SANCTIONS AS A TOOL FOR ASSET RECOVERY: A GLOBAL PERSPECTIVE

CIFAR RESEARCH PAPER

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ACRONYMS AND ABBREVIATIONS

ARMA	Ukrainian Asset Recovery and Management Agency
CFSP	Common Foreign and Security Policy
EU	European Union
FIAA	Foreign Illicit Assets Act
FCPA	Foreign Corrupt Practices Act
LSK	Law Society of Kenya
MLA	Mutual Legal Assistance
NABU	National Anti-Corruption Bureau of Ukraine
OFAC	Office of Foreign Assets Control
PEPs	Politically exposed persons
SDN	US Specially Designated Nationals and Blocked Persons
StAR	Stolen Asset Recovery Initiative
UNICRI	United Nations Interregional Crime and Justice Research Institute

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A large proportion of the tens of billions of US dollars estimated to be stolen by public officials every year ends up hidden in bank accounts and real estate investment in other jurisdictions, far from where the original corruption took place. Only a small fraction of these illicit assets is successfully traced and frozen, and even a smaller amount is eventually returned to the countries of origin. A number of policy innovations have emerged in recent years, however, that place the emphasis on action by countries whose financial systems have accepted the illicit assets and could potentially strengthen the recovery of stolen assets.

One of the tools increasingly being used to fight against stolen public funds are unilateral sanctions that impose asset freezes. However, despite an increase in the usage of such sanctions to fight corruption, only some sanctions regimes have been designed specifically to aid also in the recovery of misappropriated funds to countries of origin and, as such, provide a direct link to the seizure, forfeiture and recovery processes.

This report explores the growing use of anti-corruption sanctions and their impact on asset recovery. It starts by looking at the Swiss sanctions regime, which is embedded in a wider asset recovery framework, as well as the EU misappropriation and US Global Magnitsky regimes, both of which apply asset freezing measures on individuals but rely on separate legislation to repatriate the funds.

The report also considers the experiences of a diverse group of countries with anti-corruption sanctions where large-scale cross-border corruption cases have been ongoing – Egypt, Kenya, Mexico, Moldova, Mozambique, Tunisia and Ukraine – and identifies some common challenges and opportunities stemming from their attempts to recover stolen assets.

The report concludes that, while sanctions are context-specific, they can be an effective tool to advance asset recovery proceedings in many cases. However, sanctions cannot be seen as the ultimate end; they need to be linked to proactive obligations on law enforcement in countries of destination to work towards asset recovery. More transparency around the process is essential in order to enable greater public understanding, as well as the effective engagement and support from civil society.

Finally, as a number of countries are currently considering the adoption of the Magnitsky-style legislation that would sanction persons suspected of grand corruption, we propose several recommendations that governments should consider to maximise the impact of sanctions on successful asset recovery proceedings. These are to:

1. Include asset recovery provisions into anti-corruption sanctions regimes
2. Develop transparent designation criteria and apply sanctions consistently
3. Use sanctions as part of broader anti-corruption and asset recovery strategies and
4. Work with civil society throughout.

INTRODUCTION

INTRODUCTION

Kleptocracy that crosses borders is growing worldwide, with more and more cases of grand corruption coming to light each year. According to the World Bank, up to $40 billion per year is stolen through corruption in the Global South, moved through tax havens, and hidden offshore, often in Western Europe.[1] Such outflows of illicit capital are a significant constraint on the development efforts of many countries, which are struggling to find the resources needed to reduce poverty and achieve sustainable development goals. The prevention of illicit financial flows and the recovery of stolen assets is an essential part of the UN sustainable development goals, target 16.4. Supporting countries to recover the assets stolen through corruption offers an opportunity to mobilise vital resources and directly help finance development efforts. Moreover, asset recovery promotes the strengthening of law enforcement institutions, their transparency and accountability, as well as the broader political will to fight criminal networks, which are all key institutional elements of sustainable development.[2]

THIS FLOW OF WEALTH NOT ONLY FRUSTRATES DEVELOPMENT EFFORTS BUT ALSO, AND CRUCIALLY, IS OFTEN PART OF AN AUTOCRATIC SYSTEM ALLOWING POLITICAL LEADERS TO HOLD ON TO POWER THROUGH CREATING RENTIER SYSTEMS AND FINANCIAL SAFETY NETS.

This secret transfer of wealth outside their countries allows these political leaders to act with greater impunity, both through the knowledge that they can flee to homes purchased with stolen public money in cities such as Paris, London or Zurich should they face domestic opposition, and by being able to silence dissent through "buying-off" detractors and making others complicit in their corrupt schemes.

The use of sanctions in Europe and North America as a first response to the uncovering of large-scale kleptocratic practices became much more widespread over the last decade, following the Arab Spring in 2011. The European Union (EU), as one example, froze assets relating to the former rulers of Tunisia and Egypt in 2011, then later Ukraine in 2014, under a tool designed for foreign policy cœrcive measures and anti-terrorism. The passing of the Global Magnitsky Act in 2016 in the US, which allowed the US to impose sanctions on corrupt officials and those involved in human rights abuses across the world, further increased discussion on the use of sanctions to fight kleptocracy. Several EU countries, the UK and Canada soon followed and passed their own versions of this law. The EU eventually also adopted a version of this in December 2020 – the EU Global Human Rights Sanctions Regime – so far without any designations. This regime, however, lacks the anti-corruption component present in the US legislation, and it remains to be seen how the EU will use this new tool.

When considered as part of the asset recovery process, sanctions enable governments to proactively prevent suspected corrupt officials from removing assets from their jurisdiction before receiving an initial request from the country where the crime occurred. Therefore, they are often considered very effective tools and are championed as advances in securing the recovery of stolen assets. However, little of this is based on empirical evidence on when and how they can contribute to asset recovery.[3]

While there has been a great deal of engagement with Magnitsky Sanctions from the human rights movement, assessment by anti-corruption CSOs as to whether and how these and other anti-

corruption sanctions work with the asset recovery process and whether this kind of sanction should be promoted globally – including outside of financial centres – is lacking. Given the questionable successes of the post-Arab Spring and Ukraine revolution sanctions imposed by the EU to actually lead to asset recovery, developing a deeper understanding of sanctions as an anti-corruption tool and perspectives from outside Europe is needed.

As the European and world financial centres move towards further extending the use of sanctions as an anti-corruption tool, nuanced view on sanctions that reflects the reality of how sanctions can address kleptocracy from a global perspective is vital. Further, as this tool continues to spread, it is also important to consider whether these measures should be applied only in the Global North and financial centres or whether the idea of pre-emptive asset freezes for kleptocracy could also be something that countries routinely introduce as part of a suite of anti-corruption measures. Not addressing these questions could potentially divert action towards measures that are not as effective or as accountable as the anti-corruption civil society movement wants. Understanding the effectiveness of anti-corruption sanctions, however, promises a more effective and stronger global movement against kleptocracy.

