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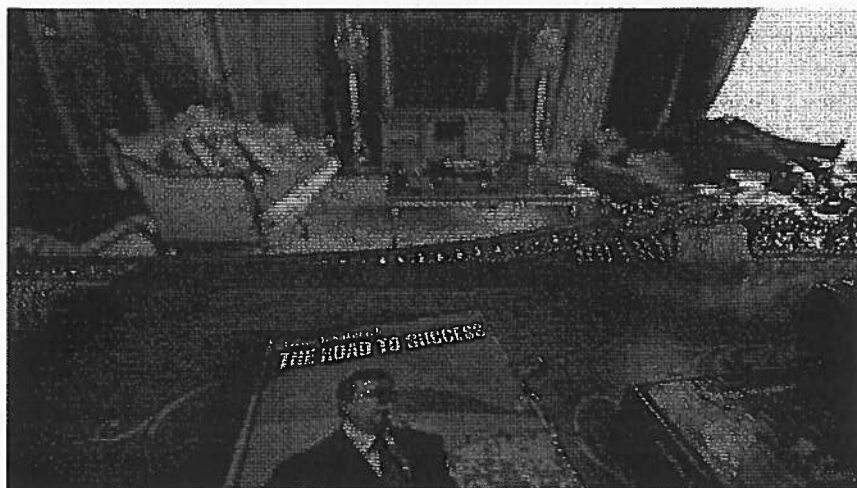
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Asset tracing: Follow the money

By Cynthia O'Murchu

Efforts to track and recover stolen funds are gaining ground but obstacles remain



Home comforts. Viktor Yanukovich enjoyed a life of luxury at his Mezhyzhirya estate before he was ejected by the Maidan protesters in Ukraine

In a building in central Kiev, anti-corruption campaigners are piecing together tattered documents in their efforts to trace more than \$30bn that prosecutors believe former President Viktor Yanukovich and his network stole from the Ukrainian state.

"They were purchasing expensive furniture and luxury goods but they saved money on their shredders," says Natalie Sedletska, a journalist who contributes to YanukovychLeaks, a website detailing dozens of transactions identified from sacks of papers hastily cut up and files dumped when the regime collapsed in February.

Her work mirrors pressure from community activists in a growing number of countries to recover assets from ousted political leaders. It has come at a time of improved co-operation from nations to which many misappropriated funds have been channelled.

Last week, the White House and African leaders announced a US-Africa Partnership to combat illicit finance, and senior diplomats called on the world's richest nations to toughen their laws against money laundering and tax evasion.

In mid-June, 14 years after Liechtenstein received a formal request for help from the Nigerian government, the principality announced it would return €167m stolen by Sani Abacha, the former military ruler. The US government has since taken control of more than \$480m that he and his associates had placed in bank accounts in Jersey, France and the UK.

Such developments remain modest given the scale of the problem. Finding and returning assets held in secret corporate structures in multiple jurisdictions is a lengthy and arduous process that is fraught with legal complications.

The Stolen Asset Recovery Initiative (Star) in Washington estimates up to \$40bn is lost each year to developing countries through corruption and only \$5bn was returned in the 15 years till 2011. Most is never found.

Since 2008, for instance, the UK has not returned any assets of criminal origin to other countries, according to a recent answer to a parliamentary question. In 2012, Egypt began legal action against the British government, saying it had not co-operated in Cairo's asset recovery efforts after the fall of the regime of Hosni Mubarak.

Viktor Yanukovich
 Ukraine
 Ruled: 2010-2014

Pressure from activists for asset tracing has grown since the Arab Spring but has not quickly translated into recoveries. Co-operation can be hindered by a perception that those in government and the civil service have been complicit in corruption. Even where there is a willingness, the expertise of new regimes



Amount allegedly misappropriated more than \$32bn

to make the case for recovery is limited.

