Role of Parliamentarians in Asset Recovery

ACINET IV, Beirut
16 April 2013
GOPAC

• A worldwide alliance of parliamentarians, working together to combat corruption, strengthen good government, and uphold the rule of law.

• Original research, global anti-corruption capacity building, and international peer support.
53 National Chapters, 6 Regions
Arab Region Parliamentarians Against Corruption

• 11 National Chapters
  – Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Morocco, Palestine, Tunisia, and Yemen.

• Significant Achievements
  – Supporting Arab Parliamentary Code of Conduct
  – Enhancing transparency in political financing
  – Implementation and review of UNCAC
  – Resource oversight (Iraq), Access to info (Yemen)
6 Global Task Forces

• Anti-Money Laundering
• Parliamentary Ethics and Conduct
• Parliamentary Oversight
• Participation of Society
• United Nations Convention Against Corruption
• Women in Parliament Network
Scale of Illicit Flight of Assets

- $1 trillion in bribes per year (World Bank)
- $2.1 trillion of assets illegally moved across borders (UNODC)
- $3.1 trillion lost through tax havens and other evasion (Tax Justice Network)
- $5 billion in stolen assets have been returned over 15 years (Stolen Asset Recovery Initiative)
2015 Millennium Development Goals

• $0.481 trillion
  – eradicate extreme hunger and poverty
  – universal primary education
  – reduce child mortality by two-thirds
  – reduce maternal mortality by three-quarters
  – halt the spread of HIV and malaria
  – halve the proportion of people without access to clean water and sanitation
  – promote gender equality in schools and the workforce
Imperatives in the Arab Region

• Post-revolution states tend to be impoverished
• A fragile new domestic order must be supported by a sense of justice
• The international dominoes must resume falling
A Typical Money Laundering Scheme

**Placement**
- Collection of Dirty Money
- Purchase of Luxury Assets, Financial Investments, Commercial/Industrial Investments

**Layering**
- Dirty Money Integrates into the Financial System
- Transfer on the Bank Account of Company “X”
- Payment by “Y” of False Invoices to Company “X”
- Loan to Company “Y”

**Integration**
- Offshore Bank
- Wire Transfer

Akaash Maharaj
United Nations Convention Against Corruption

- Article 14: Measures to prevent money-laundering
- Article 23: Laundering of proceeds of crime
- Article 53: Measures for direct recovery of property
- Article 54: Mechanisms for recovery of property through international cooperation in confiscation
- Article 57: Return and disposal of assets
- Article 58: Financial Intelligence Unit
States Seeking Recovery - Prevention

• Ratify the UN Convention Against Corruption
• Create a strong domestic anti-money laundering regime
• Institute comprehensive regulatory and supervisory regimes for financial institutions
• Punitive fines above “cost of doing business”
• Asset declarations by senior government figures
• End impunity, restrict statutes of limitation
States Seeking Recovery – Planning

• Planning for success is critical
• Create a legal framework for receipt and management of assets prior to their return
• Communicate clearly to public about the level and use of funds
States Seeking Recovery - Pursuit

- Inter-agency co-ordination for investigation and prosecution
- Financial Intelligence Unit to collect and analyse information related to money-laundering
- Recruitment of contingency-based forensic investigation is an option
- Domestic legislation and international diplomacy to avoid flight of identified assets, obtain investigatory assistance, set mutual legal assistance request
States Seeking Recovery - Claim

• Multiple legal approaches
  – Proceeds of crime, civil action, non-conviction based action
  – Punish the guilty, or aid the victims?

• Enforcement
  – Mutual legal assistance requests
  – Role of international agencies in reassuring third party jurisdictions, in case of post-conflict states
Nations at Large – Public Policy

• Full implementation of UNCAC Article 57
• Create a positive responsibility on financial institutions to identify beneficial ownership
• Create a positive responsibility by financial institutions to disclose to regulators, regulators to partner states
• Administrative seizure or restraint powers
Nations at Large – Legal Framework

• Mutual recognition of confiscation orders / ownership claims by other states’ courts
• Enable rapid restraint of assets prior to a request for mutual legal assistance
• Non-conviction based asset confiscation, esp where the accused refuses to face justice
• Permit states to bring civil cases for seizure
• Onus to prove legitimate ownership
• Spontaneous disclosure requirements
International Law

• Grand Corruption
  – a crime of pillage, in violation of customary international law
  – a crime against humanity, in violation of peremptory norms

• International Prosecution
  – International Criminal Court or Special Courts
  – Application of Universal Jurisdiction
  – Status of criminals as *hostis humani generis*
Akaash Maharaj, Executive Director

GOPAC Global Secretariat
904 - 255 Albert Street
Ottawa, Ontario  K1P 6A9
Canada

akaash.maharaj@gopacnetwork.org