



**Disrupting criminal trafficking and smuggling networks
through increased anti-money laundering and financial investigation capacity
in the Greater Horn of Africa
(AML-THB in the GHoA)**



International Asset Recovery Framework

May 17th 2021

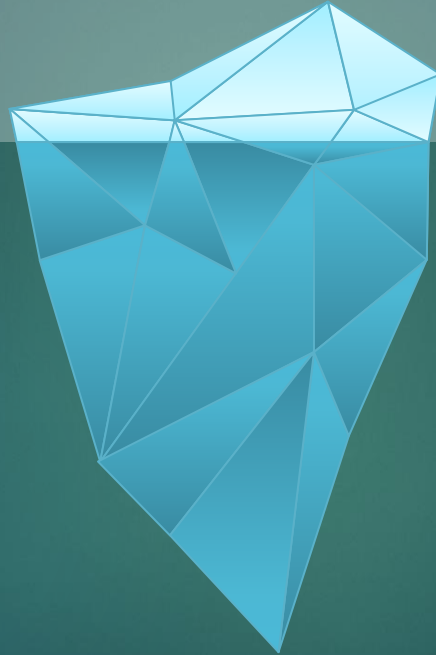
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↓ Hello! GOOD MORNING



Tip of the iceberg

The overall objective of the desired outcome of the AR legal & policy framework can be described as the tip of the iceberg. Beneath is the operational complexities that must be surmounted to achieve this goal



Part 1



General Introduction

Introduction-Objective

- ▶ Overall training objective has been given as strengthening the participants' capacity to identify, trace, investigate, seize/freeze, recover/confiscate and dispose illegally acquired assets.
- ▶ Objective of this presentation is twofold:-
 - Increase the participants knowledge/or refresh their knowledge on the asset recovery international framework, and,
 - Highlight areas in the international framework that participants can use as tools in their day-to-day asset recovery work.

Let's Get Started-Outline of the AR presentation

- Why does asset recovery matter
- Use of AR Terms
- International Instruments Framework & Regional Protocols
- International Asset Recovery Initiatives
- Asset Recovery Process- overview
- Conclusion



What is asset recovery?

- ▶ The term **Asset recovery** made its first appearance in an international instrument in the UN Convention Against Corruption(UNCAC) as a priority. AR is a term used in the UNCAC in reference to the deprivation of proceeds of corruption and the process of repatriation of such proceeds hidden in foreign jurisdictions
- ▶ The term is used widely as a process of depriving criminals and their associates of ill -gotten wealth
- ▶ In this presentation, Asset recovery refers to the detection, tracing, freezing/seizures, confiscation and return to the rightful owner of illegally acquired assets from financial crime (e.g. corruption, money laundering, organized crime and their financing, financing of terrorism, tax evasion etc.)

AR Use of Terms

Pre-seizure

Asset tracing

Asset tracking

Pre-seizure planning

Financial investigations

Property

Instrumentality

Value

Interim stage

freeze

Seizure

Preserve

Stay

Interim disposal/realization/execution

Management of seized and frozen assets

Final stages

Confiscation

Forfeiture

Restitution/return

Compensation

Damages

Penalties

Sanctions

Settlements

Re-use

Asset sharing

Why does asset recovery matter?

political

Accountability & legitimacy

Social & political stability –reducing danger to society

development

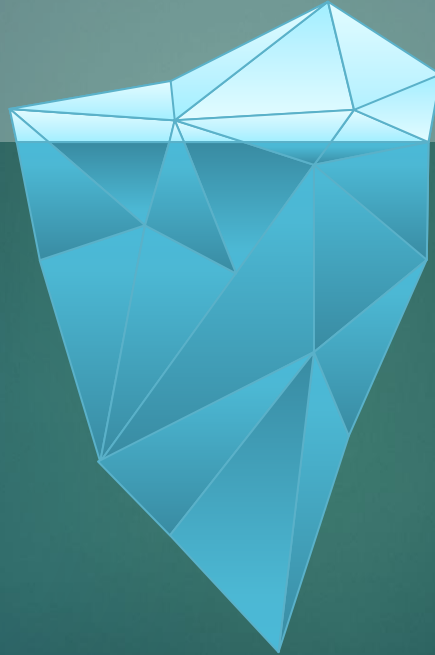
- Restoration of financial integrity for investment
- Global Agenda-MDGs etc.
- Domestic resource mobilization for use by its citizens

rule of law

- Ending impunity
- Punishment not enough, taking away incentive
- Disruptions to criminal groups & networks
- No safe havens
- Restitution to victims

