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# World Bank Oversight of Asset Return:

*Lacking Clear Vision?*

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# Abstract

The international community has repeatedly recognized the importance of the return of stolen assets, particularly to support sustainable development in receiving States. In several instances, governments have turned to the World Bank to facilitate and supervise the return of recovered assets. Five case studies of World Bank facilitation and oversight of asset return were reviewed and analyzed. The case studies show that the rationale for seeking World Bank involvement in asset return is flawed; there are gaps in the Bank's ability to prevent corruption in asset return projects; and CSOs face barriers—which are sometimes insurmountable—to independent and intensive monitoring of World Bank-facilitated asset return projects. The paper recommends that future asset return projects prioritize building the capacity of receiving States and incentivizing reforms to strengthen the rule of law, national anti-corruption law and mechanisms, and the enabling environment for civil society (particularly freedom of association, assembly, and expression). Capacity building would create a foundation for sustainable asset return that can occur without support from an external facilitator, and with monitoring and oversight provided by independent civil society organizations.

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# Table of Contents

<b>Executive Summary</b> .....	<b>4</b>
<b>Introduction</b> .....	<b>7</b>
<b>Chapter 1: The World Bank’s Approach to Facilitating Asset Return: Five Case Studies</b> .....	<b>8</b>
Case Study #1: Abacha I (Nigeria, 1999-2006) .....	9
Case Study #2: Kazakhstan I (2007 – 2014) .....	11
Case Study #3: Kazakhstan II (2012 – present) .....	13
Case Study #4: Abacha II (Nigeria, 2017 - present) .....	15
Case Study #5: Kyrgyzstan (2019 – present) .....	17
<b>Trends in World Bank Facilitation and Oversight</b> .....	<b>18</b>
<b>Chapter 2: Flawed Rationale for the World Bank’s Oversight</b> .....	<b>19</b>
<b>Barriers to Ensuring Use of Assets for Public Benefit:     Relationship between the World Bank Project Staff and Implementing Agencies</b> .....	<b>19</b>
<b>Challenges in Conducting Independent Oversight:     Relationship between the World Bank and Member States</b> .....	<b>20</b>
<b>Lack of Competition for Supervision of Asset Return Projects</b> .....	<b>20</b>
<b>Chapter 3: Gaps in the World Bank’s Efforts to Prevent Corruption in Projects</b> .....	<b>21</b>
<b>Weak Corruption Risk Assessments and Mitigation Measures</b> .....	<b>21</b>
<b>Over-Reliance on Project-Level Grievance Redress Mechanisms</b> .....	<b>22</b>
<b>Limited Ability to Prevent the Awarding of Contracts to     Entities Associated with Corrupt and Autocratic Regimes</b> .....	<b>22</b>
<b>Chapter 4: Barriers to Effective, Independent External Monitoring of World Bank Projects Funded by Recovered Assets</b> .....	<b>23</b>
<b>Inconsistent Transparency that Stolen Assets     are Funding World Bank Projects</b> .....	<b>23</b>
<b>Insufficient Disclosure of Other Project Information</b> .....	<b>24</b>
<b>Additional Measures Needed to Ensure     Effective CSO Monitoring and Oversight</b> .....	<b>25</b>
<b>Conclusion</b> .....	<b>26</b>
<b>Recommendations</b> .....	<b>26</b>

# Executive Summary

The international community has repeatedly recognized the importance of the return of stolen assets, particularly to support sustainable development in receiving States. In several instances, governments have turned to the World Bank to facilitate the return of recovered assets. This report examines the World Bank's role in facilitating and overseeing the return of recovered assets to recipient countries. The paper focuses only on the World Bank's role in asset return, as distinct from the World Bank and the Stolen Asset Recovery Initiative (StAR)'s role in asset recovery.

The paper reviews five case studies of World Bank facilitation of asset return—two in Nigeria, two in Kazakhstan, and one in Kyrgyzstan. In Abacha I (Nigeria), the Bank acted as an external monitor for funds returned to a national budget. Civil society organizations characterized this approach as ineffective, citing evidence of corruption during the return process. In Kazakhstan I, the Bank facilitated an NGO modality of asset return, which CSOs regarded as mostly successful in delivering benefits to poor and marginalized communities. In the other three cases, recovered assets were used to expand or otherwise support pre-existing Bank-financed projects (Abacha II, Kyrgyzstan), and to support new Bank projects (the two projects funded by Kazakhstan II). The Bank is closely involved project design and oversight of project implementation in these three cases. However, in at least one case (a project funded by Kazakhstan II assets), CSOs critiqued the project's apparent non-compliance with Bank policies; indicators of corruption in the awarding of contracts and grants; and the financial support that the project provided to affiliates of the ruling regime.

Asset-holding governments seem to view the World Bank as well-placed to design and manage programs that will benefit the citizens—particularly poor citizens—of countries from which assets have been stolen. Governments also seem to view the World Bank as a cost-effective, neutral facilitator and independent monitor of project implementation that ensures recovered assets are properly managed during the return process. However, these rationales are flawed. Where corruption is endemic in a country, it is difficult for the World Bank to ensure that activities related to social issues such as promoting youth engagement do in fact benefit the poorest and most marginalized. While the World Bank oversees implementation of Bank-funded activities, government agencies manage the day-to-day implementation of those activities. In countries with pervasive corruption in the public sector, World Bank contracts and grants may not be awarded in a fair and unbiased manner.

The Bank also faces challenges in conducting independent oversight. Due to its structure, the Bank frequently has not identified and addressed problems with projects' compliance with Bank policies until independent civil society groups brought those problems to the Bank's attention. For example, staff incentives emphasize disbursement of loans rather than compliance with Bank policies. The Bank also seeks to maintain good working relationships with its member countries, particularly

middle-income members that borrow from the Bank at market lending rates. The emphasis on maintaining good working relationships with revenue-generating loan and grant recipients reduces the Bank's willingness to take action that would potentially damage those relationships.

The Bank's oversight of asset return project comes at a significant cost—often millions of dollars. Despite the importance of minimizing the costs of asset return, there is no evidence that the World Bank has faced any competition from other actors to provide supervision and project management services for projects funded by recovered assets. Further, the fee gives the Bank a financial incentive to secure and maintain its own role in asset return by agreeing to the demands of asset holding governments and the governments to which the assets are being returned.

Preventing corruption during project implementation should be a key consideration in the design of projects that are funded by recovered assets. Yet there are also gaps in the Bank's efforts to prevent corruption in projects funded by recovered assets. Experts have found that corruption risk assessments and mitigation measures for many World Bank-funded projects are inadequate. CSOs have found that project-level grievance redress mechanisms—which the Bank has relied on as anti-corruption mechanisms for some projects, including projects funded by recovered assets—are non-existent or non-functional for many Bank-financed projects. These mechanisms are also not required to be independent from the government agency responsible for implementing the project. Further, in systematically corrupt countries, if a project is structured as a grant to an implementing agency, which then oversees the disbursement of grants and contracts, the Bank may not have grounds to disqualify entities associated with a corrupt ruling party. Thus, the Bank may not be able to prevent corrupt regimes from benefitting from contracts funded by recovered assets.

Independent CSO monitoring, financed by foundations or other entities independent from the Bank, is the lynchpin in successful asset return projects. However, Bank-facilitated asset return projects do not consistently enable participation from independent CSOs. The Bank has sporadically disclosed information about its role in facilitating asset return, and has at times obfuscated its role by referring to asset return projects as funded by "grants" from the Swiss development agency. World Bank policies do not require disclosure of information critical to effective, independent CSO monitoring—such as information about the source of assets, the Bank's role, detailed financial and procurement documentation, and information about beneficial owners of all contracting companies. Additional provisions should be embedded in MoUs to strengthen transparency and disclosure of documents in order to improve independent civil society's ability to participate in and monitor project implementation.

However, even if World Bank policies and MoUs are strengthened, there may be insurmountable barriers to

effective, independent CSO monitoring. The largely positive experience with asset return via the World Bank—the BOTA Foundation in Kazakhstan I and the MANTRA approach in Nigeria II—were positive because it was possible for civil society organizations to independently conduct in-depth monitoring of and reporting on the return of assets. Such monitoring requires open civic space, the ability to express critical views freely, and genuine and specific commitments from governments to facilitate and allow for in-depth CSO monitoring. In the absence of these conditions, CSOs are unlikely to be able to effectively monitor these projects.

The paper recommends that future asset return projects consider a range of options for asset return, and prioritize building the capacity of receiving States and incentivizing reforms to strengthen the rule of law, national anti-corruption mechanisms, and the enabling environment for civil society (particularly freedom of association, assembly, and expression). Capacity-building will build the foundation for more sustainable asset return that can occur without support from an external facilitator, and instead with monitoring and oversight provided by independent civil society organizations.



# Addressing Shortfalls in World Bank Oversight of Asset Return



## Challenges in conducting independent, effective oversight

### PROBLEMS

- Close relationships between World Bank project staff and implementing government agencies in systematically corrupt countries
- Lack of incentives to ensure compliance with Bank policies
- Lack of competition for the role of providing independent oversight

### RECOMMENDATIONS

- ✔ Enable independent CSO monitoring
- ✔ Design projects with an aim to prevent implementing agencies from awarding contracts and grants to entities associated with corrupt ruling regimes
- ✔ Ensure competition for the role of providing independent oversight



## Insufficient Efforts To Prevent Corruption In Asset Return Projects

- Lack of sufficient anti-corruption measures in projects
- Over-reliance on project-level grievance redress mechanisms
- Limited ability to prevent the awarding of contracts to entities associated with corrupt and autocratic regimes

- ✔ Project-level grievance redress mechanisms should not serve as the primary anti-corruption mechanism for projects.
- ✔ Conduct thorough corruption risk assessments for asset return projects, incorporate tailored mitigation measures into project design, and closely monitor implementation



## Barriers To Effective, Independent External Monitoring

- Lack of transparency that stolen assets are funding Bank projects
- Non-disclosure of information about projects
- Lack of enabling environment for independent CSO monitoring

- ✔ Prioritize building the capacity of receiving States and incentivizing reforms to strengthen the rule of law, national anti-corruption law and mechanisms, and the enabling environment for civil society
- ✔ Ensure more transparency at the earliest stages — i.e., at the start of discussions with the World Bank or others about managing asset return — and incorporate feedback from independent civil society organizations.

- ✔ Ensure commitments from all parties to full CSO engagement in the return process

- ✔ Improve World Bank disclosure of essential information about projects

### Potential Modalities for Future Asset Return Projects:

- 1 Directly to state party, after establishment of anti-corruption mechanisms, rule of law reforms, and improvement to enabling environment for civil society

- May work well for significant amounts that can serve as an incentive for reforms.
- Proposed by Uzbek activists

- 2 Through projects facilitated by international entities, selected through an open tender process

- Standards for such facilitation should be adopted, incorporating the above recommendations



# Introduction

The return of stolen assets is “one of the main objectives and a fundamental principle of the United Nations Convention against Corruption.”<sup>1</sup> Yet as of 2015, “of the over 6.2 billion United States dollars realized so far through settlements worldwide, not more than three percent has been returned to States whose officials were bribed and where corrupt transactions took place.”<sup>2</sup> Strengthening asset recovery and return is a component of Sustainable Development Goal 16 on Just, Peaceful, and Inclusive Societies,<sup>3</sup> and the Addis Ababa Action Agenda committed to making the U.N. Convention on Corruption “an effective instrument to ... return stolen assets to their country of origin,” and “encourage[d] the international community to develop good practices on asset return.”<sup>4</sup>

After stolen assets are recovered, assets are typically returned to countries via one of three modalities: through “NGOs or foundations, either set up by the bodies who confiscated the money or granted to local organisations who work on poverty issues,” who are then tasked with distributing assets; “the earmarking of funds for specific projects in the country where the funds originated;” and “direct payments to the recipient country’s budget.”<sup>5</sup> The “direct payment” modality has generally taken one of two approaches: returning assets directly to the State of assets’ origin unconditionally, or returning assets under strong conditions, urging the receiving party to first adopt anti-corruption reforms as a safeguard against repeating theft and money laundering.