"Very often there are technicalities which are the beginning of a failure, for example missing dates or signatures on mutual legal assistance requests," says Rudolf Wyss, Switzerland's former head of mutual legal assistance. "Another problem is 'fishing expeditions'. The only evidence in one request from an Asian country, for example, was a newspaper article."

Banks in nations where assets are hoarded have also proved reluctant to probe too deeply. A study by Global Financial Integrity, the anti-corruption group in Washington, estimates 56-76 per cent of illicit flows are deposited in banks in developed countries.

A 2011 report by the UK's financial regulator found serious weaknesses in banks' anti-money laundering systems. It highlighted institutions that did not carry out adequate due diligence on customers, took on high-risk clients and failed to properly identify politically exposed persons with whom they did business.

Investigators identify many practical difficulties with asset tracing. "Establishing the true beneficial owner of the asset – that's the hardest part of asset tracing," says Rupert Broad of the Metropolitan Police's proceeds of corruption unit.

Swiss authorities froze the assets of Mr Mubarak, the former Egyptian president, and his entourage within hours of the fall of his regime

Researchers have found company registration agents flouting the rules when collecting identification information on clients – more in countries such as the US and Britain than in tax havens. US states including Delaware, known as the country's "onshore tax haven", lack robust disclosure and information gathering requirements.

Despite the obstacles, asset tracers have made progress during the past decade. Politicians have vowed to crack down on so-called shell companies used to hide criminals' funds, and to strengthen laws against money laundering. International frameworks and bilateral agreements have paved the way for better collaboration between law enforcement agencies across the world.

Switzerland, long under pressure given its reputation as a haven for kleptocrats, has emerged as one of the most progressive jurisdictions. Officials say it has returned about SFr1.7bn of illicit money in over a decade. Legislation passed in 2011 and known as the Lex Duvalier law after the former Haitian president allows the authorities to freeze assets even if the country from which they were allegedly stolen is unable to ask for mutual legal assistance or cannot bring the alleged corrupt official to justice.

Swiss authorities froze the assets of Mr Mubarak, the former Egyptian president, and his entourage within hours of the fall of his regime. The EU took 37 days to act on the same request, says Transparency International, the anti-corruption group.

More broadly, the Group of Eight club of leading industrial countries has since 2011 devoted a series of meetings to tracing assets of regimes overturned during the Arab Spring. In April this year, financial investigators from more than 30 countries met in London to help the Ukraine government find and recover stolen assets.

The meeting reflected the importance of better explaining the complex process of asset recovery, and building relationships between the multiple organisations involved. "Bringing practitioners together is going a long way in terms of building trust and addressing misunderstanding of legal requirements," says Jean Pesme of Star in Washington.

International organisations such as Star are helping governments with their asset tracing work. The UK's Crown Prosecution Service has begun deploying specialist advisers to six countries including the United Arab Emirates.

The beneficial ownership registry concept will only be credible if it included also legal arrangements such as trusts. Limiting it to companies only is window dressing at best

In the UK, measures planned in the Serious Crime bill are aimed at improving the government's ability to recover assets and crack down on those who support criminals, such as lawyers and accountants.

Governments have promised additional legislation to make it easier to trace and recover assets. One of the most prominent initiatives is the creation of registers of beneficial ownership of companies. David Cameron, the British prime minister, has promised to establish a public register and has pushed other governments, including those of offshore financial centres, to follow suit.

Some caution the effect will be limited. "We must not be naive," says Daniel Thelesklaf, director of Liechtenstein's Financial Investigation Unit. "A criminal would never declare to a registrar that he controls a company, and the company registries will never be in a position to verify the information given to them."

He points to loopholes in registries such as those planned in the UK which apply only to companies. "The beneficial ownership registry concept will only be credible if it included also legal arrangements such as trusts," he says. "Limiting it to companies only is window dressing at best."

Gaining access to information is only the start of a difficult process facing those seeking to recover assets. Bringing a criminal case can be complex and linking a specific asset with its corrupt origins is often difficult. Illicit money is also frequently mixed with legitimate

ventures.