This report, therefore, investigates the following questions regarding the use of sanctions:

- How have sanctions been used to fight corruption and advance asset recovery until now?
- How are anti-corruption sanctions and their effectiveness viewed from the perspectives of countries of origin of misappropriated funds?
- What role should anti-corruption sanctions play as a tool to fight corruption and support the recovery of misappropriated assets?

In order to answer these questions, this report is structured as follows. Firstly, it reviews the link between sanctions as a traditional tool of foreign policy and the recovery of state assets. The second chapter gives an overview of sanctions regimes that focus on helping countries fight the misappropriation of state assets used by prominent financial centres: Switzerland, the European Union, and the United States. The third chapter looks at the experience of countries of origin with anti-corruption sanctions. The fourth chapter then considers opportunities and challenges these sanctions bring, with a focus on their application and results in controlling corruption and advancing asset recovery. The report concludes by outlining the conditions under which sanctions that support asset recovery efforts and the return of ill-gotten gains can be most effective.

SANCTIONS & ASSET RECOVERY

LINK BETWEEN SANCTIONS AND ASSET RECOVERY

Traditionally, sanctions have been imposed in the framework of threats to international peace or violations of international law and human rights abuses, but they are being imposed with increasing frequency also in reaction to severe corruption allegations and state capture.[4] The devastating impact of corruption on societies' well-being in light of numerous investigative revelations has encouraged financial centres to find new tools to react to political and economic crises across the world. Unilateral sanctions have been one of the tools adjusted to this challenge.

The inclusion of the perpetrators of grand corruption into sanctions lists comes in an environment of a general shift from comprehensive sanctions, such as broad economic and trade embargœs, to more targeted or "smart" measures. Such sanctions do not target a particular country or economic sector as a whole, but rather try to address the wrongdoing of a certain group, individual or a business entity. Such an evolution is a result of evidence that strict economic sanctions that are imposed on a country as a whole can inflict great harm and suffering on the general population rather than the ruling elite itself.[5]

Targeted sanctions can take on many forms: sectoral sanctions, bans on commodities, diplomatic pressure exercised by suspending diplomatic relationships, boycotting sport and cultural events, and publicly targeting concrete individuals. Targeted sanctions can also be categorised according to their degree of discrimination, with the most targeted form being individual sanctions, which affect only the designated individuals. Individual sanctions establish lists of designated persons who can be banned from traveling and holding bank accounts abroad, whose visas might be restricted, and who may have their assets frozen.[6] Lists of individuals subject to visa bans and asset freezing measures are the tools of choice used in anti-corruption sanctions in order to deny the access to their ill-gotten wealth, wherever it might be located.

Sanctions can also target corrupt practices in relation to a specific political crisis in a particular country, such as those used by the EU after the Egyptian revolution in 2011. In contrast, horizontal sanctions lists do not refer to a specific country, but rather target individuals and entities based on a thematic principle, such as involvement in grand corruption. Such horizonal lists are particularly suitable for tackling transnational challenges, especially in cases where the link to a specific country would not be possible or desirable.[7] The detachment of the country link becomes particularly important in situations when anti-corruption sanctions should be applied on active, politically exposed persons, thus allowing the imposition of sanctions without implying the involvement of the wider political regime in the country where the corruption occurred.

Sanctions have traditionally been an attempt to achieve a change of behaviour in a sanctions' target, to constrain a target's capacity to carry out certain activities by denying them access to key resources, to signal disapproval or to spread certain political messages, and more recently, to protect assets that are suspected of having been misappropriated from a country of origin until their illicit origin can be proved and the assets can be repatriated.[8]

WHAT DO WE MEAN BY SANCTIONS?

There are many types of sanctions put in place by international bodies and autonomous jurisdictions, using various political, financial and trade tools to influence particular countries, groups or individuals. For the purpose of exploring the link between sanctions and asset recovery, we focus on unilateral measures imposed by jurisdictions in the framework of their foreign policy that apply financial sanctions in response to corruption allegations. Concretely, these sanctions freeze the assets of persons accused of the misappropriation of state funds, prohibit any funds from being made available to them and sometimes also ban them from traveling to the sanctioning country (visa bans).

In the case of targeted anti-corruption sanctions, visa bans are expected to act as a sanction as well as a disincentive for the corrupt individuals by denying them – and in some regimes, their families – the opportunity to study in the sanctioning countries or to enjoy their real estate and luxury goods located in foreign jurisdictions, which can also serve as a means to launder dirty money.[9] Sanctions in the form of asset freezes prevent listed persons from not only physically accessing their real estates but also denies them the possibility to enjoy any profits from their use and prohibits funds from their bank accounts from being made available to them. This, together with the restrictions on providing any types of financial services to sanctioned persons by the sanctioning jurisdictions, significantly constricts their ability to engage in potentially harmful activities.[10]

Thus, sanctions applied by countries where ill-gotten assets are often hidden can impact asset recovery processes in a number of ways. Directly, they can quickly freeze the assets of persons implicated in corruption cases, which, in turn can be used as a basis for asset recovery proceedings aimed at using the funds for the benefit of citizens of countries from whom it was stolen from in the first place.[11] Indirectly, they create financial and public pressure to incentivise non-corrupt behaviour and anti-corruption reforms.

SANCTIONS AIMED AT TACKLING THE MISAPPROPRIATION OF STATE FUNDS

The following section looks more closely at sanctions regimes in three jurisdictions often used for hiding illicit assets – Switzerland, the European Union and the United States – that are being deployed to tackle kleptocracy with a special focus on the application of their asset freezing and recovery provisions.

SWITZERLAND

The asset freezing provisions in Switzerland being used in the case of politically exposed persons (PEPs) are tied to a special administrative legal regime in a way that makes it possible to act very quickly. The Federal Council can issue ordinances and rulings to freeze the assets of (foreign) individuals to safeguard the interests of the country. This allows Switzerland to act even in the absence of suspicious transactions reported to the financial intelligence unit, freezing requests from other jurisdictions, or the opening of criminal investigations.[12] Ordinances implementing the preventive freezing of assets have been applied in the cases of the ruling elite from Tunisia, Egypt and Ukraine after they were toppled in the revolutionary movement.

The ordinances are based on the Federal Act on the Freezing and Restitution of Illicit Assets (the "Foreign Illicit Assets Act," FIAA) that came into force in 2016. The law stipulates that Switzerland can order the freezing of assets of PEPs or their close associates in cases where there is reason to assume that those assets were acquired through acts of corruption or other criminal mismanagement for the purposes of mutual legal assistance (MLA) or for confiscation if MLA proceedings fail.[13] In the process, Switzerland places the responsibility of the relevant judicial authorities of the country in question to initiate the necessary criminal proceedings and to demonstrate the illicit origin of the frozen assets.[14]

The FIAA legislation specifically aims to deal with misappropriation and is precisely tailored to the objective of asset recovery. It details the criteria for the freezing of assets and provides a legal basis for their confiscation and restitution, covering all stages of the asset recovery process. Moreover, rather than relying on the information and evidence provided by the requesting state, the Swiss Federal Council can rely on its own law enforcement and other agencies in Switzerland instead.[15]

The FIAA provides the Federal Council with a legal basis to freeze a broad range of assets without having to rely on an emergency provision of the Swiss Constitution. The FIAA only applies in special situations, however, and lists four cumulative criteria that must be met before asset freezes may be adopted. Firstly, the government must have lost or be about to lose power; secondly, the level of corruption in the country of origin must be notoriously high; thirdly it must be likely that the assets were acquired criminally; and lastly, the freezing action must be required to safeguard Switzerland's interests. The application of the legislation is thus restricted to countries in transition and does not apply to regimes unwilling to cooperate.

