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Research Report

Illicit financial flows and stolen asset recovery: The Global North must act

Research Paper, No. 172

Provided in Cooperation with:

South Centre, Geneva

Suggested Citation: Chowdhary, Abdul Muheet; Diasso, Sebastien Babou (2022) : Illicit financial flows and stolen asset recovery: The Global North must act, Research Paper, No. 172, South Centre, Geneva

This Version is available at:

<https://hdl.handle.net/10419/278271>

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Illicit Financial Flows and Stolen Asset Recovery: The Global North Must Act

Abdul Muheet Chowdhary and
Sebastien Babou Diasso



**SOUTH
CENTRE**

RESEARCH PAPER

172

ILLICIT FINANCIAL FLOWS AND STOLEN ASSET RECOVERY: THE GLOBAL NORTH MUST ACT

Abdul Muheet Chowdhary and Sebastien Babou Diasso ¹

SOUTH CENTRE

1 DECEMBER 2022

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Acknowledgements and thanks are due to the helpful comments of Dr. Priyadarshi Dash, Associate Professor at Research and Information System for Developing Countries (RIS), New Delhi, India.

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ABSTRACT

Domestic resource mobilization is essential for developing countries to achieve the Sustainable Development Goals by the deadline of 2030. Concomitantly, Illicit Financial Flows (IFFs), which also lead to asset theft, are major means through which these countries are losing resources. This research paper analyzes the World Bank's Stolen Asset Recovery (STAR) database and shows that countries from where assets have been stolen are mostly developing countries, and countries where the stolen assets have been hidden are developed countries. The paper also shows that regarding the pending or ongoing asset recovery cases, there is a clear pattern where the majority of countries waiting to have their assets returned are developing countries, and those who must return them are developed countries. There is an unexplained and unjustified delay by developed countries in the process of returning the frozen assets to developing countries which needs to be addressed as soon as possible. There is also an evaluation of international legal reforms which can be implemented to accelerate the asset recovery process. However, all these will need the full commitment of Global North countries where most of the stolen assets are hidden and which bear the brunt of responsibility for returning them to the developing countries.

La mobilisation de ressources locales est essentielle pour que les pays en développement réalisent les objectifs de développement durable à l'échéance de 2030. Parallèlement, les flux financiers illicites (FFI), qui conduisent également au vol d'actifs, sont les principaux moyens par lesquels ces pays perdent des ressources. Ce document de recherche analyse la base de données STAR (Recouvrement des Actifs Volés) de la Banque mondiale et montre que les pays où les actifs ont été volés sont principalement des pays en développement, et que les pays où les actifs volés ont été cachés sont des pays développés. Le document montre également qu'en ce qui concerne le processus de recouvrement des avoirs en cours ou en attente, il apparaît clairement que la majorité des pays qui attendent la restitution de leurs avoirs sont des pays en développement, et ceux qui doivent les restituer sont des pays développés. Il y a un retard inexpliqué et injustifié de la part des pays développés dans le processus de restitution des avoirs gelés aux pays en développement, qui doit être résolu le plus rapidement possible. Il existe également une évaluation des réformes juridiques internationales qui peuvent être mises en œuvre pour accélérer le processus de recouvrement des avoirs. Toutefois, toutes ces mesures nécessiteront l'engagement total des pays du Nord, où la plupart des avoirs volés sont cachés et qui assument la plus grande partie de la responsabilité de leur restitution aux pays en développement.