Even a criminal conviction does not always pave the way for recovery of assets. James Ibori, former governor of Nigeria's Delta state, was jailed in April 2012 for 13 years for fraud and money laundering after pleading guilty at a London court to 10 offences involving £50m. His lawyer has since argued that Ibori's guilty plea was not an admission he profited personally.

But governments have turned to civil actions that require a lower burden of proof. For example, US prosecutors used the tactic to try to recover assets belonging to Teodororino Obiang, the son of the ruler of Equatorial Guinea. So did the Libyan government, which recouped a £10m mansion owned by a son of the late Muammer Gaddafi in London. "If resources are not an issue and a government is willing to invest, the civil process can be incredibly effective," says Keith Oliver, an asset recovery specialist at Peters & Peters in London. "But it's expensive. It's a real test of will."

As international laws close loopholes, corrupt officials and their often highly paid advisers are devising new ways to cover their tracks. There is anecdotal evidence that those seeking to hide assets are seeking less regulated jurisdictions in the Middle East and the Seychelles, for example.

As you squeeze the balloon you get all the bad action into a smaller area and it's easier to deal with

Money is easily stashed in art, antiques or jewellery, which are difficult to trace and portable. "Criminals treat their ill-gotten gains like a share portfolio of assets," says Antonio Suarez-Martinez, a partner at Edwards Wildman Palmer, the law firm. "They diversify."

Sarah Gabriel, an asset recovery lawyer at Peters & Peters in London, has drawn up a list that includes trademarks, stuffed animals, Wimbledon season tickets and insurance policies. Mr Wyss recalls seizing an ivory altar piece stolen from an Asian church and stored in a Swiss bank vault after use as collateral for a

loan.

An entrepreneur may set up a company or trust in a way that appears entirely legitimate to a financial institution but which could be used for expensive purchases. There are also concerns that virtual currencies such as Bitcoin are tempting officials.

Despite the difficulties, civil society activists and professional asset tracers are guardedly optimistic. Heather Lowe from Global Financial Integrity says: "As you squeeze the balloon you get all the bad action into a smaller area and it's easier to deal with."

Daria Kaleniuk, executive director of the Anti-Corruption Action Centre in Ukraine, warns that there is no time for complacency and Ukrainian law enforcement may still be vulnerable to vested interests: "We need to maintain public pressure. There is still a risk that lack of will or capability may interfere with the process."

Wealth in the spotlight

Sani Abacha
Nigeria
Ruled: 1993-1998



Misappropriated \$2bn-\$5bn
Amount frozen \$680m
Amount recovered \$1.1bn

The former Nigerian military dictator Sani Abacha – dubbed by the US Department of Justice one of the "most notorious kleptocrats in memory" – is thought to have looted \$2bn-\$5bn during his five years in office from 1993-1998.

Since his death in 1998, the government has worked to recover these assets in the face of legal counter-attacks by his family.

In recent years, Nigeria had recouped more than a billion dollars, the largest portion of which – \$707m – was returned from Switzerland. Funds the authorities found shortly after Abacha died were paid into a special account at the Bank of International Settlements in Basel and spent on housing projects, education and allocations to Nigeria's 36 states.

In April, a UK High Court judge rejected a plea from companies owned by a trust connected with a business associate to overturn a \$200m freezing order on assets allegedly derived from Abacha's activities.

In June, Liechtenstein agreed to return €167m, 14 years after the Nigerian authorities first asked the principality for assistance.

Last week, the US Department of Justice won a court order for \$480m of alleged proceeds of corruption in what it called the "largest ever kleptocracy forfeiture action in the US". It chose the civil route to pursue the assets, using the Kleptocracy Asset Recovery Initiative launched by Attorney General Eric Holder in 2010.

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Jean-Claude Duvalier
Haiti
Ruled: 1971-86

For 28 years, millions of dollars allegedly stolen by Haiti's deposed president Jean-Claude Duvalier have sat in Swiss bank accounts. New laws and a court decision have paved the way for the return of the money to the country.