After assets have been frozen, their confiscation can proceed according to an independent Swiss criminal procedure or as part of a procedure initiated in the country of origin via an MLA request. The latter is

the practice in most cases – as in the instance of assets linked to Mubarak and Ben Ali – but both routes require substantial cooperation with the requesting country. If neither procedure is successful, the FIAA allows for an alternative freezing and confiscation procedure. In order to increase the likelihood of success of the MLA procedure, the FIAA allows for technical assistance to the country of origin as well as a transfer of confidential information.[16]

As one of the biggest financial centres, the Swiss government has been very active in the asset recovery debate. Swiss asset recovery legislation has adapted to react specifically to situations of foreign illicit financial flows, which makes it quite effective in freezing suspicious assets and, to a lesser extent, recovering them. Even though Switzerland provides substantial technical assistance to requesting countries, some high-profile cases are unable to be closed even after ten years of cooperation, which highlights that further innovation is needed to speed up and successfully close the process. Recent criticism has been raised on the way in which assets were restituted from Switzerland to Kazakhstan in the Kazakh II case, which carried a high risk of repeated misuse, and highlights the importance of an effective restitution framework when recovering assets.[17] Some suggestions have been made in order to further improve the FIAA legislation, for example, to improve transparency of restitution agreements and to grant well-established NGOs the possibility of being part of the criminal proceedings in Switzerland.[18]

UNITED STATES

The United States has been the most frequent user of unilateral sanctions. Its sanctions regime with an anti-corruption component – the Global Magnitsky Human Rights Accountability Act – has further spread into a number of countries across the world. This is a horizontal targeted sanctions regime that allows the imposition of sanctions on individuals outside of any national sanctions programme in place,[19] thus separating the decision to sanction personal misconduct from considerations regarding the political situation and diplomatic relationship with the country of origin of that person.[20]

The first iteration of the Magnitsky Act known as "Magnitsky Rule of Law Accountability Act" was adopted in 2012. It was named after the Russian tax lawyer Sergei Magnitsky who was jailed and brutally murdered in Russia after he exposed a large-scale tax fraud scheme committed against his employer, the British investment company Hermitage Capital Management, and focused on sanctions against those believed responsible for his death. In 2016, a new legislation known as the "Global Magnitsky Act" came into effect, allowing authorities to target individuals involved in the original Russian case, and a year later, an Executive Order 13818 further broadened its scope and designated 52 individuals and affiliated companies from a number of countries.[21] Between its inception and 2021, the US government has sanctioned 246 individuals and entities under this programme, spanning actors in 34 different countries.[22]

US sanctions are realised via several bodies. The key regulators of the sanctions programs are the US Department of State and the US Department of the Treasury – or more precisely, the Office of Foreign Assets Control (OFAC). They can also be applied via presidential decrees. Since 2008, the US is able to make designations, either publicly or privately, which ban entry to foreign corrupt actors and human rights violators and their family members under the Section 7031 (c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act.[23] Out of 77 primary individuals (excluding immediate family

members) publicly designated under this act as of April 2020, nearly half of them have also been targeted for Treasury Department sanctions, most of which have been under the Global Magnitsky Act.[24]

An important distinction between these two types of sanctions is that crimes can be sanctioned under the Global Magnitsky program only if they have been committed within five years prior to the announcement of sanctions, whereas 13 7031 (c) has no time constraint. Moreover, a wide range of bodies is invited to participate in the Magnitsky designation process, including Congress, foreign governments and civil society.[25]

The Global Magnitsky Act freezes all assets of designated persons; however, in order to seize such property, the US government needs to open a separate legal action based on the grounds, for example, of bribery or embezzlement.[26] It is not clear how often separate legal proceedings are started in parallel to Magnitsky sanctions and the sanctions regime does not provide a clear link to asset recovery mechanisms as it is in the case with Swiss legislation. The victim country can file an MLA to request assistance in asset recovery if it is suspected that considerable amount of assets belonging to the sanctioned individual are located in the US. The legislation foresees the possibility of de-listing in the case of a "significant change in behaviour" of the designee, as well as in the case of a prosecution for the wrongdoing for which sanctions were imposed.[27]

US GLOBAL MAGNITSKY ACT AGAINST DAN GERTLER

Among the first listings under the Global Magnitsky Act was Dan Gertler, an Israeli businessman and mining billionaire with close ties to the former president of the Democratic Republic of Congo (DRC), Joseph Kibala. Gertler had been accused of amassing his wealth in opaque and corrupt mining deals in DRC.[28] While the sanctions seemed to be effective in supporting democratic elections and encouraging the long overdue departure of Joseph Kibala,[29] the impact on Gertler and the allegedly corrupt, underlying network surrounding him is more questionable and it highlights the importance of effective application and enforcement of sanctions.

Investigative research revealed that Gertler may have been able to evade these sanctions and continues to operate in DRC's mining sector. Gertler has possibly taken advantage of his connections to the political elite and an international money laundering network reaching from the DRC to Europe and Israel to move millions abroad and retain his business in the country.[30] Another blow to the sanctions regime came in January 2021, when US President Trump responded to an appeal by Gertler's lobbyists and eased restrictions on Gertler that had been initially imposed in 2017, five days before leaving office. While Gertler still remains on the US government's Specially Designated Nationals list under the Magnitsky Act, he can now conduct transactions in US dollars with US companies, banks and citizens, for one year.[31]

While far from perfect, there are indications that the Global Magnitsky Act creates pressure for international businesses to be more proactive in investigating their clients and partners with human rights and kleptocracy issues in mind in order to avoid the risk of future issues with sanctions.[32] Even though some multinational companies that allegedly worked with Gertler were slow to act, Congo's largest gold operator Randgold said it would stop providing services to Gertler's gold mining company shortly after the sanctions were imposed.[33]

EUROPEAN UNION

In addition to criminal law instruments, the EU can and has used foreign policy in response to being used by kleptocrats as safe haven for their dirty money. While the EU has been imposing sanctions under its Common Foreign and Security Policy (CFSP) for decades,[34] their application on alleged kleptocratic leaders of ousted regimes in Tunisia, Egypt and later Ukraine in the 2010s was framed as an issue of political commitment and credibility[35] and represented a novel approach.[36]

Unlike other EU sanctions that are traditionally imposed in response to human rights breaches and aim to change the behaviour of sanctioned individuals, the so-called misappropriation sanctions were specifically imposed with asset recovery as their end goal. Besides the attempt to stabilise the situation and signal support for the new ruling elites in these countries, freezing the assets of the designees was done with a clear aim to prevent the flight of assets suspected to be stolen by the former rulers while they wait for trial and, therefore, making it possible to recover them once the situation has stabilised. This was the first time the EU had ordered a preventive account freeze, thus taking an approach similar to the one practised in Switzerland.[37]

These cases constitute the only instances in which sanctions have been applied to leaders after their ousting within the framework of European sanctions. An imposition of misappropriation sanctions by the EU constituted a new development, but it was applied only in three cases when the EU wanted to show support to the new post-Arab spring leaderships, and it is unlikely that they will be used again.[38]

What the misappropriation sanctions clearly demonstrated is that the investigation, seizure and the ultimate recovery of stolen assets was successful in only a handful of instances in each country where sanctions were applied over the past six to ten years. While a number of obstacles in the requesting states hampered asset recovery, the sanctions regime is facing a number of challenges itself, such as the high number of judicial challenges and a disconnect between the EU asset freeze and MLA cooperation, which is done at the national level.

