

## **Synthesis and recommendations**

**Stolen assets are revolting to most people and that is fortunate** because the fortune certain heads of state make on the back of their population is indefensible. This wealth is indecent when compared with the great misery of the common. For the thirty dictators of which we here present the inventory, we estimate the amounts of stolen assets between \$105 and \$180 billion. At the top of this shameful ranking are: Saddam Hussein (Iraq), the Shah of Iran, Suharto (Indonesia), Houphouet-Boigny (Cote d'Ivoire) and Marcos (Philippines). For certain countries, the drain was massive: the wealth of \$5 to \$6 billion made by Mobutu is more than a hundred times what the Democratic Republic of Congo's government spends on health in a country in which life expectancy does not reach 42 years!

Stolen assets destroy democracy and development by erecting a model based on greed, illegality and lies. They often have dictatorship, bribery and repression as corollary. They impose corruption as the key to political and economic success, ruining the hopes of democratization in the bravest citizens.

**Stolen assets can also reinforce pre-conceptions; however for the wrong reasons.** The Western world has an image of a corrupt developing world and it makes them feel better to have it confirmed. The position of moral lessons giver is so convenient. The handling by the media of the Bongo and Sassou Nguesso affairs should not be exempted from criticism.

**Certain people will want to stick to the condemnation of kleptocrat leaders. They will miss the point.** What can appear shocking to the reader of our study is not the volume of assets hijacked. Others have presented much bigger estimates in the past – a cost of \$20 to \$40 billion for developing countries, according to the World Bank and the United Nations. What hurts is that despite repeated promises of wars on bribery, **only 1 to 4% of all hijacked assets have been returned to the deprived populations.**

The judicial framework has been reinforced (Chapter II) with the adoption in 2003 of the United Nations Convention Against Corruption – known as the Merida Convention, which came into force in December 2005 and makes the restitution of stolen assets a key principle of international law. In 2007, the World Bank launched an initiative called "StAR" for the recovery of illicit assets.

Today, despite civil society mobilization (Chapter V), the outcome remains pathetic. Our study goes over the initiated legal proceedings against more than twenty countries, of which ten have been successfully completed (Chapter I). Only \$4.4 billion in assets has been returned and \$2.7 billion frozen. Ironically, the rare returned funds were restituted by Switzerland during the past 12 years including the Marcos (Philippines), Abacha (Nigeria) or Lazarenko (Ukraine) funds. The United States has restituted funds for Iraq and Peru. France, which sometimes introduces itself as the spokesman of the developing world, has barely moved and when it did, not always to accelerate the procedures.

**Why such a big discrepancy between developed countries' publicly expressed ambitions and the trivial percentage of returned funds?** This is the central question developed in this report.

## **1. Restitution, an obstacle course**

For deprived people, the recovering of stolen assets is a challenge (Chapter III). It is a lost cause if the political regime concerned is still in power since the victim state is in charge of initiating legal procedures. Once the judicial cooperation demand is submitted to the country suspected to shelter the stolen assets, the goodwill of the solicited administration is still required: France has rejected a Nigerian demand written in English, England refuses to cooperate if no evidence regarding the funds can be found on its territory (!); Switzerland will not try to identify bank accounts under false names; Liechtenstein has about fifteen administrative and judicial ways to appeal which prolongs the procedure; certain countries never reply. It can take 17 years to successfully complete a demand as was the case for Marcos' assets in Switzerland! These difficulties corroborate the sad admission of failure expressed by the signatories of the 1996 "Appel de Genève": there are no more frontiers to money-laundering, but for the judicial system, there is.

Complaints ruled reasonable in Paris and in Spain in May 2009 may however mark historic judicial progress. First, these complaints have been filed against heads of states at the time they were in power: Teodoro Obiang Nguema in Equatorial Guinea (sole suspect in front of the Spanish courts), Omar Bongo in Gabon and Denis Sassou Nguesso in Congo-Brazzaville. Second, only civil society complaints have been ruled receivable, pending in France on the confirmation of the Court of Appeal. No doubt that such judicial procedures start to frighten corrupt leaders who thought they could, *ad vitam aeternam*, enjoy with impunity their loot in foreign countries.

## **2. Fiscal and judicial havens protect economic criminality**

Is it by chance if the words "Liechtenstein", "Monaco", "Cayman Islands" and "Jersey" are quoted twenty times in this report? If "Luxembourg" appears 37 times and "Switzerland" (for good and less good reasons) 467 times? Most fiscal havens are also judicial paradises. By guaranteeing opacity, they minimize the hopes of someday recovering the stolen billions:

- They make the identification of the stolen assets very difficult because bank secrecy and multiple judicial vehicles (trusts, anstalts, foundations, etc.) facilitate the ability of criminals and their agents to hide the true owner of the funds and to recycle the stolen money in the licit economy (laundering).
- They enable the quick transfer of tracked (or susceptible to be tracked) assets into safe locations. In Switzerland, Moussa Traoré's \$2 billion worth of assets that Mali expected to find had been transferred. Only \$2.4 million was seized.