La movilización de recursos internos es esencial para que los países en desarrollo alcancen los Objetivos de Desarrollo Sostenible antes de la fecha límite de 2030. Al mismo tiempo, los flujos financieros ilícitos (IFF) que conducen al robo de activos son mecanismos importantes por los cuales estos países están perdiendo recursos. Este documento de investigación analiza la base de datos de recuperación de activos robados (STAR por sus siglas en inglés) del Banco Mundial y muestra que los países en los que se han robado activos son en su mayoría países en desarrollo, y los países en los que se han escondido los activos robados son países desarrollados. El documento también muestra que con respecto a los casos de recuperación de activos pendientes o en curso, existe un patrón claro en el que la mayoría de los países que esperan que se les devuelvan sus activos son países en desarrollo, y aquellos que deben devolverlos son países desarrollados. Hay un retraso inexplicable e injustificado por parte de los países desarrollados en el proceso de devolución de los activos congelados a los países en desarrollo que debe abordarse lo antes posible. También hay una necesidad de evaluación de las reformas legales internacionales que pueden implementarse para acelerar el proceso de recuperación de activos. Sin embargo, todo esto necesitará el compromiso total de los países del Norte Global, donde se oculta la mayoría de los activos

robados y que cargan con la mayor parte de la responsabilidad de devolverlos a los países en desarrollo.

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I. INTRODUCTION

Resource mobilization is a core issue for developing countries. Substantial funding is required in order to attain the Sustainable Development Goals' (SDGs) targets and improve the socio-economic situation by 2030. Governments need to increase their domestic resources as a matter of priority, given that most of these countries already have high debt levels making the option of additional external debt less likely. Thus, alongside initiatives aiming to mobilize more domestic resources, more commitment is also needed at the domestic and international levels to fight unfair practices such as Illicit Financial Flows (IFFs), which account for a substantial loss of resources in developing countries. According to the United Nations Office on Drugs and Crime (UNODC), the developing world has been losing between \$20 to \$40 billion per year through practices such as bribery, misappropriation of funds, and corruption². For the United Nations (UN) High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel), as much as 10% of the world's gross domestic product (GDP) might be held in offshore financial assets. 2.7% of the global GDP is laundered by criminals, and bribery of all types in the world amounts to an estimated \$1.5 to \$2 trillion every year³. Those suffering the most from the IFFs are developing countries.

Indeed, IFFs, as will be shown in this research paper, have been an important source of revenue loss in developing countries, particularly assets stolen by means of corruption via abuse of the position of certain public officials. A process of returning such illegally acquired resources called "Asset Recovery" became an issue of relevance. It was incorporated into international law through various agreements, including the United Nations Convention Against Corruption (UNCAC). There have also been initiatives to disseminate good practices in this regard. This process was emphasized in SDG 16.4 and in the Addis Ababa Action Agenda on Financing for Development as a tool to increase domestic revenues.

In order to stem Illicit Financial Flows and recover stolen assets, efforts in building effective, accountable, and inclusive international legal frameworks are needed both in countries where assets have been stolen and in destination countries where the assets are hidden to stem the channels allowing for this practice and to reduce further incentives for assets theft while returning those already hidden.

In this regard, an Intergovernmental Working Group on Asset Recovery was set up in December 2006 through resolution 1/4⁴ by the Conference of the States Parties (COSP) to the United Nations Convention against Corruption (UNCAC). Unfortunately, as this paper will demonstrate, the results are insufficient so far, given the number of cases pending for years without any return of the assets to the country from where they were stolen, called the origin jurisdiction.

The paper also shows a clear pattern that most of the recovery jurisdictions, meaning countries where assets have been hidden, are developed countries, and those awaiting the return of their assets are developing countries. Hence, more efforts are needed from the developed countries to accelerate the recovery process to the benefit of origin jurisdictions, which are mostly developing countries. Further, the paper provides an overview of the asset recovery

² United Nations Office on Drugs and Crime, "Asset Recovery." Available from <https://www.unodc.org/unodc/en/corruption/asset-recovery.html>.

³ *Financial Integrity for Sustainable Development*, Report of the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (United Nations, February 2021). Available from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

⁴ United Nations Office on Drugs and Crime, "First session of the Conference of the States Parties to the United Nations Convention against Corruption". Available from <https://www.unodc.org/unodc/en/corruption/COSP/session1-resolutions.html#resolution14>.

process. It concludes by examining some options for reform, as recommended by the FACTI Panel.⁵

⁵ The FACTI Panel was setup jointly in 2020 by the Presidents of the UN General Assembly and the Economic and Social Council (ECOSOC) to provide recommendations to promote global financial accountability, transparency, and integrity.