Regardless of modality, governments are encouraged to “consider the Sustainable Development Goals in the use and management of recovered assets.”<sup>6</sup> The Global Forum on Asset Recovery’s Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases emphasize that asset return should be transparent and involve civil society.<sup>7</sup> For these reasons, governments and courts in asset-holding jurisdictions have, in several cases, turned to the World Bank to facilitate the return of recovered assets.

This report examines the World Bank’s role in facilitating and overseeing the return of recovered assets to recipient countries. The paper focuses only on the World Bank’s role in asset return, as distinct from the World Bank and the Stolen Asset Recovery Initiative (StAR)’s role in asset recovery. The paper shows that the Bank’s involvement in facilitation and oversight has lacked transparency, and that Bank oversight alone is insufficient to ensure that corruption does not occur and the public benefits from projects funded by recovered assets. Where projects have been successful, there has been intensive, independent civil society monitoring, and recipient governments have committed to support such monitoring. The paper argues that some of the concerns regarding transparency, CSO involvement, and anti-corruption safeguards could be addressed by strengthening the Bank’s policies and including additional requirements in the Memoranda of Understanding that govern the terms of asset return. However, other institutional issues—such as the close working relationships between World Bank project staff and implementing agencies, and the Bank’s emphasis on maintaining good relations with member States—cannot be easily resolved. Ultimately, the paper recommends that future cases consider a range of options for asset return; prioritize building the capacity of receiving States to improve anti-corruption mechanisms, rule of law reforms, and the enabling environment for civil society; and support independent civil society oversight and monitoring of asset return.

Chapter 1 examines the World Bank’s approach to asset return, by reviewing five cases of asset return that the Bank has facilitated and managed. Chapter 2 discusses the flaws in the rationale for the World Bank’s oversight of asset return. Chapter 3 explores gaps in the World Bank’s ability to prevent corruption in the asset return projects that it funds, and Chapter 4 identifies barriers to effective external monitoring of World Bank-funded asset return projects. The paper concludes with a set of overarching recommendations, and specific recommendations to asset-holding governments and the World Bank.

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<sup>1</sup> Conference of States Parties to the U.N. Convention against Corruption (2015), Resolution 6/3, [Fostering effective asset recovery](#).

<sup>2</sup> *Supra* note 1, para. 4.

<sup>3</sup> United Nations General Assembly (2019), Resolution 70/1, [Transforming Our World: the 2030 Agenda for Sustainable Development](#), pg. 25.

<sup>4</sup> [Addis Ababa Action Agenda of the Third International Conference on Financing for Development](#) (2015), Resolution 69/313, para. 25.

<sup>5</sup> Nawaz, Farzana. U4 Anti-Corruption Resource Centre (2016), [Impact of International Asset Recovery on Poverty Reduction and Political Accountability](#), page 4.

<sup>6</sup> Conference of the States Parties to the U.N. Convention against Corruption (2017), [Resolution 7/1](#), para. 8.

<sup>7</sup> Global Forum on Asset Recovery, [Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases](#) (2017), Principles 4 and 10.

# Chapter 1:

## THE WORLD BANK'S APPROACH TO FACILITATING ASSET RETURN: FIVE CASE STUDIES

	Case	Modality	WB Activities	CSO Involvement	Shortcomings of Return Process	Outcome
<b>Abacha I (Nigeria)</b> <b>1999-2006</b>	\$500 million from Switzerland	Direct payment without conditions	Analyzed spending of repatriated funds after	Contributed to World Bank report on 51 randomly selected projects.  Published an independent shadow report on the project.	Lacked transparency about the use of funds, and did not disclose all of the projects that were funded by the assets.  Restituted funds not distinguishable from other funds allocated to national development projects.  Funds used to pay for projects and activities that had already been completed.	Allegations of significant corruption in the return process, including the misappropriation of funds.  CSOs viewed the Bank oversight as ineffective and very limited in scope.
<b>Kazakhstan I</b> <b>2007-2014</b>	\$84 million from Switzerland	NGO modality—via the BOTA Foundation	Facilitated negotiations between governments.  Supported, monitored, and supervised NGO modality.	Represented on the Board of Trustees for the Foundation.  Closely involved in decision-making on the disbursement of funds.	High administrative costs and overly bureaucratic structure.	Generally positive impacts on poor families.  CSOs and experts viewed the oversight structure as unnecessarily bureaucratic.
<b>Kazakhstan II</b> <b>2012-present</b>	\$48 million from Switzerland	Earmarked funds for specific projects.	Managed two projects funded by the recovered assets.	No involvement.	Lacked transparency about the source of funds, and failed to disclose information essential to independent CSO monitoring.  Flawed procurement and tendering process.  Funds used to support political activities.	Return is ongoing.  Allegations of significant corruption and diversion of benefits to ruling party have not been resolved.  CSOs view the Bank oversight as ineffective in preventing corruption during the return process.
<b>Abacha II (Nigeria)</b> <b>2017-present</b>	\$321 million from Switzerland	Earmarked funds for specific projects.	Funds were applied to the pre-existing World Bank-managed National Social Safety Net Program.	Intensively monitored disbursement of funds from bank account.  Deployed over 500 monitors and supervisors to monitor distribution of funds to individual households.	Lacked transparency about how the funds were applied to the World Bank project.	Asset return is ongoing.  Generally positive outcomes on poor families.  CSOs view Bank oversight and engagement with CSOs as useful.
<b>Kyrgyzstan</b> <b>2019-present</b>	\$6 million from the United States	Earmarked funds for specific projects.	Funds appear to have been applied to a pre-existing World Bank water project.	Unknown—appears that there is no CSO involvement.	Lack of transparency about how the funds were applied to the World Bank project.	Asset return ongoing.  Outcomes unknown.

# Case Study #1:

## ABACHA I (NIGERIA, 1999-2006)

In 2005, Switzerland agreed to release approximately \$500 million<sup>8</sup> in recovered assets to the Nigerian government. The World Bank would supervise the funds' transfer and use, and the repatriated assets would fund "pro-poor" development projects in key sectors with the aim of making progress on the Millennium Development Goals.<sup>9</sup> Anticipating the repatriation of the funds, the Nigerian government increased outlays in the education, health, and basic infrastructure (power, roads, and water) sectors in its 2004 budget.<sup>10</sup> Nigerian and Swiss officials "agreed on funds monitoring and tracking" after spending in these sectors had already begun.<sup>11</sup> The repatriated funds were programmed into the Nigerian national budget in three installments, beginning in the fall of 2005 and ending in the fall of 2006. According to the agreement reached between the parties, this total of approximately \$510 million was allocated between power (\$168.5 million), works (144.5), health (84.1), education (60.1), and water (48.2).<sup>12</sup>

The governments of Nigeria and Switzerland requested that the World Bank monitor the use of the funds by carrying out a study to analyze the specific use of the funds and producing a comprehensive review of public expenditures (PEMFAR report).<sup>13</sup> "Our role," the Bank stated, "was limited to analyzing spending of repatriated funds after they were disbursed. We had no role in supervising the implementation. ... The parties (the Federal Government of Nigeria, Swiss government, and World Bank) agreed to this approach as a detailed review of every expenditure would have been prohibitively expensive - negating the development impact of the returned funds."<sup>14</sup> Both the project study and the PEMFAR report were financed by a \$280,000 grant provided by Switzerland and administered by the World Bank.<sup>15</sup> The PEMFAR report was co-financed by the UK's Department for International Development (DFID), and the Heinrich Böll Foundation provided financial support for CSO engagement in the project study.<sup>16</sup>

World Bank economists wrote the PEMFAR report, published in 2007, in collaboration with Nigeria's Federal Ministry of Finance and other experts. The PEMFAR reviews fiscal policies and performance at both the federal and state levels, identifies bottlenecks, and suggests various reforms to both macro and sectoral expenditure patterns. The PEMFAR was meant to advise Nigeria on improving its financial management practices and policies, such as suggesting moving its domestic petroleum subsidies from the revenue to the expenditure side of the federal budget. Its "core finding" was that Nigeria's public financial management was "very weak and in need of urgent reform."<sup>17</sup>

The second report, published in 2006, was written by a team of experts from a Nigerian CSO, Integrity, who worked as consultants to the World Bank. Government staff carried out the monitoring of projects in the field, coordinated by the government and members of several Nigerian CSOs. The objective of this report was to "verify that additional budget resources went to the agreed development projects,"<sup>18</sup> and 51 randomly selected projects were visited and analyzed. The report provides limited information about these projects; for example, in the "health [sector], 8 projects were reviewed. All 8 pertained to physical infrastructure for primary health care centers. Of the 8 projects reviewed, 2 were described as completed."<sup>19</sup> The report highlights three main challenges as the primary obstacles to a thorough monitoring and understanding of the utilization of the funds. First, the money was treated as part of the general budget and not distinguished in any way from other budget spending. Nothing was labeled as attached to the repatriated funds, so it was not possible to clearly track how the money had been used. Second, although the money was repatriated in 2005 and 2006, the government began allocating funds in the 2004 budget. Third, there were "a number of instances where spending agencies used their share of the Abacha loot to either

<sup>8</sup> Swiss Federal Office of Justice Press Release (2005), "Abacha assets to be handed over to Nigeria: Switzerland doesn't provide a refuge for funds of criminal origin," para. 1.

<sup>9</sup> Supra note 8, para. 6.

<sup>10</sup> Nigerian Network on Stolen Assets (NNRA) (2006), "Shadow Report on the PEMFAR Monitoring Exercise," pg. 8; Jimu, Ignacio (2009), "Managing proceeds of asset recovery: the case of Nigeria, Peru, the Philippines, and Kazakhstan," pg. 8.

<sup>11</sup> World Bank (2006), "Utilization of Repatriated Abacha Loot: Results of the field monitoring exercise," pg. 6.

<sup>12</sup> Jimu, Ignacio (2009), "Managing proceeds of asset recovery: the case of Nigeria, Peru, the Philippines, and Kazakhstan," pg. 7.

<sup>13</sup> NNRA (2006), "Shadow Report on the PEMFAR Monitoring Exercise," pg. 8; Supra note 11, pg. 10; World Bank (2007), "Nigeria: A Fiscal Agenda for Change-Public Expenditure Management and Financial Accountability Review (PEMFAR), Volume I: Main Report," pg. 2.

<sup>14</sup> World Bank (2017), "World Bank Monitoring of Repatriated Abacha Funds," para. 8.

<sup>15</sup> NNRA (2006), "Shadow Report on the PEMFAR Monitoring Exercise," pg. 5.

<sup>16</sup> World Bank (2006), "Utilization of Repatriated Abacha Loot: Results of the field monitoring exercise," pg. 12; NNRA (2006), "Shadow Report on the PEMFAR Monitoring Exercise," pg. 5.

<sup>17</sup> World Bank (2007), "Nigeria: A Fiscal Agenda for Change-Public Expenditure Management and Financial Accountability Review (PEMFAR), Volume I: Main Report," pg. 93.

<sup>18</sup> World Bank (2006), "Utilization of Repatriated Abacha Loot: Results of the field monitoring exercise," pg. 4.