And yet these fiscal and judicial havens only exist with the agreement of the international finance centers. Half of them are situated in Great Britain; the State of Delaware in the United

States has every criteria of a fiscal haven; Europe shelters about twenty and France tolerates at its doors the presence of Andorra and Monaco. Moreover, their clients do not operate from the Bahamas or Gibraltar but from Paris, London or New York.

### **3. Western countries and companies are accomplices of the developing countries' looting.**

By seizing and restituting the ill-gotten assets placed in their territory, the rich countries would lose a few billion of cash. Moreover, it would expose the complacent welcome they offer to dictators. With the exception of Switzerland, keen to change its reputation as a tyrant sanctuary, most countries try to avoid such revelations (Chapter IV). These revelations would highlight the darkest pages of the Western world support to some of the biggest criminals of the twentieth century, including Suharto, Saddam Hussein, Mobutu, Pinochet, Charles Taylor and Milosevic. These exposures would also give us a different perspective on the debt some peoples have inherited, for example, Indonesians, Iraqis and Congolese, without having ever seen a dime of the corresponding amounts. Finally, these revelations would risk damaging the economic and diplomatic profits that multinational corporations and certain countries continue to gain from their support to accommodating dictators.

How does one explain the consideration granted by France to Bongo and Sassou Nguesso, despite the obvious corruption and repression in Gabon and Congo-Brazzaville any other way?

## **Recommendations to the French government and the European Union**

### **1. Dismantle fiscal and judicial havens and impose judicial cooperation**

- Instead of taking on specific tax haven problems one at a time (tax evasion, financial instability or money-laundering), take a broader approach. For this purpose, a black list including all the different types of risks involved should be created.
- Sanction the users of fiscal and judicial havens and intermediaries.
- Forbid banks to open subsidiaries in or accept funds coming from establishments set up in the countries or territories refusing international judicial cooperation.
- Obtain from the FAFT the annual publication of judicial cooperation refusals.

### **2. Obtain the prompt ratification of the Merida Convention and guarantee its application**

- Add to the European ratification engagement a sanctions mechanism for non compliance to the directives and a requirement that they watch over the compliance of off-shore territories.

- Create a mechanism to regularly follow the application of the Merida Convention and make the conclusions public.
- Develop in each rich country, like the G8 committed to do in 2004, a rule book explaining how to formulate judicial cooperation demands.

### **3. Build a European justice system**

- Guarantee effective judicial independence, in each European country, in particular regarding the power to open investigations in cases of economic and financial delinquency.
- Set up a European prosecution court.
- Establish a European record of judicial entities and trusts enabling the authorities to know the beneficiaries and managers in order to get rid of shell corporations.
- Create a bank account file, like the French FICOBA, in every member state and guarantee free access to those files to other countries' fiscal, judicial and customs administration.

### **4. Facilitate the seizure and restitution of stolen assets**

- Lift diplomatic, parliamentary and judicial immunity from the beginning of the investigation in cases of economic and financial criminality.
- Authorize the freeze and the preliminary seizure of funds based on political decisions before the opening of judicial procedures.
- Invert the burden of proof as long as a sufficient indication of the illicit funds' origin exists.
- Protect witnesses and finance their travel to the hearings.
- Authorize the restitution of assets even if the procedure in the deprived country has not been successfully completed.

### **5. Strengthen repression towards economic and financial criminality**

- Create an international tribunal in charge of economic and financial criminality.
- Put in place within the United Nations Office on Drugs and Crime (UNODC), an international investigation bureau to support illicit stolen assets enquiries.
- Strengthen sentences, ensure their enforcement and systematize investigations of banks, financial intermediaries and beneficiaries in cases of money laundering

### **6. Encourage Civil Society efforts**

- Support civil society demands in developing countries against high level corruption and financial criminal impunity by providing financial support and protection to key actors.

- Grant to civil society the possibility to file a suite with the UNODC which will, after investigation, invite the member states to take preliminary seizure measures and sanctions.
- Systematically associate civil society organizations in deprived countries with the creation and follow-up of restitution procedures.

## **7. Drive international economic actors forward to transparency**

- Modify international accounting norms in order to obtain from each corporation a country-by-country reporting of their activities, profits and revenues paid to the government in each country where they operate.
- For now, refuse certification to companies listed on the stock market which refuses to declare, in their consolidated accounts, revenues on a country-by-country basis. Such minimal transparency requests are necessary without any delay in the extracting industries.
- Make parent corporations and their leadership criminally responsible in corruption matters in which a subsidiary is suspected, in countries that do not want or cannot pursue these infractions.

## **8. France needs to lead the way**

- **Seizure of all stolen assets under French jurisdiction**  
The CCFD-Terre Solidaire, echoing some two hundred African civil society organizations aspiring to a different relationship between France and Africa, expects a strong political move from the French government to demonstrate that it is engaged in the matter: the preliminary seizure of all assets under its jurisdiction possessed by notoriously authoritarian and corrupted heads of states. These leaders should justify in front of a court the licit origin of their wealth.
- **Debt audit**  
We also call on the Parliament to set up an enquiry commission to audit the debt that developing countries contractually owe to France and determine the legitimacy of such debt by taking into consideration the assets stolen by former regimes to which France loaned money.