Amount in question over
\$300m
Amount seized \$6.5m

A popular revolt forced Mr Duvalier, nicknamed "Baby Doc", to flee in 1986 and seek exile in France, leaving the country in a state of endemic poverty. Known for his playboy lifestyle, he was said to have illicitly amassed at least \$300m from skimming money from government contracts. Mr Duvalier, who in 2011 returned to Haiti and faces charges of crimes against humanity, corruption and embezzlement, has denied the allegations.

Haiti asked Swiss authorities to freeze \$5m in 1986, but returning them proved hard because Haiti failed to mount a legal case. Mr Duvalier almost won the money back by default in 2002 when the statute of limitations kicked in. Switzerland extended the order by invoking constitutional powers which allow it to freeze assets to safeguard national interests.

In 2011 it introduced a new law – "Lex Duvalier" – allowing the authorities to freeze and confiscate allegedly looted funds from failed states that are unable to mount a case against a corrupt official. It reverses the burden of proof, requiring those accused to prove they obtained money legally. "Once confiscated, the assets will be returned to Haiti in order to improve the living conditions of the Haitian people," the Swiss government has said.

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Obiang family
Equatorial Guinea
Ruled: 1979-present



Amount seized more than
€118m in France and \$70 in
the US

In 2008, the French arm of campaign group Transparency International and Sherpa, an association of lawyers, began targeting assets belonging to the serving president of Equatorial Guinea, as well as those from Gabon and the Republic of Congo.

A French court allowed such non-governmental organisations to file anti-corruption cases in 2010, since when the authorities have seized properties and luxury goods including 11 supercars from the son of the president of Equatorial Guinea, Teodoro Obiang.

The inquiries also identified 39 properties in Paris and the south of France belonging to Omar Bongo of Gabon and his entourage, as well as 24 properties and 112 bank accounts linked to President Dennis Sassou Nguesso of Congo-Brazzaville and his circle.

Omar Bongo, the former president of Gabon, is subject to the lawsuits, but his son, Ali Bongo, the current president, is not. The leaders and their families have denied any wrongdoing.

After a French judge issued an international arrest warrant against the son of the president of Equatorial Guinea in 2012, the US government pursued his assets using civil asset forfeiture laws which do not require a civil or criminal conviction.

In "US vs One Michael Jackson Signed Thriller Jacket" and "US v One White Crystal-Covered 'Bad Tour' Glove", contested by the family, it is attempting to recover more than \$70m, including Michael Jackson memorabilia, a Malibu mansion and a Gulfstream jet.

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Hosni Mubarak
Egypt
Ruled: 1981-2011



Amount frozen more than
\$800m

The auction of gold watches, gaudy clocks and a Ferrari offered a flashy display of assets of the deposed Tunisian dictator Zine al-Abidine Ben Ali, but scarcely reflected the scale of his corruption, writes *Borzou Daragahi*. "Some millions of stolen public money have been returned," said Ghada Zughayar, head of Transparency International's Middle East and north Africa department. "But these are drops in the ocean."

As popular uprisings in 2011 swept away the ruling clans of Egypt's Hosni Mubarak, Libya's Muammer Gaddafi and Ben Ali, many hoped their stolen billions of dollars would quickly be recovered and help to rebuild economies ravaged by years of corruption.

In Egypt and Tunisia, the amounts pillaged may be less than some thought. Government attention faded as it became apparent that the money ruling families stashed away for their own personal use paled in comparison to amounts wasted through inefficiency or dispersed through patronage networks. Gaddafi's oil-rich Libya amassed tens of billions of dollars already identified, with much more likely unaccounted for.

Money has been stashed in banks in the Gulf, experts say. Yet political tensions and warfare have dominated over reform and accountability. For now, the shaky ruling establishments in all three north African nations are too dependent on the oil-rich Arabian peninsula monarchies' patronage to call them to account.