When the EU started to consider the adoption of its own Magnitsky legislation, scholars and activists called for the reform of the legislative framework to allow for an easier recovery of stolen assets that would explicitly provide legal basis for EU confiscation and restitution, not only for freezing.[39] Unlike Switzerland, the EU currently has no common policy regarding foreign corruption or a common asset recovery policy.

In 2020, after a lengthy process, the EU adopted its Magnitsky-style legislation that allows it to target individuals accused of committing human rights violations.[40] The EU ignored calls to follow the United States example and the legislation left out the perpetrators of corruption from the scope of the regime.[41] This new regime will not replace any existing geographic sanctions regimes but, similarly to the US legislation, it will allow the imposition of financial sanctions and visa bans on human rights abusers from any country. These restrictions also apply to any entity owned or controlled by a sanctioned person and failure to comply with them is subject to penalties by individual Member States.[42]

As with previous EU sanctions, the identifying information and reasons why these persons were listed will be made public; however, no individual or entity has been sanctioned under this regime yet. The broader European asset-recovery legislative framework has not been amended further at the time of the adoption of this new regime, so even if kleptocrats might be sanctioned in the future

using the close link between corruption and human rights, EU Magnitsky designations will exist independently of any domestic criminal investigation.

OTHER COUNTRIES

Many other countries, especially those under the risk of money laundering, maintain their own sanction regimes. The UK has adopted a version of the Magnitsky law via amendment to its Sanctions and Anti-Money Laundering Act, and in 2020 froze assets and banned visas to individuals linked to the case of Sergei Magnitsky as well as the murder of Jamal Khashoggi.[43] Although its focus is on human rights perpetrators and not those involved in grand corruption, the UK government has pledged to further develop legislation linked to the Sanctions Act that would allow the sanctioning of officials on the basis of their corrupt practices.[44]

Canada soon followed the example of the United States and adopted its own Magnitsky-style legislation in 2017 – The Justice for Victims of Corrupt Foreign Officials Act. While the name of the legislation highlights designations due to corrupt practices, the Act allows Canada to impose asset freezes and prohibitions also against individuals who are responsible for or complicit in gross violations of human rights. Similar to other anti-corruption sanctions regimes, the law prohibits Canadian citizens and companies from dealing with any assets of or providing any services to a sanctioned individual anywhere in the world. Canada is also attempting to develop a special mechanism to seize assets that are frozen under this sanctions regime and to use these assets for the benefit of the victims of corruption and human rights violations. The Canadian courts would be able to decide whether to return the funds to the country of origin, donate them to a recognised NGO, or use them to assist a neighbouring country struggling with an influx of refugees.[45]

Another country that should adopt a Magnitsky-style legislation in the near future is Australia. Uniquely, the Australian regime might contain an independent expert oversight committee, which would make recommendations to the government on foreign individuals who should be sanctioned.[46]

EXPERIENCE WITH SANCTIONS AS A TOOL FOR ASSET RECOVERY: CASE STUDIES

In order to understand how have sanctions been used to fight corruption and advance asset recovery and how their role could further evolve in the future, we look at countries with a varied experience with sanctions. For this purpose, CiFAR conducted national research studies in four countries with limited sanctions experience: Kenya,[47] Mexico,[48] Moldova[49] and Mozambique.[50] The following section summarises the findings of each of these national studies. Moreover, we give a brief overview of the experience of Ukraine and Tunisia, which have experience with the EU and Swiss regimes directly aimed at supporting asset recovery.

KENYA

Kenya has been relatively successful in recent years in concluding modest asset recovery agreements and has shifted its strategy from purely pursuing corruption prosecutions and convictions to also tracing and locating the proceeds of corruption. Despite apparent challenges in the investigation, prosecution and conviction of grand corruption cases of a transnational nature, Kenyan authorities have undoubtedly made progress. Anti-corruption agencies seem to be operating more independently compared to the past and increasingly bring charges in high-profile corruption cases.

The UK, the EU and the US have sanctioned several Kenyan nationals and residents of Kenya on the grounds that they supported terrorism and corrupt conduct. The US Specially Designated Nationals and Blocked Persons (SDN) list includes 11 persons and organisational entities of Kenyan nationality or residing in Kenya, which are under US Magnitsky Act sanctions. Most individuals and entities are sanctioned for their alleged corrupt conduct in South Sudan.

The US Securities and Exchange Commission also charged the US-based Goodyear Tire & Rubber Company for violating the Foreign Corrupt Practices Act (FCPA) whose subsidiaries were alleged to have paid bribes to land tire sales in Kenya and Angola. The company settled the charges through a payment of $16 million but no compensation was paid to potential victims of corruption in Kenya.

Sanctions imposed by other countries, though, have been often portrayed within Kenya as politically motivated and designed to preserve geopolitical or business advantage. The use of Magnitsky-style, "smart" sanctions may present some advantages and opportunities in Kenya, especially in tackling past cases. Care needs to be taken, though, when imposing these international sanctions so that they primarily address cases where national progress is stalled. Extensive communication with a wide range of Kenyan stakeholders during the process is recommended.

MEXICO

Mexico has recently established several new legal frameworks aimed at improving the fight against corruption and the recovery of stolen assets, including the temporary disqualification of public officials and allowing for the extinction of domain. While Mexico has sufficient regulatory

frameworks for the location, seizure, and recovery of assets at the domestic and international levels, until now, the use of these laws has been sporadic and has only brought modest results.

Prosecution of transnational corruption originating in Mexico, including the seizure of assets, has taken place in the United States on a number of occasions; however, this has not yet translated into the return of capital to Mexico. Magnitsky legislation has broadened the scope of individuals who can be sanctioned in the US for corruption in Mexico; however, few Mexican designations have been made under the Global Magnitsky Act so far, and the FCPA and Kingpin Act have been more relevant for asset recovery to Mexico to date.

Although Magnitsky legislation encourages the engagement of civil society organizations in the designation process, the mechanisms for engagement and the types of evidence required are not well-known in Mexico. There was a proposal in the US Congress to focus Magnitsky legislation on facilitating the fight against corruption in Mexico specifically; however, Bill HR5369 "Supporting Mexico Against Corruption Act" did not receive a vote during the legislative term of the previous Congress.

