLA). But legal experts (e.g. Davis and Giuliano, 2010) argue that such a customary approach, based essentially on MLA, is restricting because MLA is best in circumstances where identified traceable funds or their transform can be located. These experts argue that by contrast, potentially higher levels of recoveries can be achieved if aggrieved countries pursue civil claims against all relevant actors within the liability chain. In other words, seeking to prosecute both the primary offender(s) and those who

help them hide or launder the stolen assets—proceeding as it were, against the entire criminal enterprise value chain. This legal strategy is what Davis (2011) argues should be viewed as value recovery:

The need to educate appropriate stakeholders continues to be of paramount importance. Most in the anti-corruption community continue to refer to this topic—as do treaties—as stolen “asset” recovery. This label of “asset” recovery is value-laden and leads to stultified thinking when it comes to recovery of stolen wealth. This topic should be defined as stolen “value” or stolen “wealth” recovery.

This is not an academic distinction. Many of the modern treaties and tomes on “asset” recovery assume that there is a traceable asset waiting idly to be identified through tracing principles, then frozen and repatriated. That is usually the exception, not the rule. Much of the “value” to be gained—in the form of damages—can be found in claims against those who have layered and laundered the stolen wealth in such a way that tracing is either impossible or a very difficult and time-consuming process. So one must not think of “asset” recovery but must instead visualize the process as “value” recovery (p. 65).

Implementation Successes and Challenges

It always seems impossible until it's done – NELSON MANDELA

Since governments are not organized to pursue civil claims themselves, Davis and Giuliano (2010) recommend that governments enlist the services of civil litigation teams. Working in conjunction with relevant government agencies such as the police, civil litigation teams can then employ available legal devices including bounty hunters to achieve the maximal value recoverable of the stolen public assets. As an example, we can point to the fact that the US Department of Justice (DoJ) has been developing an asset forfeiture scheme known as the Kleptocracy Asset Recovery Initiative. Lodged in the Criminal Division’s Asset Forfeiture and Money Laundering Section, the initiative is underpinned by a commitment to civil actions aimed at securing forfeiture of the proceeds of foreign official corruption.⁷

⁷ U.S. Attorney General Eric Holder announced on July 25, 2010, at the Africa Union Summit in Kampala, that the “U.S. Department of Justice is launching a new Kleptocracy Asset Recovery Initiative aimed at combating large-scale

The first complaint filed under the initiative sought the seizure of over \$1 million in assets (including a \$600,000 home in the State of Maryland) owned by Diepreye Solomon Peter Alamiyeseigha, former governor of the oil-rich Bayelsa State in Nigeria (Williams, 2011). Subsequently, on October 13, 2011, and again on October 25, 2011, a civil forfeiture case was filed in the United States District Court for the Central District of California and the United States Court for the District of Columbia, respectively, in which the DOJ sought the forfeiture of over \$70 million in assets owned by Teodoro Nguema Obiang Mangué, the son of the president of Equatorial Guinea and that country's Minister of Agriculture.⁸ In July 2012, the Department secured a restraining order in the US District Court in the District of Columbia against more than \$3 million in corruption proceeds related to James Ibori, formerly the governor of Delta State in Nigeria.⁹ Three months thereafter, in October 2012, the DOJ executed a restraining order issued by the United States District Court in the District of Columbia against an additional \$4 million in Ibori's assets, including the proceeds from the sale of a penthouse unit in the Ritz-Carlton in Washington, D.C.¹⁰

Whereas the DOJ initiative illustrates the benefits of civil action in augmenting asset recovery activities, Ibori's case elaborated below demonstrates the importance of proceeding against all parties involved in the criminal liability value chain. It is significant in that it is one of the few asset recovery cases where some of those involved in the criminal enterprise value chain have been brought to book. On February 27, 2012, BBC News Africa reported that Ibori had pleaded guilty in London's Southwark Crown Court. He had been arrested and charged in Nigeria in 2007, but the charges against him were

foreign official corruption and recovering public funds for their intended—and proper—use: for the people of our nations" (DOJ, 2010).

⁸ See <http://www.docstoc.com/docs/102367931/Obiang-Forfeiture-Compliant> for the October 25, 2011 filing and <http://www.docstoc.com/docs/102371036/Obiang-CA-Forfeiture-Complaint> for the October 13, 2011 filing.

⁹ <http://star.worldbank.org/corruption-cases/node/19584>

¹⁰ <http://www.theparadigmng.com/?p=2371> (accessed January 21, 2014).

dismissed. However, he was rearrested in Dubai in 2010 on a British warrant and extradited to the UK to face ten counts of money laundering and conspiracy to defraud the Delta State of Nigeria. He is now serving a 13-year sentence in UK for his crimes. The following possessions were also confiscated: a house in London valued at £2.2 million; another property in the UK valued at £311,000; a £3.2 million mansion in Sandton, South Africa; a fleet of armored Range Rovers valued at £600,000; a £120,000 Bentley Continental GT; a Mercedes-Benz Maybach 62 bought for €407,000 cash and shipped directly to his mansion in South Africa (BBC News, 2012).