<sup>19</sup> Supra note 18, pg. 35.

defray outstanding contractor arrears, or make partial payments for ongoing multi-year projects," so projects that had already been completed ended up receiving the additional funding.<sup>20</sup> The report found that "of the 51 projects reviewed, 23 were described as 'completed,' 26 were at various stages of completion, and 2 were described as 'abandoned,' " and 21% of the projects reviewed were "said to have been completed before 2004."<sup>21</sup>

A shadow report on the PEMFAR monitoring exercise was also published in 2006, written by members of the NNSA, a prominent Nigerian CSO. This report was independently prepared, and represents "civil society's view of the PEMFAR process."<sup>22</sup> The report is highly critical of the "haphazard reporting" and analysis by the original monitors and the government.<sup>23</sup> The NNSA found that many projects were never completed or were abandoned halfway. There was no procedure in place for incorporating communities in project design, and almost all projects lacked stakeholder engagement. "This type of 'top-down' imposition of development,"<sup>24</sup> states the report, "all too often fails to respond to the priorities of end-users and does little to empower and situate end-users as owners of their own development." The authors note that "during the monitoring exercise, contractors and government officials proved to be uncooperative," and called for an investigation into potential "corrupt practices" that appeared rampant throughout the contracting process.<sup>25</sup> Project costs were "exorbitant" and many projects were of low quality, and CSOs recommended that contractors "said to have exhibited gross negligence" be "blacklisted from bidding on federal contracts."<sup>26</sup>

The Nigerian authorities never publicly disclosed a comprehensive list of all projects funded by the repatriated loot.<sup>27</sup> Experts stated that up to "200 million USD had been misappropriated and not used for development projects,"<sup>28</sup> and "almost half of the returned funds were attributed to development projects of dubious benefit or simply slipped away somewhere."<sup>29</sup> The quality of the projects often fell short—they displayed poor workmanship, were behind schedule, or were abandoned altogether.<sup>30</sup> According to another CSO, "the real success of Nigeria's asset recovery efforts is difficult to measure due to a substantial lack of transparency in data around recovered assets ... relevant agencies and the government release little or no data on recovery processes, including descriptions of the cases, statuses, amounts, and, most importantly, how the large amounts recovered are to be used."<sup>31</sup>

In 2017, Nigerian CSO SERAP requested information from the World Bank in order "to verify whether or not the projects reportedly executed by the Nigerian government with the funds were actually executed."<sup>32</sup> However, the Bank was unable to provide this information, stating that "[t]he Bank's role in this particular case was limited by the design and different from the type of comprehensive audits we can do when funds are spent in projects supported by the Bank."<sup>33</sup>

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<sup>20</sup> Supra note 18, pg. 7.

<sup>21</sup> Supra note 18, pg. 8.

<sup>22</sup> Supra note 27, pg. 17.

<sup>23</sup> Supra note 27, pg. 66.

<sup>24</sup> Supra note 27, pg. 63.

<sup>25</sup> Supra note 27, pg. 64.

<sup>26</sup> Supra note 27, pg. 64.

<sup>27</sup> NNSA (2006). "Shadow Report on the PEMFAR Monitoring Exercise," pg. 8.

<sup>28</sup> Thelesklaf, Daniel (2010), "Asset Recovery" pg. 13.

<sup>29</sup> Public Eye (2014), "Abacha funds: catastrophic repatriation by Swiss authorities," para. 5.

<sup>30</sup> Supra note 18, pg. 29-38; Supra note 12, pg. 9.

<sup>31</sup> Civil Forum for Asset Recovery (CiFAR) (2018), "Asset recovery in Nigeria: the good and the bad," para. 3.

<sup>32</sup> Socio-Economic Rights and Accountability Project (2017), "World Bank to SERAP: "We have searched our databases but can't find any more information on Abacha loot".

<sup>33</sup> Socio-Economic Rights and Accountability Project (2017), "World Bank President to SERAP: Our role in the spending of Abacha loot was limited."



## Case Study #2:

### KAZAKHSTAN I (2007 – 2014)

In 2007, the Governments of Switzerland, the United States, and Kazakhstan approached the World Bank to facilitate negotiations in relation to \$115 million in recovered assets related to several oil and gas deals in Kazakhstan.<sup>34</sup> The three governments and the World Bank subsequently signed a Memorandum of Understanding (MoU),<sup>35</sup> which stipulated that three programs would be established and implemented with support from the World Bank: (1) an NGO-based BOTA program; (2) a Public Finance Management Review (PFMR) Program; and (3) an Extractive Industries Transparency Initiative (EITI) Program. In addition, before money was made available to the BOTA Program, the U.S. Department of Justice was required to concur that Kazakhstan was making sufficient progress on the PFMR and EITI initiatives.<sup>36</sup>

The EITI Program was meant to support the preparation and implementation of a comprehensive strategy and action plan to increase transparency of payments and revenues of the extractive industries operating in Kazakhstan. The World Bank supervised this project, which was financed by a single purpose trust fund in the amount of \$72,922.50. Although the government of Kazakhstan was required to submit annual reports to the Parties and make those reports public,<sup>37</sup> further project documentation is not available on the World Bank's website.<sup>38</sup>

The PFMR Program involved a five-year review of Kazakhstan's budget management process with the aim to formulate a comprehensive plan to improve public financial management and accountability.<sup>39</sup> Documentation is not available for this project on the World Bank's website,

beyond the call for experts to carry out the analysis.<sup>40</sup> According to the MoU, activities should have included tax policy reform and an agricultural expenditures study.<sup>41</sup>

The BOTA program was the primary activity financed by the restituted assets, and involved the creation of an independent, non-profit, non-governmental foundation. The BOTA Foundation was registered in Kazakhstan in 2008 and would implement the BOTA program "for the benefit of poor children and youth in Kazakhstan." The NGO modality for asset return was adopted because: 1) the government officials named in the investigation were still in office; 2) Kazakhstan was perceived to have a culture of corruption; 3) no single Kazakhstani NGO had the necessary programmatic or financial management systems to sustainably manage a program of this size; 4) civil society was not robust enough to coordinate NGO networks to work collaboratively to make use of the funds; and 5) the government that could easily shut down a local NGO and take its funds.<sup>42</sup>

The MoU specified a number of details related to the Foundation. The BOTA Foundation was to be established by five founders and a seven-member Board of Trustees that would, with assistance from the World Bank, select a BOTA Program Manager through an open and competitive bidding process. The Program Manager would be a reputable international NGO, which would be responsible for the administration, management, and expenditures of the BOTA Foundation. The World Bank would supervise and monitor the program, and its administration and expenditures. The Trustees would determine the general work of the Foundation, as well as the scope of its programmatic efforts.

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<sup>34</sup> Department of Justice (2007), "Government Files Civil Forfeiture Action against \$84 Million Allegedly Traceable to Illegal Payments and Agrees to Conditional Release of Funds to Foundation to Benefit Poor Children in Kazakhstan," pg. 1; [US District Court \(2004\). Indictment S2. 03 Cr. 404.](#)

<sup>35</sup> IREX (2008), "Achieving Development Impact with an Inclusive Asset-Return Model: The Case of the BOTA Foundation in Kazakhstan," pg. 4. MoU (2008), "Amended Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan,"

<sup>36</sup> MoU (2008), "Amended Memorandum of Understanding Among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan," pg. 7.

<sup>37</sup> Swiss Federal Office of Justice Press Release (2005), "Abacha assets to be handed over to Nigeria: Switzerland doesn't provide a refuge for funds of criminal origin," para. 1.

<sup>38</sup> World Bank (2007), [Kazakhstan-Extractive Ind. Trans. Init. Project Page.](#)

<sup>39</sup> MoU (2007), "Memorandum of Understanding among the Governments of the United States of America, the Swiss Confederation, and the Republic of Kazakhstan," pg. 3.

<sup>40</sup> World Bank (no date), "Terms of Reference for the Task: Consultant Team for the Preparation of a Public Financial Management Review and assistance in budgetary reform for the Republic of Kazakhstan,"

<sup>41</sup> MoU (2007), [Annex 3](#), pg. 1.

<sup>42</sup> *Supra* note 39, pg. 6.

The World Bank received a fixed annual fee for delivery of these services<sup>43</sup> to be paid by the government of Kazakhstan and to be calculated on a full cost recovery basis.<sup>44</sup> The 2007 Service Agreement provided an initial total fee and cost breakdown, which included \$500,000 for preparatory services (year one), and \$150,000 per year for ongoing services (years two to five). Payment was reviewed annually and adjusted by the World Bank, but was not disclosed, and the full cost of the Bank's involvement is unknown.

IREX was selected as the program manager, and managed the setup of BOTA and provided ongoing institutional support. In line with the MoU, BOTA focused on three specific program areas: 1) conditional cash transfers to poor families, a program designed by Save the Children, the World Bank, and IREX; 2) a tuition assistance program to send poor Kazakh youth to university; and 3) a social service grant-making program whereby BOTA would provide financial and technical support to service delivery NGOs throughout the country. The World Bank contracted an international development consulting firm to produce evaluation reports on these programs, which concluded that the BOTA program produced positive impacts in each of the three program areas.<sup>45</sup>

Following the BOTA Foundation's liquidation in 2014,<sup>46</sup> the World Bank also produced a Final Supervision Report evaluating different elements of the program. The World Bank report found that although each program exceeded its original targets, together they "could not lead to a sustained and observable impact on poverty."<sup>47</sup> Although "sustainability of the BOTA Foundation was envisaged"

in the MoU, the Program was nevertheless discontinued due to lack of investment interest.<sup>48</sup> As a mechanism for asset restitution, the report stated that BOTA model should be considered as one to follow for other cases because of its "remarkable achievements."<sup>49</sup> Outside experts offer similar praise for the BOTA Program's successful implementation. However, as the former Executive Director of the BOTA Foundation has written, despite a voluminous literature discussing BOTA as a model for asset return, "not much is known about how BOTA actually worked and what it was able to accomplish."<sup>50</sup>

Some aspects of the BOTA initiative also have been criticized. According to one report, the "discussions leading to the establishment of the BOTA Foundation were conducted in a bureaucratic and intransparent style and with minimal and selective involvement of Kazakh civil society."<sup>51</sup> Another report found that administrative costs were "extremely high," estimating that costs may have amounted to up to one third of the total funds returned to Kazakhstan.<sup>52</sup> Aaron Bornstein, the former Executive Director of the BOTA Foundation, wrote that, "with a local board, the World Bank, and three governments to report to, there were excessive layers of oversight, which ultimately was often not helpful or efficient," and in the future, a "top-heavy supervisory structure should be avoided."<sup>53</sup> The Swiss government also viewed the structure as "administratively cumbersome."<sup>54</sup>

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<sup>43</sup> The World Bank's supervision included: (1) assisting in the establishment of the BOTA Foundation; (2) assisting the Founders and Governments in the establishment and selection of the 7-member Board of Supervisors; (3) assisting the Board in preparing BOTA's charter and any other constitutive documents; (4) assisting the Board in conducting an open and competitive bidding process to select an organization to implement the BOTA program; (5) reviewing and supervising semi-annual progress reports and audited financial statements to monitor technical and fiduciary compliance by the BOTA Foundation with the Operational Manual; (6) review of BOTA Foundation requests for funds; (7) training and capacity building for the BOTA Foundation in the areas of procurement, financial management, calls for grants, preparation of work plans, evaluation systems, or other such technical assistance as the World Bank in its discretion deems necessary or appropriate; (8) preparation of the BOTA Program's Operational Manual which is to govern the daily operations of each element of the BOTA Program and set forth the procedures for the award of grants and disbursement of funds from an 'Operational Account' to be managed by the Program Manager; (9) providing capacity building and guidelines to assist the BOTA Foundation in various auditing aspects including: (a) selecting independent auditors; and (b) ensuring that a financial management system is maintained and financial statements and reports are prepared and furnished to the Parties every 6 months; (10) reviewing requests for the release or reallocation of funds. *MoU* (2007).

<sup>44</sup> The term "full cost recovery basis" is not defined in the MOU. The term generally refers to both direct project costs and overhead costs.

<sup>45</sup> Oxford Policy Management (2013), "Evaluation of the BOTA Foundation's Programmes, Kazakhstan," pg. 5.

<sup>46</sup> United States District Court Southern District Of New York (2015), "Government's Notice Of Final Release Of Settlement Funds And Motion To Dismiss," pg. 1.