MOLDOVA

The Billion Dollar Bank Theft, through which $1 billion was stolen from the country in 2014, brought about economic crisis and severely damaged Moldova's image and credibility. Despite pressure from the public and the international community, Moldovan authorities have failed to bring any substantial results in the investigation of the alleged financial crimes, recovering the stolen assets, and punishing those responsible.

The withdrawal of financial assistance by the IMF, World Bank, and EU to the country in response to the theft did not produce any meaningful change in the way the authorities responded. On the contrary, the EU's freezing of aid was often exploited by governing politicians, thus feeding anti-EU sentiment within the society.

The implementation of a number of international sanctions regimes were advocated for to aid Moldova in its fight against kleptocracy. This included civil society campaigning for the introduction of a Global Magnitsky Act in Moldova itself, and the imposition of Magnitsky-style sanctions against Moldovan kleptocrats by the EU and the US. To date, however, only a visa ban was applied on a former politician Vladimir Plahotniuc, allegedly linked to the Billion Dollar Bank Theft, by the US Department of State. This measure has been deemed insufficient by local civil society.

MOZAMBIQUE

The Government of Mozambique and its international partners have been struggling to locate and repatriate the assets stolen in the Hidden-Debt scandal in 2016 which brought the country to economic collapse. As a consequence, 14 leading development partners suspended direct budget support, leaving a gap in public spending. The government, development partners and some CSOs turned their attention to asset recovery instead of corruption investigations and prosecutions, which were considered politically sensitive and ineffectual.

Despite a number of challenges, Mozambique has made some progress in recent years in developing a legal and institutional anti-corruption framework, especially regarding asset recovery. However, there have been no significant cooperation agreements signed related to confiscation and asset recovery. The national courts must validate foreign court decisions in criminal matters, including confiscation.

There are sanctions imposed on some

individuals related to organised drug crime activities. Some global environmental organisations, fuelled by the corruption of local law enforcement and environmental agencies, urged the US Government to impose international trade sanctions against Mozambique for failing to prevent the illegal trade in wildlife, but no sanctions in relation to corruption allegations have been imposed so far.

Sanctions by international partners are considered useful in sending a clear message that impunity cannot be tolerated and exerting pressure for long-term reform. The anti-corruption objective, which any current sanctions related to Mozambique should support, is to block the repayment and nullify the fraudulently acquired state loans.

UKRAINE

After the government brutally clamped down on public protests of the so-called Revolution of Dignity in 2014 that eventually ousted Yanukovych's kleptocratic regime, Switzerland and the EU reacted by imposing sanctions on the political elite in the form of asset freezes. The United States also issued a series of executive orders in 2014 imposing sanctions on individuals linked to violence in Ukraine – most of them from Russia – with misappropriation of Ukrainian state assets stated as one the reasons for their impositions. The sanctions were also applied on the former Ukrainian presidential chief of staff Viktor Medvedchuk and former President of Ukraine Viktor Yanukovych.[51] There is no publicly available information as to whether any assets were identified on the US territory linked to these persons.

The wealth embezzled by the former President Yanukovych and his allies has been estimated to be worth as much as $37 billion.[52] Ukraine's prosecutor's office reportedly identified $15 billion worth of assets misappropriated by former senior officials, most of which are in Austria, Switzerland, Cyprus, Latvia, the United Kingdom, Liechtenstein, and Italy.[53] Under Ukrainian law, assets can only be confiscated if an official has been convicted of an economic crime, and such conviction is also often needed to move an international case forward. From the identified assets, only a small fraction has been frozen and, importantly, no assets linked to these sanctions have been successfully returned to Ukraine due to challenges faced by Ukraine as well as by sanctioning countries.

TUNISIA

Protests in Tunisia sparked the Arab Spring uprising that responded to oppressive kleptocratic regimes and poor economic situations in a number of countries. To signal support with the revolutionary movements which were widely reported in the media and to aid the recovery of assets embezzled by the regime, Switzerland and the EU froze assets belonging to the Tunisian political elite. The United States did not impose any sanctions on a number of Arab Spring countries, including Tunisia. The only exceptions were Libya and Syria, where UN-led sanctions were aimed at supporting a transition to democratic systems.[54]

Despite some initial success in recovering assets linked to the ousted family and associates of President Ben Ali, the Tunisian authorities have failed to compile the information necessary for Swiss authorities in part due to political will and instability in Tunisia, which has experienced nine governments since the revolution.[55] Confiscation judgments proving the illicit origin of the assets in Switzerland or settlement agreements approved by the Tunisian judicial authorities are required for a larger-scale restitution of the assets in this case.

After reaching its statutory maximum duration of ten years, the Federal Council's freezing order in the case of Tunisian

designees expired in January 2021. Even though most of the assets frozen are still located in Switzerland and have not been returned, the end of the freezing order does not mean that the assets in question will be released; the vast majority of the assets frozen were subject also to a second level of freezing by authorities involved in mutual legal assistance. Therefore, even after the expiration of the first level of freezing, the vast majority of the assets linked to the former Tunisian regime will remain frozen under mutual legal assistance proceedings between the countries.[56]

EGYPT

Over a period of 30 years, former Egyptian President Hosni Mubarak, his family and close circle of advisers are alleged to have enriched themselves through partnerships in Egyptian companies, profiting from their political power. While the illicit nature of the alleged activity makes it difficult to determine a precise figure, some estimates peg Mubarak's family fortune to be worth between $40 and $70 billion.[57] Following the Egyptian revolution in 2011, Switzerland and the EU imposed freezing orders on Mubarak, his family members and several high-profile officials.

Some assets linked to Mubarak were found and frozen in the UK; however, cooperation was marred by challenges which resulted in a lawsuit by Egyptian authorities against the UK for slow progress in the asset recovery efforts. Preceding this were revelations that assets of luxury houses and companies registered in central London were not frozen by the UK and one of the sanctions designees was even able to set up a UK-based business, all in breach with the EU sanctions regulation.[58]

While Spain froze a number of assets including luxury properties in Madrid and south of Spain, luxury cars and €28 million in cash and financial investments,[59] most of the funds allegedly misappropriated and hidden abroad by the Mubarak clan – around $664 million – were found and frozen in Swiss banks.[60] Even though a small part of the frozen assets were returned to Egypt,[61] Swiss authorities ceased mutual legal efforts with Egyptian authorities at the end of 2017.

In 2015, Egypt passed a reconciliation law that offered immunity from prosecution to listed individuals if they restore funds subject to freeze after the revolutionary changes to the state. As a part of this law, Egypt dropped criminal proceedings in the most prominent cases with possible links to assets frozen in Switzerland, and Switzerland released about CHF 180 million back to Egypt.[62]

OPPORTUNITIES & CHALLENGES

OPPORTUNITIES AND CHALLENGES IN USING SANCTIONS AS A TOOL FOR ASSET RECOVERY

The following section looks in more detail at the opportunities and challenges that emerge from the experiences of countries described in the previous section in the use of anti-corruption sanctions – commonly consisting of visa bans and asset freezes – on foreign, politically exposed persons allegedly involved in the misappropriation of public funds. A better understanding of the relationship between sanctions and asset recovery is particularly important as more countries integrate anti-corruption sanctions into their legislation and adopt new regimes, such as the Magnitsky laws.