II. ILLICIT FINANCIAL FLOWS, A FINANCIAL HEMORRHAGE FOR DEVELOPING COUNTRIES

Illicit Financial Flows (IFFs), according to the High-Level Panel on Illicit Financial Flows from Africa established in 2012 and chaired by President Thabo Mbeki (Mbeki Panel), refers to money that is illegally earned, transferred, or utilized⁶. That money may originate either from commercial tax evasion, trade misinvoicing and abusive transfer pricing, or from criminal activities, including the drug trade, human trafficking, illegal arms dealing, and smuggling of contraband, or from bribery and theft by corrupt government officials⁷.

Tax avoidance, which walks a fine line between legal and illegal, is also now considered a part of IFFs. At the regional level, the African Union (AU) clearly highlighted this in the Common African Position on Asset Recovery (CAPAR), where paragraph 3 specifically mentions aggressive tax avoidance.⁸ At the global level, the FACTI Panel also mentions this in its report.⁹

2.1. Common channels used for IFFs

The common channels that are used for IFFs are tax abuse, corruption, market/regulatory abuse, and laundering proceeds of crime. These means are used to illegally transfer trillions of dollars out of countries which represent for some countries an important part of the country's GDP.¹⁰

The phenomenon of tax abuse may be explained by Multinational Enterprises (MNEs) or wealthy individuals seeking to escape their tax liabilities or to reduce the due amount of tax. Abuse of power through corruption involves officials using bribery or unauthorized means to steal public assets, which are then hidden in foreign jurisdictions, enabling such practices.

The role of MNEs and officials in causing the IFFs is well known and has been stressed by international organizations, civil society organizations, and independent bodies and experts. Cross-border tax abuse, assets and income hidden in offshore jurisdictions with insufficient regulatory frameworks¹¹ are important components of the phenomenon. For developing countries, it represents hundreds of millions of dollars in lost or forgone tax revenues and

⁶ High-Level Panel on Illicit Financial Flows from Africa, *Illicit Financial Flows*. Available from <https://codafrica.org/wp-content/uploads/2020/11/HLP-REPORT.pdf>.

⁷ Ibid.

⁸ African Union, Draft Common African Position (CAP) on Asset Recovery (AR), 6-7 February 2020. Available from <https://anticorruption.au.int/en/documents/2020-09-16/common-african-position-asset-recovery>.

⁹ Page 3 of the FACTI Panel Report. See: https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

¹⁰ FACTI Panel Report. See from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

High-Level Panel on Illicit Financial Flows from Africa, *Illicit Financial Flows*.

¹¹ FACTI Panel Report. See from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

Julia Yansura, Channing Mavrellis, Lakshmi Kumar and Claudia Helms, *Financial Crime in Latin America and the Caribbean* (Global Financial Integrity, October 2021). Available from <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/10/GFI-LAC-Financial-Crime-Report.pdf>.

Lakshmi Kumar and Kaisa de Bel, *Acres of Money Laundering* (Global Financial Integrity, August 2021).

Available from <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/08/Acres-of-Money-Laundering-Final-Version-2021.pdf?time=1642005463>.

Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries: 2009 – 2018* (2021). Available from <https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2021/12/IFFs-Report-2021.pdf?time=1642005332>.

billions of dollars illicitly leaving developing countries each year, undermining the efforts to achieve the SDGs.¹²

Corporate profit shifting—one sub-type of IFFs—costs countries where the profits are made between US\$500 to US\$650 billion a year¹³. Tax loss due to both cross-border corporate tax abuse and individual tax abuse amounts to US\$483 billion worldwide¹⁴. Cross-border corporate tax abuse costs governments a loss of US\$312 billion in direct tax revenue, while offshore tax abuse by individuals costs US\$171 billion.¹⁵

Developing countries suffer the most from IFFs, especially in the context of a health crisis due to COVID-19. Countries need to increase investments, provide health care and revive their economies. As a matter of illustration, tax loss due to IFFs represents over 48% of the public health budget in lower-income countries, while it only represents 10% of high-income countries' public health budget. It also represents around 4.2% of low-income countries' collected tax revenue and 2.8% of high-income countries' collected tax revenue.¹⁶ Thus, it is obvious that tax loss has damaged developing countries' health system and their economic recovery. However, the efforts to stem IFFs in developing countries could not yield the expected results without a frank collaboration of developed countries.

2.2. Bulk of tax losses hidden in developed countries

The most striking observation made is that high-income countries are responsible for 99.4% of all tax loss around the world through corporate tax abuse, while low-income countries are only responsible for 0.6%¹⁷. Among high-income countries, the Organisation for Economic Co-operation and Development (OECD) countries and their dependencies are responsible for 78.3% (over 3/4) of all tax losses suffered by countries around the world, especially developing countries. It is an estimated US\$378 billion in tax loss every year due to tax havens and offshore tax evasion, not including the value of stolen assets.¹⁸ However, while the IFFs from developed countries are kept in developed countries and rarely in developing countries, the IFFs from developing countries are kept in developed countries, preventing developing countries from using these resources. Table 1 provides insights regarding profit shifting, global tax loss due to corporate tax abuse, and the involvement of each region in this loss.

¹² Global Financial Integrity, "Illicit Financial Flows". Available from <https://gfintegrity.org/issue/illicit-financial-flows/>.

Global Financial Integrity, *Trade-Related Illicit Financial Flows in 134 Developing Countries: 2009-2018*.

¹³ FACTI Panel Report. See from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

¹⁴ Global Alliance for Tax Justice, Public Services International, Tax Justice Network, *The State of Tax Justice 2021*, November 2021. Available from https://taxjustice.net/wp-content/uploads/2021/11/State_of_Tax_Justice_Report_2021_ENGLISH.pdf.

FACTI Panel Report. See from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

¹⁵ Global Alliance for Tax Justice, Public Services International, Tax Justice Network, *The State of Tax Justice 2021*.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

Table 1: Regional contribution to corporate tax abuse

Region	Shifted profits inward (USD million)	Shifted profits outward (USD million)	Annual tax loss: Corporate tax abuse (USD million)	Annual tax loss: Corporate tax abuse (% of GDP)	Tax loss inflicted on others: Corporate tax abuse (USD million)	Share of global tax loss inflicted: Corporate tax abuse (%)
Europe	514,347.0	512,134.0	126,012.7	0.6	136,576.3	44.3
Asia	295,780.0	193,276.0	52,391.9	0.2	78,539.5	25.5
The Caribbean and American Islands	233,234.0	10,159.0	943.5	0.5	61,931.4	20.1
North America	67,581.0	297,986.0	80,390.6	0.4	17,945.0	5.8
Latin America	29,383.0	102,655.0	32,247.1	0.6	7,802.2	2.5
Africa	17,076.0	51,624.0	14,796.8	0.6	4,534.2	1.5
Oceania	2,807.0	18,393.0	5,404.5	0.3	745.4	0.2

Source: Data from Global Alliance for Tax Justice, Public Services International, Tax Justice Network, *The State of Tax Justice 2021*.

Table 1 shows that profits shifted inward and outward are almost the same for European countries, while the difference between outward and inward profit shifting is important for countries in Latin America, Africa, and North America (referring to the United States and Canada). Outward profit shifting is three times higher than inward profit shifting for Latin America and Africa, providing evidence of a net loss for these regions from the phenomenon of profit shifting. Important financial resources have been taken out of these countries, preventing the use of these resources for their benefit. Furthermore, as per Table 1, Europe accounts for 44.3% of global tax abuse inflicted by means of corporate tax abuse, Asia 25.5%, Caribbean and American Islands 20.1%, North America 5.8%, Latin America 2.5%, and Africa 1.5%. Besides corporate tax abuse practices, offshore wealth is another source of tax revenue loss. Table 2 provides an illustration of the contribution of offshore wealth to tax revenue loss and the owners' location.