<sup>47</sup> World Bank (2015), "Final Supervision Report of the BOTA Program," pg. 3.

<sup>48</sup> *Supra* note 47, pg. 5.

<sup>49</sup> *Supra* note 47, pg. 6.

<sup>50</sup> Bornstein, Aaron (2015), "The BOTA Foundation explained (11-part series), Part One: Why Focus on BOTA?" para. 5.

<sup>51</sup> *Supra* note 12, pg. 14.

<sup>52</sup> Zinkernagel, Gretta and Attisso, Kodjo (2013), "Returning Stolen Assets - Learning from past practice: Selected case studies," pg. 6.

<sup>53</sup> Bornstein, Aaron (2016), "The BOTA Foundation: A Model For the Safe Return of Stolen Assets?," pg. 38 - 39.

<sup>54</sup> Government of Switzerland. "No Dirty Money: The Swiss Experience in Returning Illicit Assets," pg. 26.



## Case Study #3:

### KAZAKHSTAN II (2012 – PRESENT)

In December 2012, the Swiss Federal Department of Foreign Affairs announced that approximately \$48 million was going to be returned to Kazakhstan,<sup>55</sup> and an agreement had been signed between the Swiss Agency for Development and Cooperation (SDC) and the World Bank. The assets would be repatriated via a World Bank-administered trust fund that would finance projects “in the domains of youth policy and energy efficiency.”<sup>56</sup> The World Bank was chosen to “assume fiduciary responsibility ... because the World Bank is subject to strict internal controls [and] it will regularly review how the funds are spent.”<sup>57</sup> A World Bank press release stated that the Bank is “assisting Kazakhstan and Switzerland to set up a Trust Fund ... using \$48.8 million of frozen assets to support youth development and the promotion of energy efficiency.”<sup>58</sup> The press release also stated that, “Trust Fund resources originate from legal proceedings in Switzerland in 2011. The parties involved in the proceedings reached an agreement to use these funds to benefit the Kazakh population.”<sup>59</sup> The Youth Corps Project would “promote positive youth development through learning opportunities that serve the community while helping youth develop important skills. The project is expected to help youth gain skills that would facilitate their entrance into the labor market.”<sup>60</sup> The Energy Efficiency Project was “expected to result in quantified energy savings achieved from implementation of energy efficiency measures in selected public and social facilities. It will also help develop financing of future energy efficiency projects.”<sup>61</sup>

According to the Trust Fund Administration Agreement, the SDC would make available \$48.8 million as a grant to a World Bank-administered Single Donor Trust Fund—not acknowledging that the trust fund was being funded with

stolen assets that had been recovered. The Bank would be responsible for carrying out energy efficiency studies, beneficiary surveys, and monitoring and evaluation; and preparing and supervising recipient-executed activities.<sup>62</sup>

The World Bank’s initial documentation for the Youth Corps program was prepared in March 2012, nearly nine months before the Swiss government publicized the return of funds.<sup>63</sup> The initial documentation for the Energy Efficiency Project was prepared shortly after the Swiss announcement, in January 2013.<sup>64</sup> The World Bank approved both projects in the first half of 2013.

Day-to-day management of the Youth Corps Program would be managed by a Project Coordinating Agency, overseen by the implementing government agency. Three firms bid for the role.<sup>65</sup> Two were rejected—a Kazakh firm and IREX, the INGO that successfully managed the BOTA Foundation in Kazakhstan I. The award instead went to a joint venture of three Kazakh organizations, each with close links to the ruling party. Thus, as the Corruption and Human Rights Initiative’s in-depth report on Kazakhstan II stated, the project’s “day to day operation ... was entrusted to a consortium of ‘GONGOs’ (government-organized, non-government organizations).”<sup>66</sup> The GONGO leading the project implementation was “headed by the President’s daughter, who is a senior member of the ruling Nur Otan party,” a “political organ that underpins a despotic regime that is widely regarded as a kleptocracy.”<sup>67</sup> As the Corruption and Human Rights Initiative explains, “GONGOs tend to flourish in autocratic countries” because they can be used by “undemocratic governments” to propagandize the public and tightly control its activities.<sup>68</sup>

<sup>55</sup> Federal Department of Foreign Affairs (FDFA) (2012). “[Switzerland and the World Bank sign agreement on the restitution of Kazakh assets](#),” para. 1.

<sup>56</sup> Supra note 55, para. 2.

<sup>57</sup> FDFA (2019). “[Switzerland’s Experience in Repatriating Illicitly Acquired Assets by Politically Exposed Persons \(PEP\)](#)” pg. 2.

<sup>58</sup> World Bank (2012). “[The World Bank Supports Youth Policy and Energy Efficiency Development in Kazakhstan](#),” para. 1.

<sup>59</sup> World Bank (2012). “[The World Bank Supports Youth Policy and Energy Efficiency Development in Kazakhstan](#),” para. 1.

<sup>60</sup> Supra note 59, para. 3.

<sup>61</sup> Supra note 59, para. 4.

<sup>62</sup> World Bank (2012), “[Trust Fund Administration Agreement between the Government of the Swiss Confederation and the International Bank for Reconstruction and Development concerning the Single-Donor Trust Fund for the Energy Efficiency and Youth Corps Program \(TF No. 071882\)](#),” pg. 8.

<sup>63</sup> World Bank (2012). “[Kazakhstan - Youth Corps program \(P127966\) Project Information Document \(PID\)](#),” pg.6.

<sup>64</sup> World Bank (2013). “[Kazakhstan – Energy Efficiency Project \(P130013\) Project Information Document \(PID\)](#),” pg. 5.

<sup>65</sup> World Bank (2017), [Project Coordinating Agency](#).

<sup>66</sup> Lasslett, Kristian and Mayne, Thomas (2018), “[A Case of Irresponsible Asset Return? The Swiss-Kazakhstan \\$48.8 million](#),” pg. 4.

<sup>67</sup> Lasslett, Kristian and Mayne, Thomas (2018), “[A Case of Irresponsible Asset Return? The Swiss-Kazakhstan \\$48.8 million](#),” pg. 4.

<sup>68</sup> Supra note 67, pg. 18.

In December 2018, the World Bank noted that progress made towards achieving the Youth Corps Program objectives was “moderately satisfactory.”<sup>69</sup> The Bank also disclosed an audit undertaken by a local Kazakh accounting firm that indicated no irregularities.<sup>70</sup> To further boast of this project’s success, the World Bank issued a press release profiling a young woman with a disability whose life has been uplifted by winning a \$3,000 grant from the program to support her “soft-toy-making club.”<sup>71</sup>

However, the Corruption and Human Rights Initiative’s report raises several concerns related to the Youth Corps Program’s management and use of funds. The report highlights that the Bank consistently failed to disclose documents; the procurement and tendering process appeared to have violated Kazakh law and World Bank policy, and the Bank did not adequately address the “significant risk” for corruption in the procurement process; several contracts appeared to have been awarded

despite inflated pricing; and government propaganda and training programs received funds.<sup>72</sup> As a result, “there are worrying signals that the World Bank has not conducted its oversight and transparency duties.”<sup>73</sup>

Both the Energy Efficiency and Youth Corps projects are ongoing. As of June 2019, the Youth Corps funds have been 80% disbursed;<sup>74</sup> Energy Efficiency funds stand at 64% as of April 2019.<sup>75</sup> Under the trust fund agreement, the Bank is permitted to deduct 2% (\$976,000) of the total amount contributed for initial administration costs, and up to 2.25% (\$1.2 million) on an annual basis for program management.<sup>76</sup> A second supplemental agreement, signed in May 2017, states that the “Donor” wished to “provide a new contribution” of \$115,000 that the World Bank would apply to a new account “in order to apply new Bank cost recovery provisions.”<sup>77</sup> The trust fund fee also would be effectively raised to 5%, in accordance with updated Bank requirements on cost recovery for trust funds.<sup>78</sup>



<sup>69</sup> World Bank (2019), “Kazakhstan - Youth Corps program (P127966). Implementation Status & Results Report,” pg. 1.

<sup>70</sup> The Ministry of Education and Science of the Republic of Kazakhstan (2018), “Youth Corps Project - Special-purpose financial statements for the period ended from 1 June 2016 to 31 December 2016 and for the year ended 31 December 2017 and Independent auditor’s report,” pg. 7.

<sup>71</sup> World Bank (2018), “Production of Handmade Toys Provides Income – And Hope – for Young People with Disabilities in Kazakhstan.”

<sup>72</sup> Supra note 67, pg. 4.

<sup>73</sup> Supra note 67, pg. 42.

<sup>74</sup> World Bank (2019), “Kazakhstan - Youth Corps program (P127966) Implementation Status & Results Report,” pg. 5.

<sup>75</sup> World Bank (2019), “Kazakhstan Energy Efficiency Project (P130013 ) Implementation Status & Results Report,” pg. 5.

<sup>76</sup> World Bank (2012), “Trust Fund Administration Agreement between the Government of the Swiss Confederation and the International Bank for Reconstruction and Development concerning the Single-Donor Trust Fund for the Energy Efficiency and Youth Corps Program (TF No. 071882),” pg. 3.

<sup>77</sup> World Bank (2017). “Supplemental Agreement between the Government of the Swiss Confederation and the International Bank for Reconstruction and Development concerning the Single-Donor Trust Fund for the Energy Efficiency and Youth Corps Program,” pg. 1.

<sup>78</sup> Supra note 77, pg. 4.

# Case Study #4:

## ABACHA II (NIGERIA, 2017 - PRESENT)

In 2014, Switzerland confiscated \$321 million in assets from the Abacha family, implicated in corruption in Nigeria,<sup>79</sup> and in April 2017, a Swiss court ruled that the Swiss government should repatriate the funds on the condition that the World Bank monitor the process.<sup>80</sup> In December 2017, Nigeria, Switzerland, and the World Bank signed an MoU<sup>81</sup> that states that: the recovered funds would be used to finance targeted cash transfers; the World Bank would “monitor the use of the Funds;” Nigeria will engage “civil society organizations (CSOs) to participate in the monitoring” of the project; Nigeria will publish all project-related documents online; and World Bank documents will also be disclosed, “subject to its policies on access to information.”<sup>82</sup>

According to a 2017 World Bank press release, the “Nigerian authorities requested the funds be used to support a program of targeted cash transfers to poor and vulnerable Nigerians under the National Social Safety Net Project (NSSNP).”<sup>83</sup> In June 2016, the World Bank had approved the NSSNP, which would “lay the foundation for the establishment of the country’s first national social safety nets system,”<sup>84</sup> and “help provide access to predictable and targeted transfers to poor and vulnerable households under an expanded national social safety nets system.”<sup>85</sup> The only information available regarding World Bank monitoring of the return of assets is in a press release on the Bank’s website, which states that the Bank would “monitor

the use of the funds in the same manner as it monitors the use of the IDA Credit.”<sup>86</sup> The assets were returned in 2017 to a special account at the Central Bank of Nigeria.<sup>87</sup>

Although the Nigerian civil society organization Africa Network for Environment and Economic Justice (ANEEJ) “vehemently condemned” the Swiss court decision that the World Bank be involved in the return process,<sup>88</sup> ANEEJ participated in the negotiation process leading up to the MOU by engaging with the parties involved.<sup>89</sup> Other CSOs that had also been active in the Abacha I case criticized the agreement, stating that “there are no safeguards to ensure that the people who were cheated at the time will benefit from the restituted money,” and “there is little information and absence of clear guidelines on how these recovered assets are utilized.”<sup>90</sup>

Civil society has taken a prominent role in monitoring the distribution of funds. The MoU stipulated that CSOs be involved in funds monitoring from the beginning.<sup>91</sup> With support from DFID and ACORN,<sup>92</sup> ANEEJ is leading a group of Nigerian NGOs to assist in independently monitoring funds disbursement through a project called MANTRA.<sup>93</sup> The MANTRA project has “mobilized a network of civil society organizations to monitor end-to-end, the use” of the funds. “MANTRA monitor[s] all movements in the Central Bank Account where this money sits;” this includes

<sup>79</sup> Swiss Public Ministry (2015), “Affaire Abacha: confiscation et restitution de l’argent du crime,” para. 1.