OPPORTUNITIES

1. FAST FREEZING OF ASSETS IS ESSENTIAL FOR ASSET RECOVERY TO SUCCEED

When considered a part of the asset recovery process, sanctions that freeze assets enable governments to proactively prevent suspected corrupt officials from removing assets from their jurisdiction before receiving an initial request from the country where the crime occurred. Acting quickly on identified assets makes it difficult for designees to transfer and hide the assets in longer procedures and increases the chances of a successful recovery.

» By 2017, misappropriation sanctions and asset freezing ordinances imposed on Tunisia by the European Union and Switzerland, respectively, led to several successful recoveries. A plane owned by Ben Ali's son-in-law was seized and returned from France in 2011. Two yachts were also recovered from Italy and Spain early on in the investigations.[63] Switzerland froze CHF 60 million belonging to the former President Ben Ali and his extended family. Following an MLA, Switzerland returned part of the assets in two small instalments – $256,383.96 in 2016 and €3.5 million in 2017.[64] Switzerland also reportedly seized and returned an airplane.

» Oleksiy Azarov gifted his petrol stations network Sparschweingas in Germany together with properties in Austria and Italy to his friend Kostyantin Pivovarov one day after the violent government action against Maidan protesters in Ukraine and a few days before the EU imposed sanctions on him.[65]

2. SANCTIONS CAN ENCOURAGE THE ESTABLISHMENT OF AN EFFECTIVE ASSET RECOVERY FRAMEWORK

The imposition of sanctions places asset recovery in the spotlight and thus can encourage countries in transition to establish a strong asset recovery framework that will be useful in cases to which the sanctions pertain and in any future recovery, as well as acting as a deterrent to future theft.

» Even though Tunisia's asset recovery efforts were initially hindered by the lack of experience and resources resulting in "the indiscriminate use of mutual legal assistance requests and the insufficient use of informal channels for requesting assistance,"[66] it has been more successful in its asset recovery efforts in comparison

with other Arab Spring countries like Libya and Egypt. The support of the international community, especially that of the Stolen Asset Recovery Initiative (StAR) and the United Nations Interregional Crime and Justice Research Institute (UNICRI), has been deemed crucial for Tunisia's success in the repatriation of stolen assets.[67] With the help of its partners, Tunisia set up a special committee for the recovery of stolen assets aimed at both domestic and international strategic planning, leadership, and cooperation. The committee was indispensable for the exchange of information between national agencies as well as coordinating criminal investigations and representation of Tunisia as a civil party in criminal proceedings initiated in France and Switzerland.[68] After several years of inaction, the Tunisian president recently recreated a commission tasked with recovering money from abroad.[69]

» To aid anti-corruption reforms after the revolution, Ukraine set up the new National Anti-Corruption Bureau (NABU) and Asset Recovery and Management Agency (ARMA) to help aid asset recovery, an attempt at which had failed in the past in the case of former Prime Minister Pavlo Lazarenko.[70] While no international asset recovery case was completed during the seven years of Ukrainian sanctions, continuous collaboration between Switzerland and Ukraine has been raising expectations for a successful asset recovery in the upcoming years. After supporting a number of capacity-building activities of law enforcement agencies in Ukraine, Switzerland signed a Memorandum of Understanding with Ukraine's Office of the Prosecutor General and NABU in July 2020, with hopes that it will "fast-track the return of the stolen money to Ukraine".[71]

3. SANCTIONS CAN HELP DOMESTIC INVESTIGATIONS AND SPUR DOMESTIC REFORM

The use of targeted financial sanctions freezing assets and applying visa bans has been growing worldwide. They are being used also by countries whose citizens are subject to sanctions, and the imposition of sanctions by countries of origin can be seen as a positive tool also in countries of destination.

» Ukraine passed a legislation allowing the government to impose sanctions on individuals and entities involved in terrorist activities in 2014. It amended and expanded this in 2019, allowing Ukraine to list a number of individuals and entities linked to the Russian military aggression and aligning its designations with restrictions against Russia imposed by the EU, Canada and the US.[72]

» Moldovan civil society advocated for the introduction of a Global Magnitsky Act in the Moldovan legislation. A number of scandals demonstrated how regional criminal groups misuse Moldovan banks for the purpose of money laundering and transferring billions of dollars from the Russian Federation to offshore jurisdictions. Moldovan bank Banca de Economii is also known for its involvement in the transfer of funds from tax refund schemes uncovered by Sergei Magnitsky. It is believed that a Magnitsky law in Moldova could help to punish individuals and entities implicated in major corruption scandals. A draft law has been proposed to the parliament in 2018 and the

parliamentary election campaign in 2019, but it faced opposition and did not pass.[73]

4. SANCTIONS COULD ADVANCE CASES WHERE NATIONAL INVESTIGATIONS HAVE STALLED

The existence of sanctions applied outside of the country of origin can encourage domestic prosecution services to take action on a case, either due to the new evidence that these sanctions bring to light or the political pressure these sanctions cause domestically. Moreover, sanctions could provide an increase in technical assistance and, perhaps, political space to investigate grand corruption charges and track criminally acquired assets linked to the case. Strengthening national law enforcement and supporting independent judiciary is key for countries' ability to deal with large cases of cross-border corruption effectively.

- The Government of Mozambique and its international partners have been struggling to locate and repatriate the assets stolen in the Hidden-Debt scandal in 2016 that completely ruined the country's economy. Reports indicate that challenges in bringing prosecutions forward were somewhat reduced due to investigations taking place outside the country.[74] Further, interviews with local practitioners show that "some sort of international action is necessary" and that sanctions by international partners, including secondary sanctions on international business entities implicated in domestic corruption scandals, may be useful in sending a clear message that impunity cannot be tolerated and exerting pressure for long-term reform.
- Similarly, despite pressure from the public and the international community, Moldovan authorities have failed to bring any substantial results in the investigation of the alleged financial scandals, recovering the stolen assets, and punishing those responsible. International assistance in the form of sanctions sought to remedy this situation and was considered useful for putting pressure on domestic authorities. However, the imposition of sanctions has been unsuccessful so far.[75]

CHALLENGES

1. THE IMPOSITION OF SANCTIONS DŒS NOT MEAN AN INVESTIGATION HAS BEGUN

Sanctions only freeze assets and do not lead necessarily to investigations. The imposition of sanctions may, however, reduce the necessity for law enforcement to begin investigations as they convey the impression that cases are in progress.