Table 2: Tax revenue loss and share of global tax loss inflicted on others due to offshore financial wealth

Region	Share of global offshore wealth owned by citizens of the country (%)	Offshore wealth owned by citizens of the country (USD million)	Offshore wealth owned by citizens of the country (% of GDP)	Tax revenue loss: Offshore wealth (USD million)	Share of global tax loss inflicted by country (%)	Tax loss inflicted on other countries (USD million)
Europe	44.94	4,468.0	288.6	99,204.0	49.3	84,115.3
The Caribbean and American islands	12.66	1,258.8	2703.8	655.9	32	54,655.0
North America	21	2,087.9	8.9	38,405.2	12.1	20,649.5
Asia	16.39	1,630.0	16.1	24,554.8	4.4	7,478.4
Latin America	2.23	221.3	18.2	3,336.0	1	1,733.4

Oceania	1.17	116.1	727.3	2,236.2	0.7	1,199.3
Africa	1.6	159.1	40.7	2,320.5	0.5	893.1

Source: Data from Global Alliance for Tax Justice, Public Services International, Tax Justice Network, *The State of Tax Justice 2021*.

From the above table, 45% of the global offshore wealth belongs to European citizens, 16% belongs to Asian citizens, 2% belongs to Latin American citizens, and almost 2% belongs to African citizens. In terms of tax loss inflicted on other countries through offshore wealth, half of the global loss is inflicted by European countries, while countries in Asia represent 4%, countries in Latin America represent 1%, and countries in Africa represent less than 1%. The European, Caribbean and American islands, and North American countries account for 93% (more than 9/10) of the tax loss inflicted on other countries, mainly developing countries in Asia, Latin America, and Africa. Therefore, reducing financial and banking secrecy in developed countries could provide developing countries with relevant information on the identity of the offshore wealth owners and a tool that can improve the fight against offshore activities that, with corporate tax abuse, represent an important part of the GDP of certain developing countries as illustrated in Table 3.

Table 3: Countries losing more than one percent of GDP in tax loss

Country	Total annual tax loss (USD million)	Total annual tax loss (% of GDP)	Proportion due to corporate tax abuse (USD million)	Proportion due to offshore wealth (USD million)
Chad	1,952.4	17.1	1,947.0	5.4
Liberia	145.5	4.7		145.5
Belize	81.9	4.7		81.9
Barbados	185.4	3.9	36.0	149.4
Congo, Rep.	472.9	3.4	462.2	10.7
Sierra Leone	109.7	2.6	108.6	1.1
Zambia	635.3	2.6	602.3	32.9
The Gambia	35.8	2.3	33.5	2.4
Venezuela	6,904.7	2.3	6,599.1	305.7
Mozambique	333.5	2.2	308.2	25.3
Panama	840.7	1.5	292.0	548.7
Dominica	7.5	1.4	4.3	3.3
Honduras	307.4	1.4	278.8	28.6
Bhutan	27.1	1.3	27.0	0.1
Philippines	4,148.6	1.3	3,928.2	220.4
Nicaragua	156.9	1.3	119.4	37.5

Source: Data from Global Alliance for Tax Justice, Public Services International, Tax Justice Network, *The State of Tax Justice 2021*.

Table 3 shows developing countries losing more than 1% of GDP in tax. For some, the loss is extreme. For example, Chad is losing 17% (over 1/6) of its GDP in annual tax loss. Many other countries are losing at least 2% of their GDP in annual tax loss, which is quite important for a developing country, while they are struggling to mobilize revenues to achieve the SDGs. This arguably forces them to mobilize resources through debt, which has negative implications. More international cooperation and commitment to end corporate tax abuse and offshore tax havens through stronger regulatory frameworks and enforcement mechanisms will provide countries with a stable source of revenue and contribute to the quest of “leaving no one behind”.