<sup>80</sup> SWI (2016). “Agreement secured on return of Abacha funds,” para. 6; World Bank (2017). “World Bank Monitoring of Repatriated Abacha Funds.”

<sup>81</sup> “Memorandum of Understanding among the Government of The Federal Republic of Nigeria, The Swiss Federal Council, and the International Development Association,”

<sup>82</sup> Supra note 81, pg. 4-6.

<sup>83</sup> World Bank (2017), “World Bank Monitoring of Repatriated Abacha Funds,” para. 3, <https://www.worldbank.org/en/news/factsheet/2017/12/04/world-bank-monitoring-of-repatriated-abacha-funds>

<sup>84</sup> World Bank (2016), “World Bank Commits Half a Billion Dollars to Provide Social Assistance to Nigeria’s Poorest,” para. 1.

<sup>85</sup> World Bank (2016), [Nigeria - National Social Safety Nets Project](#).

<sup>86</sup> World Bank (2017). “World Bank Monitoring of Repatriated Abacha Funds,” para. 9.

<sup>87</sup> Supra note 83, para. 4.

<sup>88</sup> SWI (2018), “Is the Abacha accord a model for returning ‘dictator funds’?”; Ugolor 2019. “Non-State Actors Monitoring of Returned Assets.”

<sup>89</sup> Ugolor 2019, “Non-State Actors Monitoring of Returned Assets.”

<sup>90</sup> Instead of having the funds be transferred directly to the Nigerian state, CISLAC had called for the establishment of an independent “trust fund to manage asset recovery proceeds with involvement of credible CSOs.” CISLAC (2017). “CISLAC Demands Transparency and Accountability in Recovered Assets,” para. 5. SWI (2015). “Abacha millions to go back to Nigeria,” para. 10.

<sup>91</sup> The MoU stated that “the Government of Nigeria shall engage... civil society organizations to participate in the monitoring of Targeted Cash Transfers.” Supra note 81, pg. 6.

<sup>92</sup> The Anti-Corruption in Nigeria Programme (ACORN) provided a £689,000 grant to pilot the monitoring project. ACORN is a project funded by the UK’s DFID as part of the MANTRA project. See: <https://mantra-acorn.com/article/about-mantra-acorn-project>

<sup>93</sup> SWI (2018). “Is the Abacha accord a model for returning ‘dictator funds’?” para. 6; ANEEJ (2019). “Breaking new grounds in Nigeria’s Assets Recovery and Management Efforts” para. 2.

access to lists of beneficiaries, their geographic location, and the method and amount of payment.<sup>94</sup> Further, working with its CSO partners, the ANEEJ “deployed over five hundred monitors and supervisors ... in all the six geopolitical zones of Nigeria.”<sup>95</sup> ANEEJ generally views the conditional cash transfers program as successful. However, ANEEJ has also identified several challenges facing this project, such as: delays and underreporting on funds disbursement and grievance data; incomplete documentation; inconsistency in the disbursement process; and violations of confidentiality standards.<sup>96</sup>

The National Social Safety Nets Project and its major component of conditional cash transfers is ongoing, as is the monitoring process. No official reports have been made public detailing program progress, aside from the Bank’s Implementation Status and Results Report, which rates overall implementation progress as “Moderately Satisfactory.”<sup>97</sup> To date, the World Bank has disbursed over \$110 million, and charged nearly \$1 million in fees and interest to the NSSNP project since its approval in June 2016.<sup>98</sup>



<sup>94</sup> ANEEJ (2019), “Breaking new grounds in Nigeria’s Assets Recovery and Management Efforts” para. 2.

<sup>95</sup> ANEEJ (2019), “ANEEJ Launches Report on the Implementation of 2016 London Anti-Corruption Summit and GFAR Commitments in Nigeria,” para. 6.

<sup>96</sup> ANEEJ (2019), “Monitoring Report of the Utilization of The Recovered Abacha Funds in the August September 2018 Payment Round of the Conditional Cash Transfer Programme,” pg. 5.

<sup>97</sup> World Bank (2019), “Implementation Status & Results Report,” pg. 1.

<sup>98</sup> World Bank (2016), National Social Safety Nets Project.



## Case Study #5:

### KYRGYZSTAN (2019 – PRESENT)

In February 2019, the Kyrgyz Republic and the U.S. State Department published a joint statement announcing that \$6 million in recovered assets would be returned to Kyrgyzstan,<sup>99</sup> and would fund “social projects and anti-corruption and transparency efforts.”<sup>100</sup> These efforts included projects relating to healthcare, construction of water supply facilities, and strengthening Kyrgyz institutions responsible for anti-corruption programs.<sup>101</sup>

The joint statement noted that the second project, “construction of water supply facilities in order to expand access to clean drinking water for the rural population through upgrades of drinking water systems and expansion of the scope of ongoing construction of large-scale water supply facilities (water pipes, water pumps, water purification facilities),” is “currently under way with financial support of the World Bank and other IFIs.”<sup>102</sup>

Earlier IFI-funded projects in the Kyrgyzstan water sector were plagued by problems. In 2001, the World Bank began funding the Taza Suu project to address the widespread shortage of drinking water.<sup>103</sup> However, the project experienced a variety of problems—intake stations pumped polluted water, landslides destroyed cultivated springs and laid pipes, and there was apparent financial mismanagement and corruption.<sup>104</sup> According to a CSO report, “between 30-40% of the allocated \$69.5 million have disappeared, and representatives of the authorities

at various levels recognize that there has been misuse of the loans and investment. In 2010, eighteen criminal cases were initiated against firms who used funds to install poor quality equipment and pocketed funds for themselves.”<sup>105</sup>

In 2009, the World Bank approved a follow-up project,<sup>106</sup> which the Bank states was “successfully completed” in 2014.<sup>107</sup> In September 2016, a third iteration of this project, the Sustainable Rural Water Supply and Sanitation Project, or RWSSP-3, was approved, with \$23.50 million in World Bank financing. In June 2017, the Bank committed an additional \$36 million in financing to expand the number of villages reached by the project.<sup>108</sup>

No World Bank documents or press releases state that restituted funds are being used to support the RWSSP-3 project, which is an active and ongoing project and is expected to close in 2025. The Bank’s May 2019 Implementation Status and Results Report indicates that RWSSP-3 “is on track to achieve the project development objective and is overall progressing well.” However, in recent reports, risk ratings under several indicators have risen from ‘low’ or ‘substantial’ to ‘high’ in the political and governance, fiduciary, and institutional capacity for implementation categories.<sup>109</sup> As of June 30, 2019, \$13.24 million has been disbursed to this project.

<sup>99</sup> BBC (2013), “Kyrgyzstan convicts ex-leader’s son Maxim Bakiyev,” para. 2-3; US Department of Justice (2019). [Justice Department Repatriates Forfeited Funds to the Government of the Kyrgyz Republic](#),” para. 1,

<sup>100</sup> US Embassy in the Kyrgyz Republic (2019). “[Joint Statement by the Kyrgyz Republic and the U.S. State Department](#),” para. 3.

<sup>101</sup> This activity is focused on “Strengthening Kyrgyz institutions responsible for anti-corruption programs and promoting the transparency of court proceedings, and financial integrity of state organs.” US Embassy in the Kyrgyz Republic (2019).

<sup>102</sup> US Embassy in the Kyrgyz Republic (2019). “[Joint Statement by the Kyrgyz Republic and the U.S. State Department](#),” para 4.

<sup>103</sup> World Bank (2016), “[Third Rural Water Supply and Sanitation Project \(P154778\) Project Information Document \(PID\)](#).”

<sup>104</sup> Yntymak 2019, [The Promised Water](#). Other internal World Bank documents state that “despite occasional difficulties” the RWSSP “progressed reasonably well and completed satisfactorily” (World Bank 2016). World Bank (2014), “[Second Rural Water Supply & Sanitation \(P110267\)](#),”

<sup>105</sup> Yntymak (2019), [The Promised Water](#).

<sup>106</sup> Supra note 103, pg. 2.

<sup>107</sup> Supra note 103, pg. 2.

<sup>108</sup> World Bank (2017), “[Sustainable Rural Water Supply and Sanitation Development Project – Additional Financing](#),” pg. II .

<sup>109</sup> World Bank (2019), “[Sustainable Rural Water Supply and Sanitation Project \(P154778\) Implementation Status & Results Report](#),” pg. 2.

## Trends in World Bank Facilitation and Oversight

In each of these five cases, the World Bank facilitation and oversight took different forms. The Bank acted as an external monitor for funds returned to a national budget only once (Abacha I), and facilitated an NGO modality of asset return only once (Kazakhstan I). In the other three cases, recovered assets were used to expand or otherwise support pre-existing Bank-financed projects (Abacha II, Kyrgyzstan), and to support new Bank projects (the two projects funded by Kazakhstan II). In these cases, the Bank has been closely involved in project design and oversight of project implementation. In each case, transparency about the Bank's involvement and the terms of its involvement (fees charged and services provided) was extremely limited, and in some cases the Bank's official documents obfuscated the source of funds. For example, in Kazakhstan II, the project was described as funded by a grant from the Swiss Agency for Development and Cooperation, which suggested that the project was funded by development aid, though the project was actually funded by recovered assets.

In each case, assets were returned to countries with pervasive corruption in the public sector. The World Bank was chosen to facilitate asset return due to the perception that the Bank has "internal controls [and] it will regularly review how the funds are spent."<sup>110</sup> However, in Abacha I, the Bank was clearly ineffective in ensuring that the public benefitted from the restituted funds, and was unable to prevent corruption in the return process. The Bank's oversight was extremely limited, and the reporting and analysis on the use of funds that the Bank produced was "haphazard."<sup>111</sup> The Bank's oversight was also ineffective in achieving its intended purpose: project costs were "exorbitant," many projects were of low quality, and contractors were "said to have exhibited gross negligence."<sup>112</sup> The Bank has been much more closely involved in supervision and oversight in more recent cases, but more recent projects still exhibited low levels of transparency regarding the Bank's role in project implementation. Moreover, in Kazakhstan II, CSOs have called into question the public benefit of the one of the Bank's projects, due to indicators of corruption and apparent enrichment of the ruling political party through project contracts and grants.



Where projects were successful in delivering public benefits and preventing corruption, there was in-depth independent CSO engagement and monitoring. In Kazakhstan I, the Bank found that there had been "remarkable achievements" and that the BOTA model should be considered as one to follow for other asset return cases.<sup>113</sup> There are also early signs of positive outcomes from the return of Abacha II assets. Nigerian CSOs view the commitment of the Nigerian government and the ability of CSOs to have access to detailed information about the project-specific bank account as key to the success of the project—rather than the Bank's oversight alone leading to successful return.

<sup>110</sup> FDFA (2019), "Switzerland's Experience in Repatriating Illicitly Acquired Assets by Politically Exposed Persons (PEP)" pg. 2.

<sup>111</sup> Supra note 27, pg. 66.

<sup>112</sup> Supra note 27, pg. 64.

<sup>113</sup> Supra note 47, pg. 6.

# Chapter 2:

## FLAWED RATIONALE FOR THE WORLD BANK'S OVERSIGHT

Asset-holding governments have sought the Bank's facilitation and oversight of the return of stolen assets for several reasons. Governments seem to view the World Bank as well placed to design and manage programs that will benefit the citizens—particularly poor citizens—of countries from which assets have been stolen. Governments also seem to view the World Bank as a cost-effective, neutral facilitator and independent monitor of project implementation that ensures recovered assets are properly managed during the return process. This chapter explores the concerns civil society has raised about the Bank's ability to independently monitor asset return projects and ensure that assets are used for the public benefit. In addition, the chapter discusses the apparent lack of competition for the role of providing oversight of asset return, which may influence government decisions to engage the World Bank in asset return activities.