- The Tunisian government cooperated on a number of investigations with the EU members states, but they did not lead to the recovery of assets. For example, the Tunisian government communicated with Germany regarding real estate near Frankfurt that was allegedly used and owned by Ben Ali's sister. However, investigations in Germany were closed due to a lack of evidence on the criminal origin of the assets. CiFAR's investigation into assets connected to the Ben Ali family in Germany showed that, at the end of 2018, only €13,920.30 was frozen in German bank accounts under the Tunisian sanctions regime. Although experts assume that there are more unidentified assets connected to Ben Ali that are invested in Germany,[76] investigations are lacking.
- In a similar manner, German investigators tried to prove the real owners behind the petrol stations

network Sparschweingas in Germany, which is linked to the oligarch Serhiy Kurchenko and Oleksiy Azarov, the son of Yanukovych's prime minister, Mykola Azarov. However, their ownership was not direct but hidden via shell companies in the Netherlands, Austria and a number of tax havens. In the meantime, the European Union had delisted Azarov due to the lack of evidence of his funds having criminal origins. The petrol station business was still active as of 2019 but is now owned by Kurchenko's friend Kostyantin Pivovarov via an Austrian company.[77] Until today, no EU Member State has successfully recovered any assets linked to Yanukovych's regime.

2. LISTED INDIVIDUALS CAN BE REMOVED WITHOUT A TANGIBLE RESULT

Due to the lack of progress in investigations and the high-profile legal teams often employed by designated persons to bring challenges to sanctions in the courts, it is possible for listed individuals suspected of being involved in grand corruption to have their assets unfrozen before any conviction, thereby undoing the work of sanctioning these individuals in the first place.

- The European Union was quick to act during the Euromaidan crises and sanctioned 22 persons by March 2014. However, the designations were heavily challenged in court and only 10 persons are left on the blacklist today.[78] For example, due to the lack of proof of embezzlement presented by Ukrainian authorities, the EU lifted the sanctions on the businessman and politician Yuriy Ivaniuschenko, one of Yanukovych's closest allies, thus releasing the freeze on tens of millions of US dollars.[79]
- Switzerland was the first to impose sanctions on Ukrainian officials and to start a number of money laundering investigations linked to them. The initial amount of frozen assets in bank accounts linked to Viktor Yanukovich and other sanctioned individuals was reported to be around $193.34 million.[80] Approximately $72 million remained frozen in 2020, less than half of the originally frozen assets.[81] The drop in the amount of frozen assets mirrors the decrease in the number of individuals on the sanction list – from 29 to 11 individuals.[82]

3. CHALLENGE TO ESTABLISH CRIMINAL CONVICTION IN TRANSITIONING COUNTRIES

Sanctions are supposed to be applied only for a limited timeframe, but asset recovery is a lengthy process that takes years and requires well-functioning law enforcement agencies and independent judiciary. In some cases, and particularly in countries in transition, there is a risk that sanctions regimes will last far longer than envisaged, with resultant costs, when countries of destination impose sanctions without opening investigations and wait for investigations to begin in the countries of origin.

- The Ukrainian Prosecutor General's Office (PGO) has experienced continuous challenges in investigating Yanukovych's financial crimes; several Prosecutors General appointed after 2014 resigned, a number of reform attempts of the prosecutor's office failed, and none of the investigations has yet led to a conviction.[83] The issue does not lie only in the activities of the PGO, however; there are reports of unreasonable rejections of applications by the public prosecutor's office for access to bank documents abroad or for account freezes by Ukrainian judges.[84] Attempts to reform Ukraine's judicial system continue

to be challenged, and after the constitutional court threatened anti-corruption reform, the country is facing a constitutional court crisis.[85] Ukraine clearly faces a number of internal challenges linked to the unreformed judiciary and law enforcement agencies from the Yanukovych era, which make it difficult for any investigations of corruption to lead to a criminal conviction. Other countries analysed here faced similar situations.

4. THE POLITICAL INFLUENCE OF SANCTIONED INDIVIDUALS CAN UNDERMINE THE EFFECTIVENESS OF SANCTIONS

In some cases, anti-corruption sanctions have relied heavily on the political processes of the countries of origin, which can be particularly challenging when transitions are still ongoing and former regime members can have influence. The removal of sanctions on the basis of requests from transitional governments, therefore, could undermine anti-corruption efforts.

- In the case of Tunisia, there was a decision to remove Ben Ali's son-in-law, Mohammed Marouen Mabrouk from the EU sanction list, following a request from the Tunisian Ministry of Foreign Affairs.[86] Local civil society has alleged that the Tunisian Prime Minister at the time misused his position to benefit his new political party few months before the presidential and parliamentary elections, while corruption investigations linked to Mabrouk were still ongoing.[87]

5. LACK OF TRANSPARENCY LINKED TO SANCTIONS DESIGNATIONS AND DE-LISTINGS

A consistent criticism made by civil society on the imposition of sanctions in anti-corruption cases has been the lack of transparency around adding and removing individuals from sanction lists, and particularly, the lack of civil society input into these lists.

- The US has been criticised by the Kenyan Government and civil society for not disclosing any specific evidence as to why the ex-Attorney General was sanctioned with a visa ban. The US Embassy in Kenya issued only a general statement that this move would aid Kenya's anti-corruption effort. The Law Society of Kenya (LSK) pointed out that Kenyan authorities can do nothing to react to these sanctions unless there is a complaint filed with Kenyan authorities, such as the LSK disciplinary committee. Civil society organisations were also unsure about how to react to the case.[88]
- Experience from Mexico shows that the coordination between the US and Mexican authorities within the framework of the Global Magnitsky Act can be successful. Several Mexican individuals were designated due to their involvement in corruption and human rights violations, and their bank accounts and properties in the United States were frozen and they became ineligible to receive US visas. The designation of Roberto Sandoval Castañeda, former governor of the State of Nayarit, was based on acts of corruption and accepting bribes from organized criminal groups and made in May 2019 after two previous unsuccessful requests by civil society to sanction Mexican nationals.[89] However, while the Magnitsky framework in the US provides guidelines around which individuals will be considered for the sanctions, decisions about who is sanctioned and why are not substantiated in any detail.

CONCLUSIONS

CONCLUSIONS

Domestic anti-corruption actors are frustrated by the limited tools they have to tackle high levels of corruption that permeate all sectors of society and subsequent state capture. In such cases, the countries of destination, who have an obligation to help, can do so, for example, by deploying responsive mechanisms of pressure, such as sanctions.

These kinds of sanctions are varied. In some cases, they are applied only to instances of ousted regimes, such as in the case of Swiss administrative regime and EU misappropriation sanctions, while the Global Magnitsky Act in the US and similar versions in other countries can react to specific politically exposed persons and political elites still in power.

Because of the unique national circumstances in each country of origin, their experience following these sanctions is also very diverse. However, there are some common challenges and opportunities that we identified and that can support improvement of sanctions frameworks in the future.

While the listing of corrupt individuals is only powerful to the extent to which it negatively impacts the surrounding kleptocratic networks, freezing the assets of suspected individuals proves to be important in constraining the actions and power of kleptocrats, if not completely disarming them. Sanctions are both an important signifier of action against corrupt individuals and a way to prevent them from hiding any corruptly acquired wealth, giving investigating authorities time and space to build their cases.

