Image not found or type unknown

France’s New Asset Recovery Bill Is an Important Step Toward Achieving Victim Compensation

Mat Tromme

This comment piece was first published in the Global Anti-Corruption Blog (GAB) - see here.

Where asset recovery is concerned, France is probably best known for the conviction of Teodorin Obiang—the Vice President of Equatorial Guinea and son of the President—for money laundering (the first time that a French court has convicted a serving senior official of a foreign government), which resulted in the court ordering the forfeiture of some of Obiang's assets, worth around USD 150 million. The decision is still under appeal, and the next hearing is scheduled for December 2019. But even if the conviction and associated forfeiture order are upheld, under existing French law those assets will go to the French state. (It is unclear whether other plaintiffs who can also establish a valid claim on the assets could also benefit from them in any way.) The forfeited funds will not go to the true victims of Obiang's corruption—the people of Equatorial Guinea.

> Some countries and commentators argue that in cases of grand corruption like this, the forfeited assets should go back to the country from which the funds were stolen.

There are obviously a number of moral and practical questions coming out of this, not least the fact that the French state keeps the looted assets, as French courts remarked. Some countries and commentators argue that in cases of grand corruption like this, the forfeited assets should go back to the country from which the funds were stolen. But in the Obiang case, it would seem nonsensical to suggest that the forfeited assets be transferred to the government of Equatorial Guinea, as that would be tantamount to returning those assets to the Obiang family itself. The challenge, which many have struggled with, is how to return assets to a country in a way that benefits the victim populations when the country's government is controlled by a kleptocratic political elite and where there is no rule of law. Related to this, it also raises questions about who ought to be considered the victim (the state, or the population?), and, if the latter, how to go about making appropriate compensation.

Some countries and commentators argue that in cases of grand corruption like this, the forfeited assets should go back to the country from which the funds were stolen. This, it also raises questions about who ought to be considered the victim (the state, or the population?), and, if the latter, how to go about making appropriate compensation.

Earlier this month, the French Senate agreed on a new asset forfeiture bill that would address this problem by amending existing law so that when a French court orders the forfeiture of the illicit assets of a foreign public official or other politically exposed person (PEP), those assets, rather than being forfeited to the State, would instead go into a special fund that seeks to improve living standards of victim populations, improve the rule of law, and fight against corruption in the country where the offenses took place. (The state would, however, be able to retain a portion of the assets, up to a specified limit, to cover the costs of bringing the case in the first place.) Under the proposed bill, assets would be forfeited to the French state only in those cases where it is "absolutely impossible" to return the assets to the victim populations. The bill also calls for greater "transparency, accountability, efficiency, solidarity, and integrity " in the asset return process, principles that civil society had actively pushed for.

Of course, a great many details would still need to be worked out as the bill makes its way through the lower house of the French parliament (the Assemblée Nationale), especially as it's not altogether straightforward to figure out how best to ensure that the seized funds will benefit the victim populations. The discussions at the Committee level in the Senate evince a preference for channeling forfeited funds through Overseas Development Assistance (ODA) on a case by case basis. But many of the practicalities still need attention, and French legislators have instructed the Conseil d'Etat (a body that provides legal advice to the government and doubles as a supreme court for administrative matters) to advise on the practical implementation of orders to return assets to victim populations. (When the Conseil d'Etat does so, this will itself be an important decision, one that the anticorruption should pay close attention to.)

And there are some other difficulties too, which Senators and their officials have openly acknowledged . As it currently stands, the French Criminal Procedure Code says that the return of assets requires the agreement of the requesting state (which, as discussed above, may not happen where a country is very corrupt), and so the Code will likely need amendments.Moreover, the offenses that would trigger asset forfeitures under the proposed bill are limited to concealment and laundering the proceeds of all crimes, though the Committee report also recognizes there may be difficulties with including any crime within the scope of offenses that can lead to forfeiture. Finally, though the bill focuses on assets seized from PEPs, that term is not actually fully defined in French law.

Despite these concerns, the bill is a significant step in the right direction, and a good illustration of how civil society organizations can inform and influence the asset return process (Transparency International France played a key role in encouraging the Senate to table the Bill, and CSOs and governments are also coming together to address the difficult questions that cases like these raise with respect to victim compensation.) Indeed, civil society involvement will be crucial to ensuring that the law is adopted by the Assemblée Nationale and implemented in a transparent way.

URL: https://binghamcentre.biicl.org/comments/6/frances-new-asset-recovery-bill-is-an-important-step-toward-achieving-victim-compensation

© 2024 BIICL | A company limited by guarantee | Registered in England No. 615025 | Registered Charity No. 209425