### Barriers to Ensuring Use of Assets for Public Benefit: Relationship between the World Bank Project Staff and Implementing Agencies

Recovered assets should be used to provide restitution to identified victims, "benefit the people of the nations harmed by the underlying corrupt conduct," combat corruption, and support the achievement of development goals.<sup>114</sup> Only two MOUs for the five cases of asset return reviewed in Chapter 1 are publicly available. Both explicitly state that the aim of the asset return is to benefit the people of the recipient country, in one case "for the benefit of poor citizens of Kazakhstan,"<sup>115</sup> and in another to "contribute[] significantly to the implementation of social programs for the benefit of the Nigerian people."<sup>116</sup>

However, where corruption is endemic in a country, it is difficult for the World Bank to ensure that activities related to social issues such as promoting youth engagement do in fact benefit the poorest and most marginalized. The World Bank provides oversight of the implementation of Bank-funded activities, but government agencies manage the day-to-day implementation of those activities. Government agencies conduct procurement processes, award grants, deliver services, oversee and monitor construction and other project activities, and respond to individuals' grievances and concerns.

Given this reliance on implementing agencies, "[i]n systemically corrupt countries ... it is common for World Bank projects to be captured by the government ministry cartels from which the project staff is seconded."<sup>117</sup> For example, in instances in which World Bank-financed projects provided small grants to address social issues, experts raised concerns that project staff had used grants to "stifle legitimate protests" by awarding grants only to those who were not critical of government programs.<sup>118</sup> Other experts have identified discrepancies in reporting on project implementation, which varied depending on whether reporting was produced by consultants hired by implementing government agencies or consultants hired directly by the Bank.<sup>119</sup>

In projects funded by recovered assets, similar problems have occurred as a result of the lack of independence of implementing government agencies in systematically corrupt countries. In Kazakhstan II, for example, the Corruption and Human Rights Initiative demonstrated that recovered assets were awarded to organizations associated with the ruling political party; assets were spent on videos and other materials promoting President Nazarbayev; and an audit conducted by a local Kazakh auditing firm found no irregularities.<sup>120</sup>

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<sup>114</sup> GFAR Principle 5 states that, "Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct." Principle 6 states that "Where possible, in the end use of confiscated proceeds, consideration should also be given to encouraging actions which fulfill UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals." *Supra* note 7.

<sup>115</sup> *Supra* note 39, pg. 3.

<sup>116</sup> *Supra* note 81, pg. 1.

<sup>117</sup> Jean Ensminger Edie And Lew Wasserman Professor Of Social Science California Institute Of Technology, [Written Testimony Before the House Financial Services Committee, Subcommittee on International Monetary Policy and Trade on "Examining Results and Accountability at the World Bank,"](#) (March 22, 2017), pg. 5.

<sup>118</sup> In a project in Kenya that provided support for community-driven development (CDD) projects, for example, an expert stated that "one of the most harmful features in the design of the Arid Lands Project was the discretion that district project officers had over which villages received projects. This effectively amounted to monopoly control over who got the money, and it vested the project office with immense power over beneficiaries. By controlling the allocation of future funds to villages, the project staff was able to stifle legitimate protests." *Supra* note 117, pg. 3.

<sup>119</sup> "Consider the following example that, though extreme, indicates the shortcomings of the status quo. In 2006, the World Bank finalized an \$84.6 Million loan to the Indian government for a hospital improvement project in Orissa, India to improve the quality of the state's health services delivery. The completion report was prepared by construction supervision consultants hired by the government of Orissa. Their report indicated that the project's outcomes were "Moderately Satisfactory," and certified that 38 hospitals had been completed to specification. In reality, however, when the World Bank sent its own inspectors to Orissa, after being alerted to the situation by locals, it found that 93% of the hospitals funded by the project had problems like leaking roofs, crumbling ceilings, molding walls, and non-functional water, sewage, or electrical systems." Binette, Daniel (2016), "A Modest Proposal for Improving Supervision in World Bank Infrastructure Projects," para. 5.

<sup>120</sup> *Supra* note 67, pg. 38.

## Challenges in Conducting Independent Oversight: Relationship between the World Bank and Member States

The Bank faces challenges in conducting independent oversight to ensure that implementing agencies comply with Bank policies. Frequently, the Bank has not identified and addressed problems with projects' compliance with Bank policies until independent civil society groups have brought those problems to the Bank's attention. Many CSOs, including BIC, have reported extensively on gaps in projects' compliance with the Bank's environmental and social policies, which were addressed only after CSOs filed formal complaints.<sup>121</sup> With regard to disclosure of project documents, one anti-corruption expert has argued that "[i]t is never in the interest of corrupt officials to share budgetary and contracting details, which is why they are so often hidden, even when [World Bank] project documents explicitly require that they be made available."<sup>122</sup> In at least one asset return project, the Bank overlooked the implementing agency's non-disclosure of required information about the project, as well as indicators of potential fraud and corruption in procurement.<sup>123</sup> In the same project, the Bank had not disclosed procurement plans on its website (as required under the Bank's policies), which was only addressed after a CSO reported the issue to the Bank.<sup>124</sup>

Institutional incentives limit the Bank's capacity and willingness to conduct independent oversight and ensure compliance with its own policies. For decades, experts and analysts have emphasized that the Bank has a strong incentive to maintain good working relationships with its member countries, particularly middle-income members that borrow from the Bank at market lending rates—such as Kazakhstan and, at times, Nigeria.<sup>125</sup> The Bank often is unwilling to take action that would potentially damage its relationships with revenue-generating loan and grant recipients. Further, according to one expert, "most staff career incentives favor moving as much money as possible, thus merely encouraging pro forma application of [the Bank's] policies"<sup>126</sup> without close scrutiny of project compliance with those policies once loans have been approved.

In asset return projects, the Bank takes a significant fee for supervising a project's implementation and providing oversight (discussed in the following section). As a result, the Bank has a financial incentive to secure and maintain its own role in asset return by maintaining good working relationships with asset holding governments and the governments to which the assets are being returned. Promoting and monitoring transparency, anti-corruption measures, and civil society involvement risks damaging relationships with the Bank's revenue-generating "clients" for supervision and oversight of asset return projects, and reduces the incentives to engage with governments on these issues in asset return projects.

## Lack of Competition for Supervision of Asset Return Projects

The World Bank's oversight does come at a cost. Despite the importance of minimizing the costs of asset return,<sup>127</sup> there is no evidence that the World Bank has faced any competition from other multilateral development banks to provide supervision and project management services for projects funded by recovered assets. According to publicly available information, no other multilateral development bank has taken on the responsibility for facilitating and overseeing asset return projects.

The fees charged for World Bank oversight of asset return projects varied based on the type of World Bank involvement. For the Kazakhstan I case, in which the Bank provided oversight for an NGO modality of asset return, the total World Bank fee was anticipated to be \$1.1 million U.S. dollars out of \$84 million, or 1.3%.<sup>128</sup> In Kazakhstan II, assets were returned through a recipient-executed trust fund. The Bank originally planned to charge up to 4.25% of the \$48.8 million contribution to the trust fund, or \$2.074 million.<sup>129</sup> Subsequently, in 2017, the parties signed a supplementary agreement, under which the Bank's new policy directive on trust funds and cost recovery would apply, which would increase the Bank's fee to \$2.44 million.<sup>130</sup> Due to the non-disclosure of MOUs for the other three of the five case studies (Abacha I, Abacha II, and Kyrgyzstan) reviewed in Chapter 1, the cost of the Bank involvement is unknown.

<sup>121</sup> E.g., BIC (2018), "Uganda Transport Sector Development Project," <https://bankinformationcenter.org/en-us/project/uganda-transport-sector-development-project-tsdp>

<sup>122</sup> *Supra* note 117, pg. 3.

<sup>123</sup> In its report on the Kazakhstan Youth Corps Program, CHRI reported on a number of indicators of fraud and corruption in the procurement process, including a large number of contracts awarded to the same firm, "which if tendered as a single contract would have required the more demanding International Competitive Bidding procedure;" and inflated costs of services. *Supra* note 67, pg. 34.

<sup>124</sup> *Supra* note 67, pg. 42.

<sup>125</sup> The World Bank (2019), *World Bank Country and Lending Groups*.

<sup>126</sup> Fox, Jonathan A. and Brown, Lloyd David (ed.) (1998), *The Struggle for Accountability: The World Bank, NGOs, and Grassroots Movements*, pg. 530.

<sup>127</sup> For example, the Conference of States Parties to the UNCOC has called upon Member States "to consider waiving or reducing to the barest minimum reasonable expenses deducted when recovering assets, particularly when the requesting State is a developing country, bearing in mind that the return of illicitly acquired assets contributes to sustainable development." Conference of the States Parties to the United Nations Convention against Corruption, *Resolution 6/2*, para. 7.

<sup>128</sup> The Service Agreement provided an initial total fee and cost breakdown, which included \$500,000 for preparatory services (year 1), and \$150,000 per year for ongoing services (years 2 to 5). The payments were to be adjusted to ensure full cost recovery. *Supra* note 128, pg. 7.

<sup>129</sup> The Bank could charge 2% of the contribution "to assist in the defrayment of the cost of administration and other expenses incurred by the Bank", plus actual costs for "Trust Fund administration and program management" up to a maximum of 2.25% of the contribution. *Supra* note 62, Annex 1, pg. 1.

<sup>130</sup> Fees are charged as follows: a 5% fee on the first \$50 million; a 4% fee on the next \$450 million; a 3% fee on next \$500 million; and 2% on any further amount. Development Finance Vice-Presidency of the Bank (2016), "Directive: Bank Directive Cost Recovery Framework for Trust Funds," pg. 2.

# Chapter 3:

## GAPS IN THE WORLD BANK'S EFFORTS TO PREVENT CORRUPTION IN PROJECTS

Preventing corruption during project implementation should be a key consideration in the design of projects that are funded by recovered assets. This chapter discusses gaps in the Bank's efforts to prevent corruption in projects funded by recovered assets: gaps in corruption risk assessments and mitigation measures; over-reliance on project-level grievance redress mechanisms; and the Bank's limited ability to prevent corrupt regimes from benefitting from contracts funded by recovered assets.

### Weak Corruption Risk Assessments and Mitigation Measures

In its projects, the Bank identifies and addresses corruption risks through its Systematic Operations Risk-Rating Tool, and corruption risks are taken into account in the Bank's assessment of institutional capacity, governance, and fiduciary issues.<sup>131</sup> However, experts have critiqued the Bank's lack of responsiveness to governance and anti-corruption issues in projects.<sup>132</sup> Detailed corruption risk assessments and tailored prevention strategies are essential for every Bank-financed project, particularly where there is a high risk of corruption.<sup>133</sup> Yet tailored risk assessments and prevention activities are not always designed or implemented,<sup>134</sup> including for projects funded by recovered assets. For example, the Corruption and Human Rights Initiative found significant gaps in the anti-corruption measures put into place for the Kazakhstan II-funded Youth Corps Program, stating that the Bank did not address "the specific risks that emerge from project implementation through a government that is systemically corrupt and deeply authoritarian in nature. Instead the risk analysis focuses on the potential low capacity of Kazakh organisations and the lack of procedural experience."<sup>135</sup> The project funded by Abacha II assets similarly proposed few

mitigation measures to reduce the risk of corruption, instead emphasizing the importance of a grievance mechanism for beneficiaries of cash transfers (discussed further below).<sup>136</sup>

The Bank has, at times, chosen to strengthen risk assessments and mitigation measures for high-risk projects. For example, expert Richard Messick has praised an anti-corruption strategy developed for a high-risk project in Colombia, which set out specific measures to address specific corruption-related risks and incorporated anti-corruption measures into the project's design.<sup>137</sup> The Bank may also propose additional measures to prevent and monitor corruption risks in projects. For example, the Integrity Vice Presidency conducts in-depth reviews collaboratively with World Bank staff, in order to "verify that funds have been used for the purpose intended;" "assess the effectiveness of control, oversight and governance mechanisms within the project;" "identify questionable and potential ineligible expenditures as well as instances of possible misprocurement;" "identify indicators of fraud and corruption and other integrity issues;" and "compile detailed lessons learned that can be used to enhance controls and risk mitigation measures in the project."<sup>138</sup> According to INT, these reviews can be proactively conducted at an early stage in the process of implementing a higher-risk project, though the triggers for the proactive reviews are not clear.<sup>139</sup>

Given the importance of ensuring that recovered assets are not again stolen in the process of return, in-depth INT reviews in the early stages of project implementation may be a useful tool for projects funded by recovered assets. However, there is no indication that such measures are planned for the Kazakhstan II projects, the Nigeria II project, and the Kyrgyzstan project (all of which are ongoing). Further, the Bank has overlooked significant red flags in procurement processes for at least one of these projects, the Youth Corps Program funded by the Kazakhstan II assets, including the implementing agency's decision to award nearly 40% of all non-consultancy contracts to one Kazakh company.<sup>140</sup>

<sup>131</sup> World Bank (2014), "[Guidance Note Systematic Operations Risk-Rating Tool \(SORT\)](#)," pg. 2.

