



A Roadmap for the Return of Assets Stolen from the People of Uzbekistan

Introduction

Europe and North America are critical links in the transnational chains that organise, execute and conceal grand corruption in Central Asia. The freezing and seizure of assets stolen from the people of Uzbekistan by 'the office', a criminal syndicate headed by Gulnara Karimova, represents a landmark moment in the international struggle against corruption.

Assets tied to this criminal syndicate have been frozen in Switzerland, Belgium, Ireland, Luxembourg, France, and the United Kingdom. These legal procedures are at different stages in the asset recovery process.

The forthcoming return of different tranches of seized assets will take place against a governance terrain where grand corruption, and the denial of civil and political rights remain systemic challenges in Uzbekistan. Set against this backdrop it is critical that an especially rigorous and inclusive framework is developed for the return process if it is to conform with the best practices set out in established international asset return benchmarks¹; the legal requirements of international human rights law and anti-corruption law²; the international standards concerning public procurement³; and the terms of specific asset return

¹ See GFAR *Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases*; Transparency International France, *Handbook for Responsible Asset Repatriation – Good Practices and Indicators to Measure the Transparency, Accountability and Inclusiveness of Asset Restitution Processes (forthcoming)*; UNCAC Coalition, *Civil Society Statement for the Global Forum on Asset Recovery*; Transparency International France, *Civil Society Principles for Accountable Asset Return*; United Nations Human Rights Office of the High Commissioner, *Draft OHCHR Recommended Principles on Human Rights and Asset Recovery*; Addis Ababa Action Agenda on Financing for Development; The Africa Network for Environment and Economic Justice, *Tackling Poverty with Recovered Assets: The Mantra Model*; . See also Swiss Federal Department of Foreign Affairs, *Stratégie de la Suisse concernant le blocage, la confiscation et la restitution des avoirs de potentats (« Asset Recovery »)*; François Membrez and Matthieu Hösli, *How To Return Stolen Assets: The Swiss Policy Pathway*.

² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR); United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (UNCAC). See also Organization for Economic Cooperation and Development (OECD) Istanbul Anti-Corruption Action Plan.

³ UNCAC Art. 9 (public procurement and management of public finances); United Nations Commission on International Trade (UNCITRAL) *Model Law on Procurement of Goods, Construction and Services* (2011); OECD, *Recommendation of the Council on Public Procurement C(2015)2*; OECD, *Recommendation on Fighting Bid Rigging in Public Procurement C(2012)115*..

agreements, such as the one signed by the Governments of Switzerland and Uzbekistan on 11 September 2020.⁴

To assist in building such a framework, the Uzbek Asset Return Network has drafted an asset return roadmap following consultation with its members, which includes CSOs from Uzbek and international civil society.⁵ It provides a unified framework that can help to ensure all the tranches of stolen assets returned to Uzbekistan from the asset holding countries form part of a common approach, that will ensure consistency, rigour and international best practice.

⁴ Government of Uzbekistan and Swiss Federal Council *Memorandum of Understanding on the Framework for the Restitution of Illegally Acquired Assets Forfeited in Switzerland to the Benefit of the Population of the Republic of Uzbekistan*. See also *Agreement Among the Government of the Federal Republic of Nigeria and the Bailiwick of Jersey and the Government of the United States of America Regarding the Sharing, Transfer, Repatriation, Disposition, and Management of Certain Forfeited Assets*.

⁵ This document reflects the sources referenced in footnotes 1-4, as well as the joint submission to the Special Session of the General Assembly (UNGASS) against corruption by Africa Network for Environment and Economic Justice (ANEEJ), Civil Forum for Asset Recovery e.V. (CiFAR), Civil Society Legislative Advocacy Centre (CISLAC Nigeria), Human Rights Watch, I Watch (Tunisia), the International State Crime Initiative, and Transparency International EU.