However, sanctions are too often seen as an end point in the process; once imposed, investigations stall in the countries of origin and do not begin in the countries of destination. This leads to dissatisfaction on all sides and can lead to individuals' assets being unfrozen before any conviction is accomplished, as is the case in Egypt, Tunisia and Ukraine.

To be effective, anti-corruption sanction regimes need to have greater ties to processes of recovery of those assets, with their imposition linked to proactive obligations on law enforcement in countries of destination to work on asset recovery with their colleagues in the countries of origin. More transparency is also needed around the process to enable greater public understanding and buy-in to the imposition of sanctions and the needed next steps in the asset recovery process.

Historically, the word sanction carries a negative connotation. The analysed anti-corruption sanctions are effectively a specific subset of sanctions – asset freezes. As such, their primary purpose is not to follow the trade or political interest of sanctioning countries but to prevent future theft of assets. Different terminology adopted by the international community, such as pre-emptive asset freezes, might help emphasise this recent change in the use of sanctions and rid them of negative biases.

RECOMMENDATIONS

A number of countries are currently considering the adoption of the Magnitsky-style legislation that would sanction persons suspected of grand corruption. In order for the sanctions to maximise their impact on successful asset recovery proceedings, there are several recommendations that governments should consider.

1) Include asset recovery provisions into anti-corruption sanctions regimes

While all the sanctions regimes analysed aim to help prevent misappropriation of state assets, only some have a specific legislative framework linked to the sanctions that address also the confiscation and repatriation of assets after they have been frozen. New laws should also include obligations for authorities to engage in investigations and cooperation with the purpose of repatriating stolen assets subject to sanctions.

If criminal investigations are unlikely to bring any results in personal convictions or recovering assets, an innovative way to work around this would be to support countries of origin to bring non-conviction-based forfeiture claims around sanctioned assets, where such laws exist. Another way would be to empower tax authorities to seize undeclared assets through administrative proceedings and bring about parallel criminal proceedings on sanctioned individuals.

2) Develop transparent designation criteria and apply sanctions consistently

The effectiveness of sanctions can be undermined by their inconsistent and selective application. A lack of clarity and poor communication about why sanctions were imposed in particular cases (and not others) can make designation decisions appear political and unsubstantiated. An approach that is sensitive to questions of national sovereignty should provide as much background information on designations in the remits of possible ongoing investigations.

3) Use sanctions as part of a broader anti-corruption and asset recovery strategy

Sanctions regimes analysed seem to be particularly effective in supporting asset recovery and addressing corruption and democratisation in general when they are linked to a broader strategy in the sanctioning and to the country of origin. Effort should be taken to support countries of origin, especially those without asset recovery offices and adequate frameworks, by providing technical and financial resources to set up an effective asset recovery and strengthening the rule of law in a way that is sensitive to the political context.

4) Working with civil society throughout the duration of sanctions

The inclusion of civil society can be beneficial not only in sharing the evidence of corrupt practices to assist investigations, but also in recommending and in discussing the reasons for designations. Moreover, the imposition of international freezing orders and sanctions is often accompanied by sensational coverage of the amount of assets that could likely be recovered. Because international asset recovery processes are extremely complex and can often take anywhere from five to ten years to complete, it is vital to manage public expectations about how much money can be recovered. Working with civil society around sanctions can be important in achieving this.

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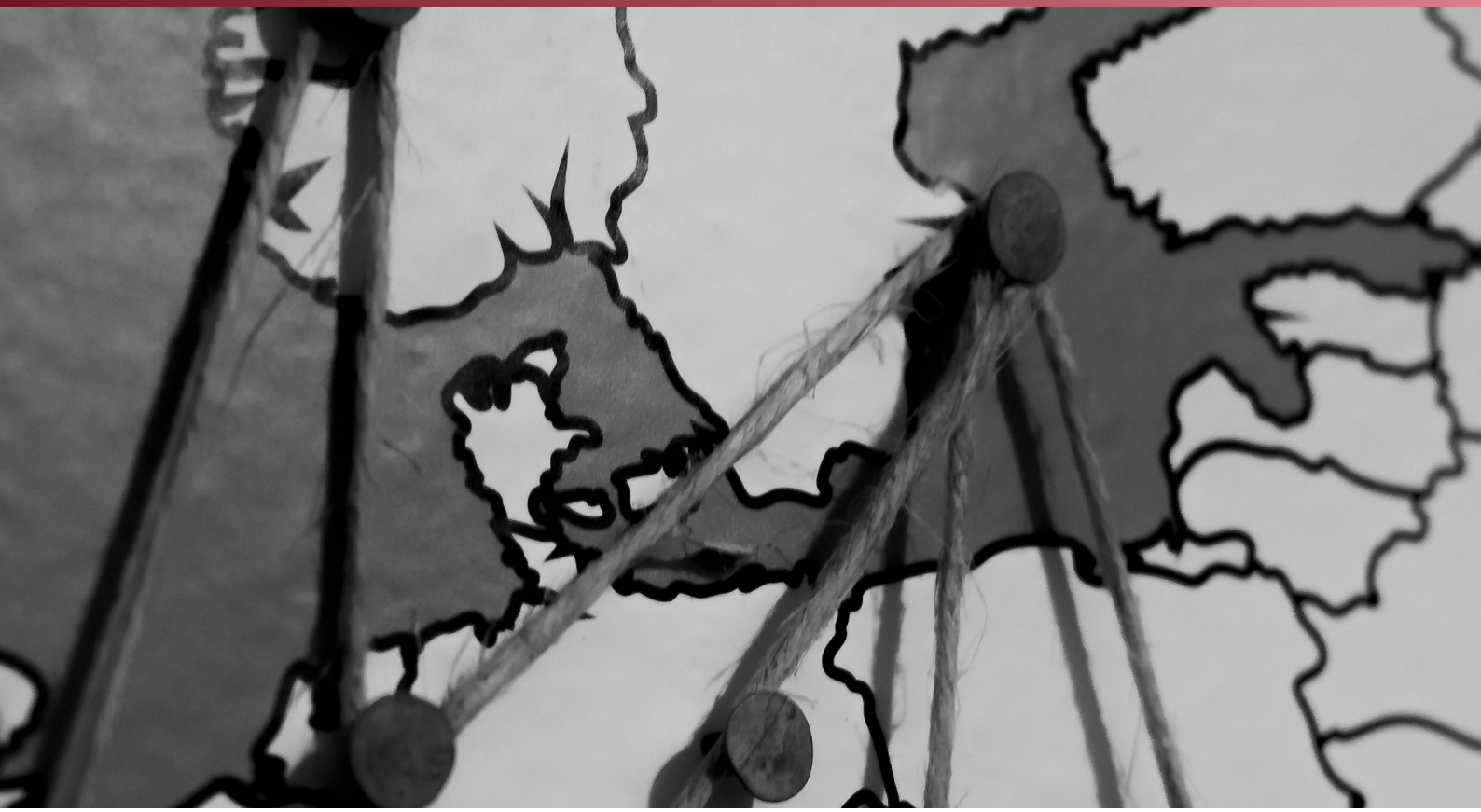

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