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Part 2



International
Instruments
Framework &
Regional
Protocols

United Nations Convention Against Corruption-UNCAC

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- ▶ UNCAC is a product of the international community response to public corruption and its devastating effects. The Convention came into effect in 2005
- ▶ Two key features relevant to today's discussions:
 - a) asset recovery and **return** is mentioned for first time in international instrument as priority to fight corruption
 - b) platform for multilateral cooperation on corruption matters
- ▶ UNCAC obligates Member States to domesticate especially the **mandatory** Articles and provides for review mechanism to support the domestication process.
- ▶ The UNCAC limitation is focus mostly on **corruption prevention, enforcement of corruption offenses** and recovery of proceeds of **corruption**



United Nations Convention Against Transitional Organized Crime-UNTOC

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- ▶ Main international instrument that provides a framework to tackle organized crime (190 parties-2018)
- ▶ Promotes international cooperation to prevent and enforce transnational organized crime
- ▶ Measures include domestication of offences such as organized criminal groups, money laundering, corruption, obstruction of justice and framework for extradition, MLA and LEA's cooperation
- ▶ Article 12-confiscation & seizure
- ▶ Article 13-international cooperation for confiscation
- ▶ Article 14- disposal of recovered assets
- ▶ UNTOC has three significant protocols:
 - a) protocol to prevent, suppress and punish trafficking in persons especially women and children
 - c) protocol against the smuggling of migrants by land, sea or air
 - c) protocol against illicit manufacturing and trafficking in firearms



African Union Convention on Preventing & Combating Corruption-AUCPCC

- ▶ AUCPCC adopted in Maputo in 2003 & came to force 2006- current-44 members
- ▶ Calls for eradication of corruption in public and private sector- offences coached in mandatory terms
- ▶ Has an advisory board to monitor implementation-AUABC

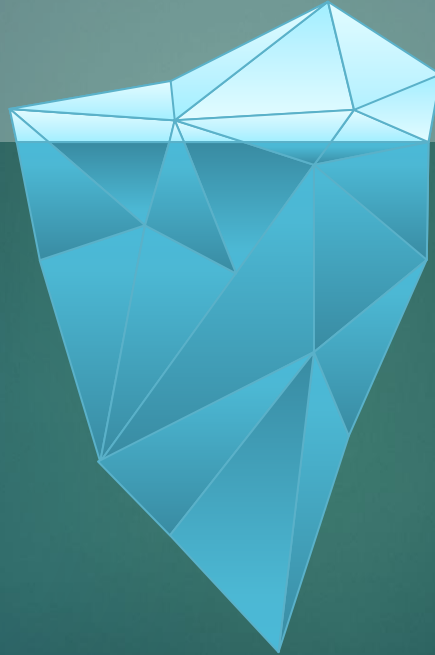


Other Regional Frameworks

- ▶ South African Community Development Protocol Against Corruption
- ▶ Economic Community of West African States Protocol on fight against corruption
- ▶ EAC Protocol
- ▶ MOUS/Bilaterals between countries

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Part 3



International Asset Recovery Initiatives

International Asset Recovery Initiatives

- ▶ Several International Bodies and Platforms have mobilized resources to improve the effectiveness of AR through setting best practices, international standards, binding recommendations, review mechanisms and technical assistance programs. Examples Include:-
 - UN Office on Drugs & Crime-UNODC (COSP, Inter-Governmental AR Working Group, UNCAC Reviews)
 - Stolen Asset Recovery Initiative-StAR(World Bank/UNODC)
 - Financial Action Task Force-FATF & FATF Style Regional Bodies-FSRBs
 - International Centre for AR-ICAR
 - Interpol- AR Global Program
 - Organization for Security & Cooperation in Europe-OSCE
 - OECD- Bribery Working Group
 - The International Association for AR-IAAR
 - CARIN & CARIN Style Networks-The ARIN's- ARINSA, ARINEA & ARINWA in Africa
 - EGMONT Group

Financial Action Task Force (FATF)

- ▶ FATF is an Inter governmental organization founded in 1989 on the initiative of the then G7 to develop policies to combat money laundering- later expanded to terrorism financing- AML/CFT
- ▶ FATF has set AML/CFT standards in form of Recommendations targeting financial integrity, has in place peer review mechanisms through regional bodies and maintains a list of noncompliant countries
- ▶ The Recommendations directly targeting AR are :-
 - 1- National Risk Assessment on AML/CFT (Risk Based)
 - 4-Measures for freezing and confiscation of assets
 - 38-Mutual legal assistance for freezing and confiscation.-