I. State-to-State Negotiations of the Restitution Terms

1. Action: Ensure the rigour and legitimacy of the asset return framework through a transparent, inclusive design process that is open, well documented, affords substantive opportunity for feedback from national and international civil society and demonstrates a commitment to international law and international benchmarks of good practice including but not limited to the GFAR principles, UNCAC, and UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁶

Specific Actions

1.1 Publication of a media release at the start of the negotiation process setting out the timeline for negotiations and the anticipated agreements which will be produced through the negotiation process.

1.2 Publish on a dedicated webpage all relevant documents pertaining to the negotiation process including draft agreements, associated briefs/information memorandums, meeting schedules, meeting minutes, and other documents prepared for, or as a result of the negotiation process. Ensure all key documents are available in Uzbek and Russian.

1.3 Provide the public with information on the contact points for the state parties responsible for the negotiation process, and give them a mandate to respond to public queries and meet with stakeholders.

1.4 Conduct a systematic national survey in Uzbekistan that obtains a representative sample of the national population, in order to collate public opinion on how the stolen funds should be spent to repair the harm generated by grand corruption.

1.5 In addition to programmes that can address the harm suffered by victims of corruption, the restitution process should earmark some portion of the returned funds for supporting the prevention of corruption, a programme addressing in this case the drivers and facilitators of corruption at senior political levels.

1.6 Initiate an open public consultation on the draft restitution agreement, with data from the national survey outlined in 1.4 made available to respondents, with opportunities for written and oral feedback from the public, both in Uzbekistan and internationally. Where the restitution agreement proposes one or more programmes of expenditure, the draft should include the rationale for the programme, the intermediate and final aims of the programme, the measurable social outcomes aimed for, and the indicators of success that will be employed. All written submissions and oral submissions by respondents should be published

⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Doc A/RES/40/34 (29 November 1985). See also ICCPR Art. 19(2) (concerning the right to seek, receive and impart information) and Art. 25(a) (concerning the right to take part in the conduct of public affairs).

on the dedicated webpage unless given *in camera*, and a written report issued which summarises the feedback and how this will be incorporated into the final agreement.

1.7 Establish a civil society working group for the drafting of the restitution agreement, and its finalisation following public consultation, which includes three independent CSOs from the origin country (Uzbekistan), two independent CSOs from the asset-holding country, and one international CSO with a strong track-record in the areas of responsible asset return, anti-corruption and human rights.

1.8 Publication of the final restitution agreement on the dedicated website, which: (a) defines the intermediate and final goals of the programmes of expenditure which form part of the asset restitution process, including their rationale as a mechanism for addressing the harm suffered by victims of corruption; (b) sets out the agencies and organisations responsible for implementing the asset return, detailing their respective roles; (c) sets out the agencies and organisations responsible for oversight and safeguarding of the returned funds (see section 3), including a rigorous framework for budget oversight, open and competitive tenders, and the depositing of all financial/procurement information on a dedicated webpage for the return process; (d) identifies contact points for implementing agencies and oversight agencies; (e) establishes an independent complaints process and mechanism for raising concerns over irregularities or shortcomings in the return process, with a clear and transparent methodology for hearing and acting on complaints; (f) establishes an auditing process for accounts and expenditures, including through investigative financial audits and social audits; (g) sets out a clear framework on transparency, which maximises the information available to the public on how the returned money is spent, the recipients of the expenditures, all relevant tender/contract information, outcome reports, impact assessments, and audits; (h) clearly sets out the responsibilities allocated to the state parties to ensure the integrity of the return process.

1.9 Engage an experienced anti-corruption organisation to conduct a detailed risk-assessment of the agreement and implementing mechanisms. The assessment should be publicly available on the dedicated webpage along with additional mitigation measures that will be taken to safeguard against the risks identified.