<sup>132</sup> Johnson, Jesper, Nils Taxell, and Dominik Zaum (2012), "[Mapping evidence gaps in anti-corruption](#)," pg. 34, Citing (IEG 2009; IEG 2011; Quality Assurance Group 2009).

<sup>133</sup> Messick, Richard (2017), "[Curbing Corruption in Development Projects: Memo for the World Bank Board of Governors](#)."

<sup>134</sup> Messick, Richard (2017), "[Curbing Corruption in Development Projects: Memo for the World Bank Board of Governors](#)."

<sup>135</sup> Supra note 67, pg. 28.

<sup>136</sup> The PAD states that "Risk mitigation measures related to governance and anti-corruption. Measures to mitigate FM governance and anticorruption related risks in the project include having in place an independent grievances and appeal mechanism for receiving and managing complaints from individuals about inclusion and exclusion of households identified through the targeting mechanism as poor." World Bank (2016), "[Project Appraisal Document on a Proposed Loan-Credit for a National Social Safety Nets Project](#)," pg. 60

<sup>137</sup> "In addition to the controls added to address the different risks listed in the matrix, the project incorporates ten elements into the design itself to reduce if not eliminate corruption. The boldest is perhaps the retention of a technical management committee to oversee the government unit responsible for implementing the project. This unit, to be "staffed by qualified Colombian professionals with experience in the sector, in public procurement, in financial management, and project management" will report to the governor of the province and the committee overseeing the project (which itself will include staff from the central government) and have a direct line of communication to the Bank staff responsible for the project. A second critical change in the design of the standard World Bank project to reduce the risks of corruption is an increase in the number of Bank staff assigned to oversee the La Guajira loan." Messick, Rick (2017), "[Preventing Corruption in Development Projects: The World Bank's La Guajira Project](#)," para. 6.

<sup>138</sup> World Bank Group (2018), "[World Bank Group Sanctions System Annual Report FY18](#)," pg. 18.

<sup>139</sup> Supra note 138.

<sup>140</sup> Supra note 67, pg. 5.

## Over-Reliance on Project-Level Grievance Redress Mechanisms

World Bank project documents frequently commit to developing project-level grievance mechanisms to receive and review complaints about the implementation of Bank-financed projects, including allegations of corruption. However, these mechanisms often do not function in practice.<sup>141</sup> Project-level grievance mechanisms have been either nonexistent or non-functioning for many World Bank projects that BIC has monitored over the last decade, even when World Bank management has specifically raised the lack of a functioning grievance mechanism with the implementing government agency.<sup>142</sup> Further, even where project-level grievance mechanisms do function, they are not usually independent of implementing government agencies. These government agencies are responsible for receiving and managing complaints, and affected people often will not file complaints due to a fear of reprisals or retaliation against them.

Two projects funded by recovered assets indicate that a project-level grievance redress mechanism will serve as one of the main anti-corruption tools for the project. Bank documents for the Abacha II project state that the “[m]easures to mitigate [financial management] governance and anticorruption related risks in the project include having in place an independent grievances and appeal mechanism for receiving and managing complaints from individuals about inclusion and exclusion of households identified through the targeting mechanism as poor.”<sup>143</sup> Similarly, the project document for the Kazakhstan Youth Corps Program states that “an effective and properly implemented [Feedback and Resolution Mechanism] will ensure that project funds are being used as planned.”<sup>144</sup> However, given project-level grievance mechanisms’ poor track record, these mechanisms should not be the primary anti-corruption tool used for asset return projects. Recent CSO findings for the Abacha II project confirm this conclusion, and identify gaps in the implementation of the grievance redress mechanism for the National Social Safety Nets Project. Nigerian CSO ANEEJ found that grievances were not always being documented, and for those that had been documented, there were significant delays in providing a response.<sup>145</sup>

## Limited Ability to Prevent the Awarding of Contracts to Entities Associated with Corrupt and Autocratic Regimes

The World Bank’s Procurement Framework is guided by a set of core principles, which include value for money, integrity, transparency, and fairness.<sup>146</sup> In addition, the Bank’s Guidelines on Preventing Fraud and Corruption prohibit corrupt, fraudulent, collusive, coercive, and obstructive practices.<sup>147</sup> Nevertheless, the Corruption and Human Rights Initiative found that contracts and grants financed by the Kazakhstan II assets were awarded to entities associated with the ruling political party, including the party’s youth wing. The awarding of contracts to these entities does not constitute a prohibited practice under the Bank’s Guidelines on Preventing Fraud and Corruption, and the Bank’s Procurement Framework does not appear to provide grounds to disqualify entities associated with a corrupt ruling party. If a project is structured as a grant to an implementing government agency, which then sub-grants to or contracts with entities associated with a ruling political party (as occurred in the Kazakhstan II-funded Youth Corps Program), the Bank may not be able to prevent contracts from being awarded to these entities. The risk that contracts will be awarded to entities associated with politicians or ruling political parties is highest in systematically corrupt countries, and future asset return projects should be designed to limit this risk.

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<sup>141</sup> World Bank (2014). “Global Review of Grievance Redress Mechanisms in World Bank Projects,” para. 3.17.

<sup>142</sup> For example, the World Bank Inspection Panel found in Kosovo that “[a]nother recurring theme in the Bank’s supervision reports is the lack of a functioning grievance management system. The system described in the Shala RAP was not maintained once the approximately 50 grievances pertaining to compensation valuation were resolved. The Bank has formally raised this deficiency with the Government.” World Bank Inspection Panel. “Republic of Kosovo Power Project (Proposed, P118287) and Second Additional Financing for Energy Sector Clean-up and Land Reclamation Project (P131539) Inspection Panel Report and Recommendation,” para. 193.

<sup>143</sup> Supra note 136, pg. 60.

<sup>144</sup> World Bank (2014), “Project Appraisal Document on a Proposed Loan/Credit for a youth Corps Project,” pg. 44, 47.

<sup>145</sup> Supra note 96, pg. 23.

<sup>146</sup> World Bank (2017), “Bank Policy Procurement in IPF and Other Operational Procurement Matters,” pg. 3.

<sup>147</sup> World Bank (2016), “Guidelines on Preventing and Combating Fraud and Corruption in Projects.”

# Chapter 4:

## BARRIERS TO EFFECTIVE, INDEPENDENT EXTERNAL MONITORING OF WORLD BANK PROJECTS FUNDED BY RECOVERED ASSETS

The GFAR principles recognize that civil society participation, “including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets,” is a key consideration in asset return.<sup>148</sup> Gaps in World Bank policies, discussed below, highlight the need to improve civil society’s ability to participate in and monitor project implementation by embedding additional provisions in MOUs to strengthen transparency and disclosure of project documents. However, even if World Bank policies are strengthened, there may be insurmountable barriers to effective, independent CSO monitoring, which is discussed in the final section of this chapter.

### Inconsistent Transparency that Stolen Assets are Funding World Bank Projects

Transparency is a key consideration in asset return, including transparency in the approach to cooperation among affected countries<sup>149</sup> and in the “transfer, disposition and administration of recovered assets.”<sup>150</sup> However, the World Bank only sporadically discloses information about its role in facilitating asset return through projects and other oversight activities.

Bank policies do not require proactive disclosure of MOUs between the Bank and governments (which set out the terms of the World Bank’s involvement) or administration agreements for trust funds that are funded by recovered assets. The Bank has, in accordance with its policies, disclosed MOUs and administration agreements upon

request,<sup>151</sup> but these are available for only two of the five case studies reviewed in Chapter 1. These documents should be proactively disclosed on the project page on the World Bank’s website in order to enhance transparency in relation to the origin of the recovered assets funding the project, the terms of the World Bank’s involvement, and the intended use of the assets.

The Project Appraisal Document (PAD)—a document produced by the Bank that contains detailed information on a project’s objectives, activities, and plans for implementation—is not required to state when a project is funded by recovered assets.<sup>152</sup> For the two projects funded by the Kazakhstan II assets, neither PAD acknowledged that the projects were facilitating asset return—and obfuscated the source of assets by referring to the source as a grant from the Swiss Agency for Development and Cooperation (SDC).<sup>153</sup> For the projects (Abacha II, Kyrgyzstan) to which recovered assets were applied after the PAD was produced,<sup>154</sup> there were no official documents published on either project’s page that described how the assets were applied to the projects. For the Abacha II project, only one sentence in an Implementation Status Report—a quarterly monitoring report that the Bank produces on projects during implementation—mentions the Abacha restituted assets.<sup>155</sup> And even the Bank’s publication of press releases on the use of stolen assets in these projects is sporadic. For example, for both Abacha I and Abacha II, the World Bank issued a press release regarding the Bank’s involvement in the return of assets.<sup>156</sup> However, there are no press releases on the Bank’s website in relation to Kazakhstan I, Kazakhstan II, or Kyrgyzstan.

As a result of this sporadic transparency, it is difficult for external stakeholders to identify projects funded by recovered assets, understand the terms of the World Bank’s involvement, and engage with the Bank regarding concerns about a project. The lack of transparency also

<sup>148</sup> GFAR Principle 10 states that, “To the extent appropriate and permitted by law, individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets.” Supra note 7.

<sup>149</sup> For example, the Open-ended Intergovernmental Working Group on Asset Recovery has been directed by the COP to UNCOC to consider “the feasibility of developing guidelines to facilitate a more coordinated and transparent approach for cooperation among affected States parties and effective return.” Conference of States Parties to the U.N. Convention against Corruption (2015). Resolution 6/2, para. 6(c).

<sup>150</sup> Supra note 7, Principle 10.

<sup>151</sup> The World Bank’s Access to Information Policy and associated directives specify which documents the Bank regularly discloses, as well as the rules that apply when the Bank receives a request for disclosure of additional information. World Bank (2015), “[The World Bank Policy on Access to Information](#).”

<sup>152</sup> The issue is not mentioned in the Bank’s current guidance on PADs. “The team leader prepares the PAD with inputs from the different team specialists. Team leaders exercise judgment on the amount of detail and the range of topics to be included in the PAD.” There is also a PAD template, which does not mention this issue. World Bank (2013), “[Investment Project Financing Project Preparation Guidance Note](#),” pg. 21; World Bank (2013), “[Investment Project Financing – Preparing the Project Appraisal Document](#).”

<sup>153</sup> World Bank (2014), [Project Appraisal Document for a Youth Corps Project](#), pg. 15. [Project Appraisal Document for an Energy Efficiency Project](#), pg. 8

<sup>154</sup> PADs were not available for the Kazakhstan I or Abacha I projects. PADs for the Kyrgyzstan project and the project funded with the Nigeria II assets were both disclosed by the Bank before the asset return MOUs were finalized.