Against this background, it is needless to say that stemming illicit financial flows is a matter of emergency. However, the willingness and engagement of developing countries are not enough to yield the expected result as long as developed countries remain insufficiently committed to preventing the entry of IFFs into their territory and proactively returning the stolen assets when detected.

Table 1 shows that in terms of loss inflicted on other countries by means of corporate tax abuse, European countries are responsible for almost half of the damage caused to the world, with a share of 44.3%, and 5.8% for North American countries. Global North countries (Europe and North America) together account for 50% of the damage caused to the world. Given their contribution to the problem, developed countries need to put more effort into fighting the IFFs. This can be done by increasing transparency, collaboration and information sharing, enabling the identification of the culprits, the means used, and the origin of the illicit flows. Such actions will be a step forward in this regard.

As will be seen in Section 3, there is a severe lack of effectiveness in returning stolen assets to their origin countries. This is proof of the weaknesses in the international system in enforcing the asset recovery process. The rectification of these weaknesses is an issue that should be prioritized in the COSP’s deliberations of the UN Convention Against Corruption (UNCAC). This, however, requires more action, primarily from the developed countries who, as will be explored in the data in the next section, are mainly responsible for returning the stolen assets.

III. STOLEN ASSETS AND THE RECOVERY PROCESS

3.1. *The Global South awaits the return of its stolen assets from the Global North*

Asset recovery has been recognized as a challenge for developing countries. At the global level, the FACTI Panel makes two specific recommendations for improving the process in its report, which are analysed in section 4. Recommendations 5A and 5B refer to a proposed multilateral mediation mechanism, and the use of escrow accounts for managing frozen/seized assets till their return to the rightful owners. At the regional level, finding #9 of the Mbeki Panel is on stolen assets and outlines the need for “Stimulating and expediting the process of asset recovery and repatriation.”¹⁹ These will be discussed later in this section.

The Stolen Assets Recovery (StAR) Initiative²⁰ was established in 2007 jointly by the World Bank and the UNODC in order to support the implementation of Chapter V of the UNCAC, which aims to facilitate the return of stolen assets to their origin countries.

The StAR Initiative produced a database on asset recovery, which comprises completed and ongoing cases, called the “Asset Recovery Watch Database”²¹. This database provides information on 246 cases, with 112 cases completed, 10 cases partially completed, 116 ongoing cases, and 8 cases where the process level is unknown.

An analysis of the 116 ongoing cases in the database reveals a series of outrageous observations. The consolidated details are contained in Annex – I.

The first, shown below in Table 4, reveals a clear pattern: almost all the countries waiting for their assets to be recovered (jurisdictions of origin) are developing countries and almost all the countries where the stolen assets are hidden (jurisdictions of recovery) are developed countries.

The reach of this research paper is developing countries pertaining to the Group of 77 (G77) plus China and the South Centre’s Member States

¹⁹ High-Level Panel on Illicit Financial Flows from Africa, *Illicit Financial Flows*.

²⁰ Stolen Asset Recovery (StAR) Initiative. Available from <https://star.worldbank.org/>.

²¹ Stolen Asset Recovery Initiative, Asset Recovery Watch Database. Available from <https://star.worldbank.org/asset-recovery-watch-database>.

Table 4: Proportion of developed and developing countries as jurisdictions of origin or recovery in ongoing cases

Country Category	Number
No. of Jurisdictions of Origin	36
No. of Jurisdictions of Origin that are G-77+China Members	30
No. of Jurisdictions of Origin that are not G-77+China Members	6
% of Jurisdictions of Origin that are Developing Countries	83%
% of Jurisdictions of Origin that are Developed Countries	17%
No. of Jurisdictions of Recovery	26
No. of Jurisdictions of Recovery that are G-77+China Members	8
No. of Jurisdictions of Recovery that are not G-77+China Members	18
% of Jurisdictions of Recovery that are Developed Countries	69%
% of Jurisdictions of Recovery that are Developing Countries	31%

Source: StAR Asset Recovery Watch Database. Authors' compilation.