In June, 2010, juries in the UK convicted Ibori's wife, Theresa Ibori; his sister, Christine Ibori-Ibie; and his associate, Udoamaka Onuigbo. The court issued confiscation orders in the sum of £5.1 million, £829,786.44, and £2.7 million against all three of them, respectively. Furthermore, Solicitor Bhadresh Gohil, Ibori's "bag-man"; Daniel Benedict McCann, Ibori's fiduciary agent; and Lambertus De Boer, his corporate financier, were all convicted and jailed for a total of 30 years for their role in the criminal enterprise.¹¹

The other notorious case concerns Riggs Bank and its role in facilitating money laundering for corrupt government officials in Equatorial Guinea and Chile.¹² Riggs Bank was punished for its involvement in the criminal enterprise value chain. "The Office of the Comptroller of Currency imposed a U.S. \$25 million fine—the largest ever under the Bank Secrecy Act of 1970—on Riggs Bank, for its failure to report suspicious transactions in the Equatorial Guinean accounts."¹³ Additionally, Riggs Bank was "sentenced to a \$16 million criminal fine in April 2005"¹⁴ for the laundering of accounts owned and controlled by

¹¹ <http://www.westlondontoday.co.uk/content/nigerian-politician-who-stole-250m-was-ruislip-cashier> (accessed March 14, 2013).

¹² For a digest of the Riggs Bank and Augusto Pinochet case, see Open Society Justice Initiative (2005).

¹³ Open Society Justice Initiative (2005, p. 33).

¹⁴ Open Society Justice Initiative (2005, p.34).

Augusto Pinochet of Chile. The trial judge is said to have called the bank “a greedy corporate henchman of dictators and their corrupt regimes.”¹⁵

Seeking to prosecute both the thief and the fence sends a clear message to prospective criminal masterminds that the government will make every effort to bring anyone involved in the illegal appropriation of public resources to justice. This new approach makes clear that all individuals and institutions in the developed countries that are complicit in the corrupt activities of African officials will be brought to justice.

Concluding remarks

From a global perspective, we take away the message that notwithstanding the noted successes with asset recovery, there is much reason to be circumspect about the pace and prospects for value recovery. Consequently, its deterrent impact on grand corruption is yet to pack a punch. This trepidation is due to a variety of issues, some of which reside in the domestic arena, others in the international and yet others cross-cutting.

First, there is the uneven manner in which law enforcement agencies handle natural and juristic persons in anti-money laundering and related offenses.¹⁶ The law enforcement regime seems to promise prosecutorial forbearance to juristic persons, a promise rendered credible by the existing record of enforcement.¹⁷ Given the pivotal role of banks in the worldwide payment and settlement systems, the (perverse) incentive effects of this asymmetry cannot be overemphasized. Second is the slow pace of progress in meeting the two crucial obligations under the UNCAC framework namely, the injunction to state parties to *domesticate the convention* and *cooperate with each other*. Achievement of these tenets connotes increased financial transparency particularly regarding the identification of beneficial ownership and the streamlining of mutual legal assistance procedure. The latter can significantly reduce the overall transactions costs of value

¹⁵ Open Society Justice Initiative (2005, p. 34).

¹⁶ For an elaboration, see Ayogu and Agbor (2015), p.352-354

¹⁷ On the record of enforcement, interested readers can consult Ayogu and Gbadebo-Smith (2015) as well as Ayogu and Agbor (2015) for further details.

recovery by increasing the degree of certainty and consistency (codification) whereas the former can help in the tracing, identification, freezing and issuance of civil interim measures or prejudgment remedies, all of which are essentialities in the value recovery process.

We have argued that grand corruption is at the core of the nexus of governance and illicit financial flows. To effectively begin breaking the link, we suggested a game changer namely, an adjustment to the rules of the game—(political) institutional change—in a manner that screens out prospective wolves (that can pillage) but allows likely shepherds (that can husband) to emerge. That is the domestic dimension. The international dimension is complex as it involves domestic politics as well as international relations. Both dimensions are challenging because the proposed changes are at odds with the interest of powerful political elites who in most cases have incumbency and are the “selectorate.”¹⁸ Moreover, subsequent regime changes do not guarantee the emergence of actors whose preferences do not diverge from the collective good. How to engender the disruptive changes that have been outlined here is the subject for further research. Such a multidisciplinary research agenda can benefit by drawing from the scholarship of international political economy, anthropology, and social psychology, underpinned by the theory of incentives. This complexity is our Gordian knot.

¹⁸ Selectorate refers to an arrangement where a few individuals within a party or regime decide whom to bequeath leadership or shape succession planning based on their private agenda. Discontinuity in regime changes is not a sufficient condition for the emergence of a better state.

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