II. Disbursement and the Allocation of Funds

2. Action: Uphold the integrity of the asset return process by ensuring funds are distributed in a transparent, rigorous and inclusive manner, that delivers the social outcomes and goals addressed in the restitution agreement, whilst ensuring finances are apportioned in a manner that meets international benchmarks for best public finance practice, including through a robust complaints procedure.⁷

Specific Actions

2.1 Utilise the dedicated webpage noted in 1.2 for publishing all information regarding the returned assets, and the programmes of expenditure they are allocated to. The programmes of expenditure should contain clear and accessible information on their aims, anticipated social outcomes, and performance indicators. A CSO working group (see 1.7, 2.6) should be empowered to review and provide feedback on programme aims, outcomes, and metrics.

2.2 Where specific projects are established to operationalise the programme, which involve the selection of organisations and individuals to conduct the project; or, where there is a need to contract from the private sector goods and services, the dedicated website must contain in a timely manner all information regarding the selection process, including for example, tender documents, selection criteria, minutes of award committee meetings, applicants selected, contracts issued and audits of expenditure (see sections 2.4 and 3).

2.3 All private sector organisations bidding for projects or contracts should provide declarations of their beneficial owners, senior management, and any conflicts of interest, and this should be made available on the dedicated website. Where the organisations are NGOs or charitable organisations, information should be provided on their senior management, board and sources of funding, which will be made available on the public website.

2.4 All tenders and projects calls should meet international benchmarks for best practice including transparency of information (call for bids, with transparent selection criteria and open selection process), bids and award decisions; transparency of public spending; evaluation of suppliers' performance; promotion of the participation of small and medium-sized enterprises; determination of ethical standards applicable to public procurement officers and suppliers; publication of a summary report on the submitted projects, the rationale for choosing the selected projects, the objectives pursued, their implementation schedule and follow-up and monitoring procedures. Specific efforts should be taken to ensure no one involved in 'the office' benefits directly from the returned funds.

2.5 There should be clear identification of all the actors involved in the selection and implementation of funded projects, including, within each of the States involved, the authorities responsible for the disbursement and allocation of funds. There should be the

⁷ See e.g., UNCAC Art. 9; UNCITRAL *Model Law on Procurement of Goods, Construction and Services* (2011); OECD, *Recommendation of the Council on Public Procurement* C(2015)2; OECD, *Recommendation on Fighting Bid Rigging in Public Procurement* C(2012)115. See also United Nations Office on Drugs and Crime (UNODC) *Guidebook on Anti-corruption in Public Procurement and the Management of Public Finances: Good practices in ensuring compliance with Article 9 of the United Nations Convention against Corruption* (UNODC 2013)