Other Useful Sanctions Regimes for AR

US-FCPA, FINCEN, OFAC

UN- UNSCR- 1267 & 1373
Consolidated Sanctions Lists

UK- Sanctions

EU Sanctions

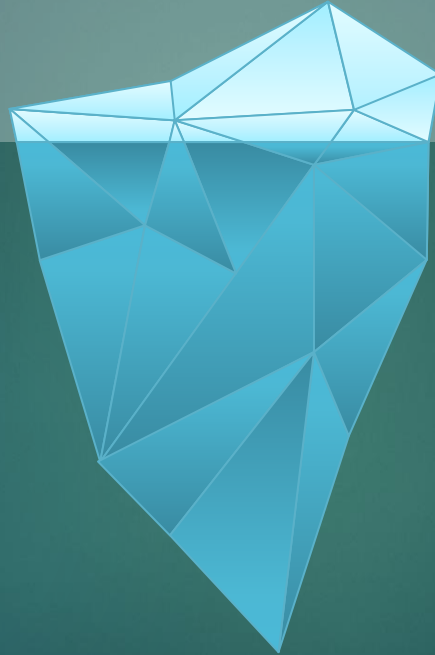
MDBs-Debarment Sanctions

ARINSA/ ARINEA?



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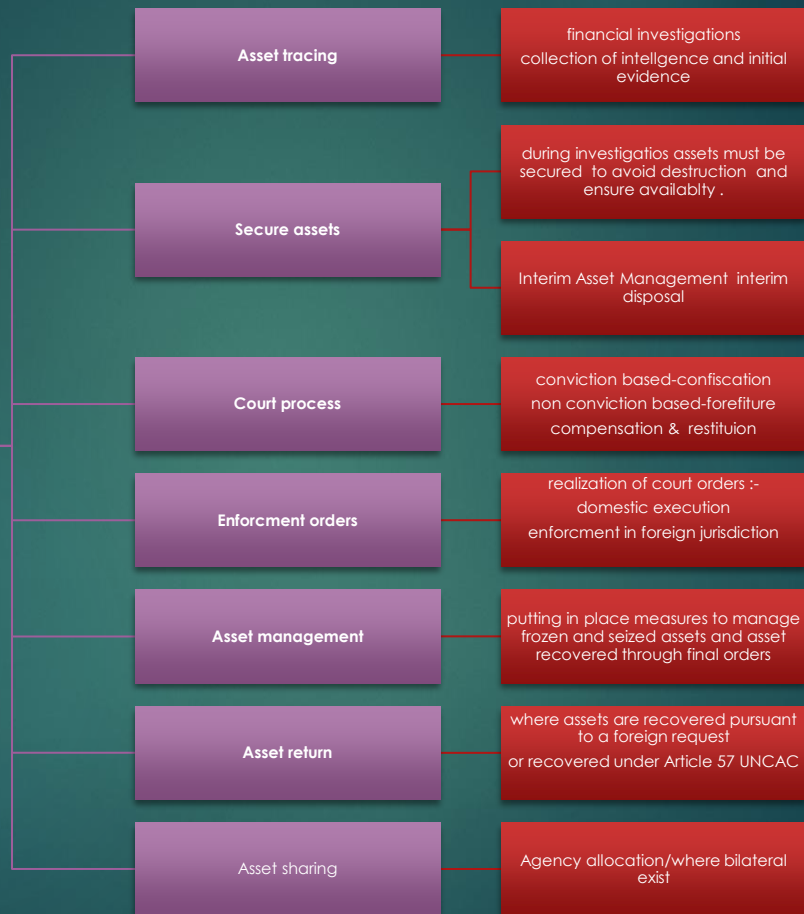


Part 4



Overview of Asset Recovery Process

AR Cycle



Strategic considerations

- ▶ Property-based systems (also referred to as “tainted property” systems) allow the confiscation of assets found to be the proceeds or instrumentalities of crime—requiring a link between the asset and the offense (a requirement that is frequently difficult to prove when assets have been laundered, converted, or transferred to conceal or disguise their illegal origin).
- ▶ Value-based systems (also referred to as “benefit” systems) allow the determination of the value of the benefits derived from crime and the confiscation of an equivalent value of assets that may be untainted.
- ▶ Article 31 UNCAC offers useful guidelines

Case examples

- ▶ Peru: Vladimiro Montesinos and His Associates
- ▶ Zambia: Civil Actions in Tort against Frederick Chiluba and His Associates
- ▶ Nigeria: Diepreye Alamiyeseigha
- ▶ Uzbekistan: US Jurisdiction over the Gulnara Karimova Corruption Case



Thank you-Questions?