

Toward a Meaningful “Common African Position on Asset Recovery”

Mat Tromme

It's no secret that kleptocratic rulers in Africa have robbed their countries of substantial assets that could have otherwise been used to promote development and social welfare. Indeed, the amounts are often staggering: [\\$16 billion](#) reportedly stolen by former Libyan President Gaddafi; [\\$1 billion](#) by Gambia's ex-President Jammeh; billions by former Congolese President Kabila; and the list goes on. Recently, Nigeria's Economic and Financial Crime Commission [suggested](#) that up to \$50 billion has been looted from Africa, and whether or not particular estimate is accurate, there's little doubt the problem is serious. More troubling is the fact that only a [small proportion](#) of these stolen assets have been recovered and repatriated to the country of origin.

As part of the effort to address the challenges of asset recovery—and to give African states more clout in negotiating the terms and conditions of asset return with the states that initially seize the stolen loot—African countries are currently undertaking an effort to develop a "Common African Position on Asset Recovery" (CAPAR). Incidentally, a common african position was the chosen theme of this year's African Union [Anti-corruption day](#). At this early stage, it seems likely that this effort will result only in a political proclamation (perhaps within the framework of this month's UN General Assembly), one that will re-emphasize the importance of the speedy and unconditional return of assets, and call for better collaboration across countries. That's a good start, but not enough! Developing a pan-African position on asset recovery—perhaps similar to the multilateral framework adopted by the [Mercosur](#) countries and by [the EU](#) —is a worthwhile endeavor, one that will likely produce tangible benefits only if it goes beyond mere statements of intent or general principles, and lays out some concrete steps to translate the vision into reality.

Ideally, CAPAR should seek to streamline policies and resources devoted to recovering assets and developing better investigative and prosecutorial capacity across African states, for example by implementing cross-border investigations and fostering collaboration, experience and information-sharing between countries. There are various ways to achieve this broad objective:

- *First*, CAPAR should aim to draw on good practices at the country level and spread them throughout the continent. For example, CAPAR could institutionalize a system in which whistleblowers are compensated with a proportion of the assets recovered, as is the practice in Nigeria, or could promote something like Kenya's Alternative Dispute Resolution (ADR) system for asset recovery, which has [allegedly](#) been used by the authorities to recover \$27 million in four months alone. ADR systems avoid lengthy court proceedings, which may be particularly useful in countries with cumbersome court procedures, (though, let's be honest, ADR systems have downsides as well.) Kenya has recently signed a bilateral agreement with Jersey and Switzerland, which should facilitate asset recovery, so CAPAR should also consider drawing on and replicating these sort of agreements.
- *Second*, CAPAR could improve the mutual legal assistance (MLA) process for cross-border asset recovery cases. The current MLA process in Africa is beset by both legal and practical obstacles (see, for example, [here](#) and [here](#)). As Eliud Wabukala, chairman of Kenya's Ethics and Anti-Corruption Commission (EACC) recently argued, developing a better MLA framework will improve information gathering and exchange, and improve law enforcement efforts more generally. CAPAR could add value by providing a

more homogenous interpretation of some legal principles that are sometimes invoked to refuse MLA requests. It could further provide guidance on how to better enforce foreign judgments in Africa, clarify how an MLA request can be appealed, and so forth. Finally, CAPAR could also require governments to publish basic statistics on the MLA requests they received or requested, and how they were handled—data that at the moment is sorely lacking.

- *Third*, CAPAR could help develop a common framework for addressing sensitive questions related to how recovered assets will be disposed of. Such questions include those related to allocating recovered assets among multiple countries when more than one has a plausible claim to the assets in question. The Mercosur countries have just struck a [deal](#) which clearly outlines how the decision to share the assets will be taken, and CAPAR could adopt a similar approach. Relatedly, given the salience of calls for victim compensation—and ongoing discussions over how victims should be defined and identified, and whether recovered assets should sometimes be transferred directly to individual victims rather than national governments—CAPAR should provide clear guidelines on these issues. And while CAPAR is likely to adhere to the widespread view in Africa that stolen assets should be returned by asset-holding states without conditions, CAPAR could also take a position on whether those returned assets should go into the consolidated budget of a given state or the African Union, or if assets should go towards a separate account, with some sort of additional safeguards or provisions governing how that money is to be used and shared among countries (even where governance standards among them differ). Crucially, and where relevant, CAPAR will also need to clarify conditions for sharing repatriated assets among countries.

- *Fourth*, CAPAR should formalize certain measures to improve the accountability and transparency of asset recovery. As per [the GFAR principles](#), this means that CAPAR should provide ways for involving civil society throughout the asset recovery process, including in negotiations over how the funds will be tracked and used in practice once returned.

Of course, implementing these ideas will not be easy and edges onto the aspirational. First and foremost, asset recovery is a highly politically-charged issue, so even among countries that share similar interests and background, finding compromises may be difficult. Thus, the diversity among African states, and the fact that their interests and capacities may diverge substantially on asset recovery issues, is an important challenge (some countries, like Nigeria, South Africa, Kenya, have a lot more experience than others in investigating, prosecuting and securing the return of assets). Sustaining momentum is [another challenge](#).

Yet these challenges should be addressed. Africa doesn't need yet another general political declaration. Or put it differently, it needs to ensure that this declaration actually gets translated into practice. CAPAR's true potential lies in the possibility of developing a genuine multilateral asset recovery framework, one that would have a meaningful impact on the recovery of ill-gotten assets in Africa.

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