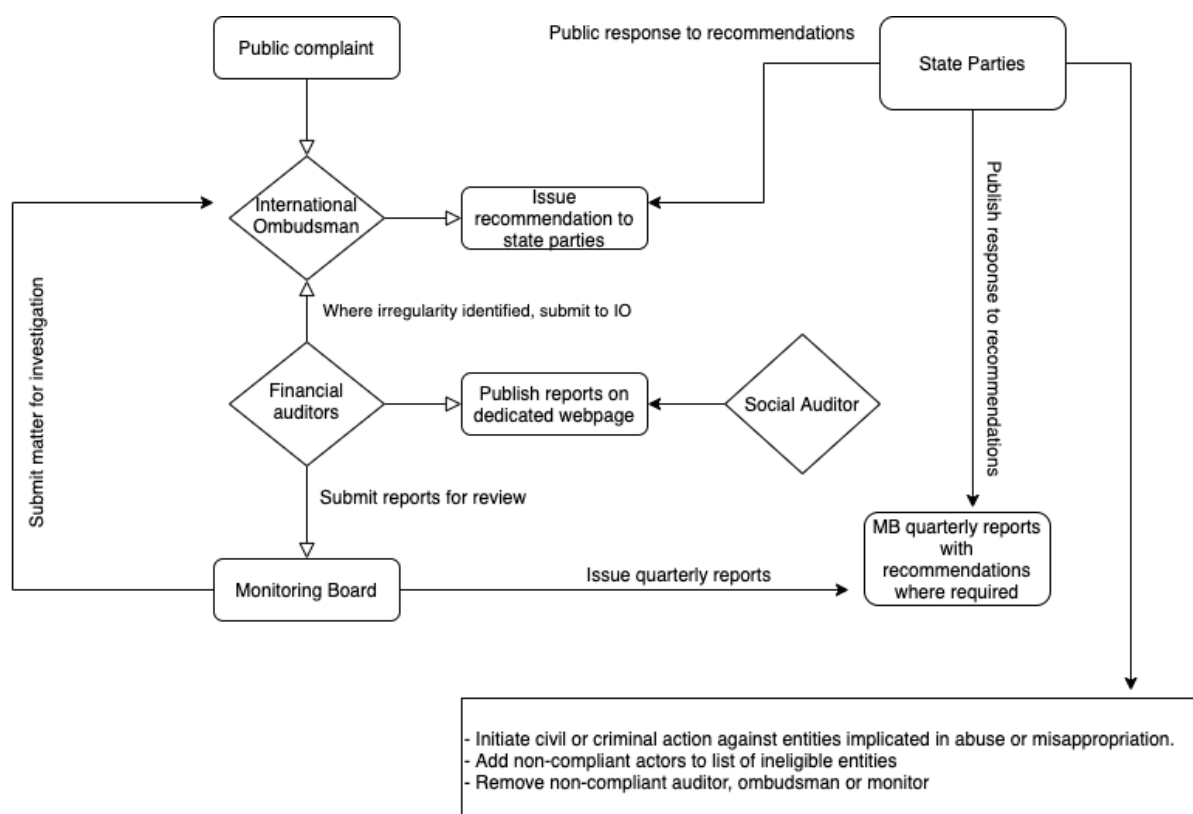
designation of contact points within the different authorities involved. The responsible authorities should report on project progress on a regular basis, according to a schedule determined in advance.

2.6 A portion of the returned funds should be allocated to enable CSOs of the origin country (Uzbekistan) and of the asset holding country to participate in an ongoing basis in the monitoring of the implementation of selected projects via a civil society working group (see 1.7).

2.7 An independent, international ombudsman should be selected, agreeable to both State parties, CSO working group, and Monitoring Board (see 3.3), who can receive and arbitrate complaints lodged by the public, contractors, auditors, the Monitoring Board, or project participants regarding any irregularity or abuse of process. The Independent Ombudsman should have powers to obtain documents, and interview people, in order to make a determination of fact and make public recommendations to State parties published on the dedicated website. The Ombudsman should also have the power to suspend a programme while an investigation is conducted if the prima facie evidence indicates a serious abuse of process or funds. The state parties should issue a public response to the Ombudsman recommendations, explaining how the recommendations will be responded to, a timeline for the response, and the authorities mandated for the delivery of this response.

III. Monitoring and Return Process

3. Action: Uphold public confidence in the asset return process, and buttress national and international standards for good governance, by implementing a triangulated process for monitoring the return process, which draws on the public, auditors, a diverse board of national/international experts, and an international ombudsman, to ensure rigorous oversight through monitoring and where required investigation of irregularities, with a proactive programme for detecting these irregularities and remedying them in partnership with the states parties.⁸



Specific Actions

3.1 To enhance public disclosure and the safeguarding of returned assets, it is critical that there is independent, impartial, and rigorous financial and social auditing of expenditure. The states parties in consultation with the CSO working group, should select international financial auditors of high standing to conduct investigative audits to ensure that all money has met international benchmarks with regard to tender, selection, financial accounting, and transparency procedures (including declaration of beneficial owners). In order to protect the actual and perceived impartiality and rigour of these financial audits it is important the auditor is not licensed by either state party or a commercial client of either state party, and who as a result may face a conflict of interest. Social audits should also be conducted of the programmes of expenditure, using the publicly agreed social indicators and aims, to evaluate

⁸ See e.g., International Organization of Supreme Audit Institutions (INTOSAI) Guidance on Audit of Institutional Framework for Fighting Corruption (2017).

performance. Reports from the financial and social auditors should be provided immediately upon submission of final interim and end of project reports. All information regarding the selection of financial and social auditors should be published on the dedicated website. Contact points for the financial and social auditors should be provided to the public. Reporting should be done on an annual basis.