<sup>155</sup> The ISR stated that “Under Component 2 (Implementing a Targeted Cash Transfer), cash payments under the Household Uplifting Program (HUP) have been made to 302,676 households using the electronic payment system in 20 states, amounting to close to \$10 million (by which 80 percent was from the Abacha restituted funds).” World Bank (June 6, 2019), “[National Social Safety Nets Project Implementation Status and results report](#),” pg. 1.

<sup>156</sup> World Bank (2005), “[Nigeria, Switzerland and the World Bank Underline the Importance of Fighting International Corruption and the Repatriation of Looted Funds](#).” World Bank (2017), “[Nigeria: World Bank to Help Monitor Repatriated Abacha Funds](#).”

discourages CSO monitoring. The lack of transparency is particularly problematic in cases like Abacha II and Kyrgyzstan, for which recovered assets are being used to fund Bank-financed projects that were approved several years ago. There is very little information about how recovered assets have been applied to these two projects.

Asset return projects serve an important symbolic purpose in the fight against corruption. These projects deserve maximum transparency, and a commitment to go beyond the Bank's standard disclosure practices for other loans and grants.

## Insufficient Disclosure of Other Project Information

The World Bank's policies do not require public disclosure of other project information that is essential to effective, independent CSO anti-corruption monitoring for projects funded by recovered assets. Many of these shortcomings are due to gaps in the World Bank policy on disclosure of procurement-related documents, beneficial owners, and operational plans for project implementation.

The Bank's Access to Information Policy requires disclosure of certain procurement information on the Bank's website, but that information is limited,<sup>157</sup> and the lack of information has made it difficult for civil society to independently monitor asset return projects. For example, the Corruption and Human Rights Initiative critiqued that the Bank failed to disclose detailed information for some Kazakhstan Youth Corps Program tenders, and that information about losing bids was not publicly available.<sup>158</sup> Other experts have also recommended that the Bank require disclosure of "details of winning and losing bids" for Bank-financed projects.<sup>159</sup>

Until 2016, the Bank also was not required to collect or disclose information about beneficial owners for procurements related to projects, and the Corruption and Human Rights Initiative raised concerns about the beneficial ownership of companies that won contracts under the Kazakhstan Youth Corps Program.<sup>160</sup> The Bank's 2016 procurement regulations<sup>161</sup> now require the Bank to "collect and publish beneficial ownership data for all procurements related to World Bank projects over certain thresholds," which are "are country specific."<sup>162</sup> However, the new disclosure requirement would only apply to contracts subject to Bank prior review.<sup>163</sup> In 2014, for the Kazakhstan II youth program, the Bank reviewed contracts: above \$500,000 for goods (the threshold for the use of international competitive bidding procedures); over \$100,000 for consulting contracts with firms; over \$50,000 or more for contracts with individual consultants; and all direct contracts, single-source contracts and amendments.<sup>164</sup> Furthermore, it is not yet clear how beneficial ownership information will be disclosed on the World Bank's project-specific web pages. According to the U.S. Department of the Treasury, beneficial ownership information will be published on borrower's websites "and the information will be published on the World Bank's website/systems."<sup>165</sup>

Additional operational information also must be disclosed about asset return projects in order for civil society to effectively monitor those projects. For example, Project Operation Manuals, which provide important details about procurement, financial management, and Bank oversight, are not routinely disclosed on project pages.<sup>166</sup> Other experts have suggested that the Bank "[m]andate that projects publish transaction level budget and expenditure data quarterly on the web and on publically accessible boards in relevant local sites. Note that enforcement of the latter is virtually impossible, which is why the web is crucial; web postings can be easily monitored for compliance."<sup>167</sup>

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<sup>157</sup> This information consists of an initial procurement plan (disclosed after the loan/credit negotiations) and annually updated procurement plans (after they are officially received and approved by the Bank). It also includes General Procurement Notices, Specific Procurement Notices for open international competitive procurement, Request for Expressions of Interest for consulting services contracts either (i) subject to open international competitive procurement, or (ii) with estimated costs at or above \$300,000. The Bank also publishes contract award information for contracts subject to the Bank's prior review. World Bank (2015), "Bank Directive / Procedure: Access to Information," Annex 2.

<sup>158</sup> Supra note 67, pg. 34.

<sup>159</sup> Supra note 117, pg. 6 – 7.

<sup>160</sup> Supra note 67, pg. 30.

<sup>161</sup> World Bank (2016; revised 2017 and 2018). "World Bank Procurement Regulations for IPF Borrowers," pg. 31.

<sup>162</sup> United States Department of the Treasury Page (2018), "Report to Congress on Beneficial Ownership Information Practices at the Multilateral Development Banks," pg. 3. According to the World Bank's website, "Monetary thresholds are set for each borrowing country by the Regional Procurement Managers (RPMs) to maximize competition and efficiency of procurement." World Bank (2016), "Thresholds and Legal Agreements in Procurement," para. 1.

<sup>163</sup> Prior review means that the Bank examines a contract and issues a no-objection before a contract is awarded.

<sup>164</sup> Supra note 144, pg. 44 and 47.

<sup>165</sup> United States Department of the Treasury Page (2018), "Report to Congress on Beneficial Ownership Information Practices at the Multilateral Development Banks," pg. 2 – 3.

<sup>166</sup> Other MDBs routinely disclose equivalent documents. For example, the ADB routinely discloses Project Administration Manuals, like this [one](#) for a project in Mongolia, upon circulation to the Board. It is circulated to the Board along with the Report and Recommendation of the President, prior to project approval.

<sup>167</sup> Supra note 117, pg. 6 – 7.



## Additional Measures Needed to Ensure Effective CSO Monitoring and Oversight

The UN Convention Against Corruption recognizes that the involvement of civil society and other groups outside the public sector supports the effectiveness of efforts to prevent and eradicate corruption.<sup>168</sup> The largely positive experience with asset return via the World Bank—the BOTA Foundation and ANEEJ’s early experience with Abacha II—were positive because it was possible for civil society organizations to independently conduct in-depth monitoring of and reporting on the return of assets. Such in-depth monitoring and reporting is not envisioned in or enabled by Bank policies, which tend to focus on engagement and consultation with affected stakeholders on how pre-determined activities are to be implemented.<sup>169</sup>

The CSO experience with the Abacha II asset return—as part of the World Bank-funded National Social Safety Nets project—has largely been positive. In the original MoU, the Government of Nigeria committed to engage CSOs in monitoring the asset return.<sup>170</sup> Subsequently, the Ministry of Justice signed an MoU on monitoring with the Africa Network for Economic and Social Justice (ANEEJ), an independent CSO,<sup>171</sup> which gives ANEEJ the ability to monitor to transaction-level information about the project. ANEEJ also has conducted extensive monitoring activities. For example, ANEEJ’s first monitoring activity in December 2018 mobilized 500 monitors and 66 supervisors.<sup>172</sup>

Such monitoring requires open civic space, the ability to express critical views freely, and genuine and specific commitments from governments to facilitate and allow for in-depth CSO monitoring. In the absence of these conditions, CSOs are unlikely to be able to effectively monitor asset return projects.

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<sup>168</sup> U.N. Convention Against Corruption (2003), Preamble.

<sup>169</sup> For example, the emphasis of Environmental and Social Standard 10 is on stakeholder engagement that “supports the development of strong, constructive and responsive relationships that are important for successful management of a project’s environmental and social risks.” World Bank (2017), “The World Bank Environmental and Social Framework,” pg. 4.

<sup>170</sup> Supra note 89.

<sup>171</sup> Supra note 96, pg. 3.

<sup>172</sup> Supra note 96, pg. 3.

# Conclusion

Going forward, there will be additional cases of asset return. Many of these cases, particularly the return of up to \$1.3 billion in stolen assets to Uzbekistan,<sup>173</sup> have the potential to make a significant contribution sustainable development. Given the serious weaknesses in prior instances of the World Bank's facilitation and oversight—which range from the Bank's inability to “clearly track” expenditures in Nigeria I to allegations that a Kazakhstan II project enriched the ruling party—future asset return projects should consider other options.

Uzbek activists, for example, have encouraged building the capacity of receiving States and incentivizing reforms to strengthen the rule of law, national anti-corruption mechanisms, and the enabling environment for civil society (particularly freedom of association, assembly, and expression).<sup>174</sup> Capacity building would create the foundation for more sustainable asset return that could occur without support from an external facilitator, and instead with monitoring and oversight provided by independent local civil society organizations.

## Recommendations

- ▶ Future asset return projects should **prioritize building the capacity of receiving States and incentivizing reforms to strengthen the rule of law, national anti-corruption mechanisms, and the enabling environment for civil society** (particularly freedom of association, assembly, and expression). Capacity-building should be conducted with the aim to return assets in the future without support from an external facilitator, and with monitoring and oversight provided by independent civil society organizations.
- ▶ There should be **competition for the role of facilitator of asset return**, which could reduce fees charged and improve the effectiveness of third-party oversight.

## TO ASSET-HOLDING GOVERNMENTS, PARTICULARLY SWITZERLAND AND THE UNITED STATES:

- ▶ Ensure **more transparency of the asset return process generally, and especially at the earliest stages of the process**—i.e., at the start of discussions about managing asset return.
- ▶ **Consult with independent civil society organizations at the earliest stages** of the asset return process, prior to making a decision on the modalities of asset return.
- ▶ Avoid using the proceeds of asset return to support projects that target issues such as “youth engagement,” which can easily be politicized.
- ▶ **Explore cost-effective alternatives to World Bank facilitation and oversight** of asset return projects, particularly the potential to build the capacity of receiving governments as a pre-condition for asset return.
- ▶ **Ensure commitments from all parties to full CSO engagement** in the process of design of asset return projects, and to independent CSO monitoring of the process of project implementation. Effective, independent monitoring also requires commitments from all parties to give CSOs access to full information regarding project implementation, and to fund and build capacity within CSOs to take on this role.
- ▶ **If the World Bank is engaged:**
  - Design projects with an aim to **prevent implementing agencies from awarding contracts and grants to entities associated with corrupt ruling regimes.**
  - Ensure that the World Bank commits to instituting **tailored anti-corruption strategies for asset return projects**, with rigorous procedures for detecting and responding to instances of corruption.
  - **Ensure that the World Bank commits to greater disclosure** of: its own role in facilitating asset return; MoUs and administration agreements; and procurement documents and other financial information about projects.

<sup>173</sup> Ilkhamov, Alisher (2019), “How Should the Return to Uzbekistan of Gulnara Karimova’s Ill-Gotten Assets Be Carried Out?”

<sup>174</sup> Uzbek CSO activists (2018), “On Principles of Responsible Repatriation of Assets to Uzbekistan, Proposal by Uzbek civil society activists.” Uzbek CSO activists (2019), “Civil Society Activists of Uzbekistan Call for Justice in the Return of Gulnara Karimova’s Ill-Gotten Assets.”

## TO THE WORLD BANK:

- **Avoid using the proceeds of asset return to support projects that target issues such as “youth engagement,”** which can easily be politicized and allow for significant discretion in the awarding of grants.
- **Conduct thorough corruption risk assessments** for asset return projects, incorporate tailored mitigation measures into project design, and closely monitor implementation. Project-level grievance redress mechanisms should not serve as the primary anti-corruption mechanism for projects.
- **Institute additional corruption prevention measures,** such as INT in-depth reviews at the early stages of project implementation.
- **Routinely disclose MoUs and Trust Fund Administration Agreement on project pages** for projects funded by asset return.
- **Ensure that PADs and other documents clearly identify that projects are funded by recovered assets,** and clearly state how recovered assets are applied to projects.
- **Disclose additional procurement information and beneficial ownership information** on the Bank’s website, including more detailed tender information and information about losing bids.



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