3.2 A Monitoring Board should be set up to provide independent oversight of the return process. It is critical for safeguarding purposes, and public legitimacy purposes, that the Monitoring Board is seen to be independent, impartial, and populated by individuals of high standing with a mixture of expertise. In particular, it is proposed that there is a political representative from the Government of the asset holding state and the Government of Uzbekistan, 1 x representative from the asset holding state's audit office, 1 x representative from the Uzbek Anti-Corruption Agency, 1 CSO member from Uzbekistan, 1 CSO member from asset holding state, 1 jurist member of high standing from Uzbekistan, 1 international jurist member of high standing with a background in oversight of public expenditure, 1 national academic expert in the area of anti-corruption from Uzbekistan, 1 international academic expert in the area of anti-corruption, 1 national investigative journalist from Uzbekistan, 1 international investigative journalist. The Monitoring Board should convene on a quarterly basis, and review all documentation relating to the returned assets and their expenditure. The Monitoring Board should be empowered to suspend a programme of expenditure if there is prima facie evidence of abuse, while the matter is referred to the International Ombudsman who will report back to the Monitoring Board with investigation findings, and draft recommendations, which will be finalised in agreement with the Monitoring Board. The CSO, academic, jurist, and journalist representatives should be selected through an open call, with transparent selection criteria. Information should be published on the applicants, the appointed applicants, and the rationale for the decision. The Monitoring Board Agenda, Minutes, Papers and associated documents should be published in a timely manner on the dedicated webpage.

3.3 Where evidence is uncovered in audits, ombudsman investigations, or independent investigations conducted by civil society, indicating abuse of funds or other forms of impropriety, criminal and civil mechanisms should be applied to sanction the individual/organisation and recover the money. Where the abuse is not in breach of criminal law, but is in breach of civil law, the contract should be cancelled, and the contractor placed on list of ineligible entities for a period commensurate with the offence, with the lifting of sanctions depending on redress of bad practice.

3.4 Where the financial and social auditing bodies, ombudsman or monitoring board or monitoring board members fail to meet reporting requirements or monitoring duties, their remuneration should be reduced, or in the case of serious abuse the contract cancelled, and a new organisation/individual appointed.

3.5 As a complement to the structures set out in 3.1-3.4, Uzbek civil society, the national/international media, and international civil society, are important additional sites of oversight that can help to detect any irregularities and report evidence of abuse or misuse of funds. Therefore, it is vital that all information pertaining to the returned assets, set out in section 2, is uploaded in a timely manner in an open data format, onto the dedicated public webpage.

I. State-to-State Negotiation of the Restitution Terms	II. Disbursement and Allocation of Funds
The public (via consultation)	The public (via full disclosure)
CSO Working Group	CSO Working Group
Uzbekistan Public (via national survey)	International Ombudsman
	International financial auditor
	Social auditor
	Monitoring Board

Table 1: Accountability and inclusivity framework

Signatories

Organisations

Uzbek Forum for Human Rights
Central Asia Due Diligence
UzInvestigations
Transparency International Ireland
Transparency International France
Transparency International EU
Waeber Avocats
SHERPA
Civil Forum for Asset Recovery
International State Crime Initiative

Individuals

Dilmira Matyakubova, PhD Researcher, University of Ulster
Farida Sharifulina, civil society activist
Timur Karpov, journalist
Muzaffar Suleymanov, civil society activist
Alisher Toksanov, political scientist
Azimbay Ataniyazov, civil society activist
Shahida Tulyaganova, journalist
Murat Ubbiniyazov, civil society activist
Kudrat Babajanov, journalist
Ulugbek Ashur, journalist