Thus, from Table 4, it is evident that the majority of countries waiting to have their assets returned are developing countries, accounting for 83% of the jurisdictions of origin. Similarly, the majority of countries responsible for returning the stolen assets are the developed countries, which constitute 69% of the jurisdictions of recovery. Thus, it is clear that action is required primarily by the developed countries to return the stolen assets of the developing countries.

A country-level examination of developing countries, provided in Table 5, reveals the preferred destinations for parking their stolen assets. For example, in the case of Nigeria, there are 5 ongoing cases to recover assets from the United States and 3 from the United Kingdom. For Brazil, there are 2 cases from Switzerland and one each from the US and Jersey, a territory of the UK. It reveals an interesting pattern, and many of the jurisdictions of recovery are known tax havens, like Ireland and Luxembourg.

The second pattern to note is consistent with Table 4, which is that almost all the recovery jurisdictions are developed countries. The following Table 5 and Figure 1 provide insights into the state of play of ongoing cases and the distribution of these cases per jurisdiction of origin, jurisdiction of recovery, and an overview per region as well.

Table 5: Progress on asset recovery in developing countries (ongoing cases)

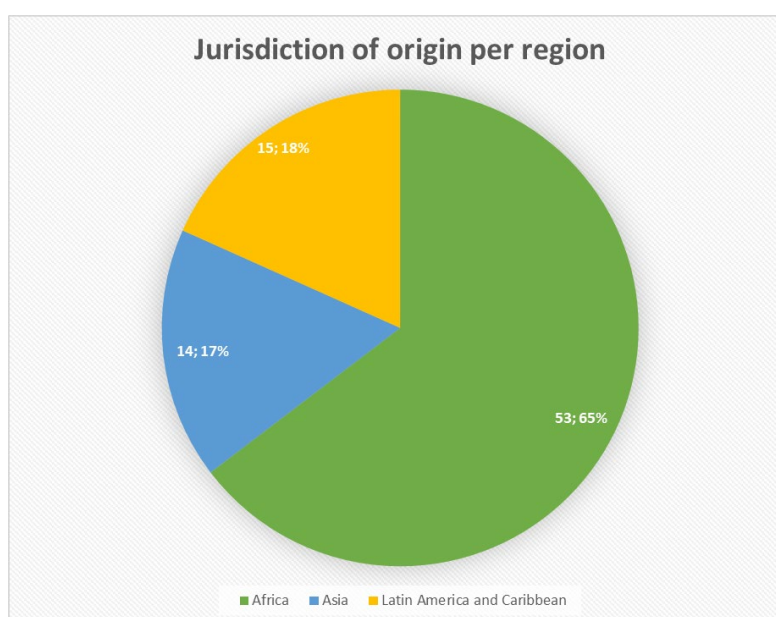
Jurisdiction of origin	Jurisdiction of recovery		Jurisdiction of origin	Jurisdiction of recovery	
	Country	N° of cases		Country	N° of cases
Nigeria	USA	5	Chad	South Africa	1
	UK	3		United Kingdom	1
	Luxembourg	1		United States	2
	Bahamas	1	Total		4
	France	1	Tunisia	Canada	1
	Hong Kong SAR, China	1		European Union	1
	India	1		Switzerland	1
	Ireland	1		United Kingdom	1
	Jersey	1	Total		4
Total		15	Haiti	Switzerland	1
Libya	Australia	1		United States	3
	Canada	1	Total		4
	European Union	1	Peru	Luxembourg	1
	Germany	1		Mexico	1
	South Africa	1		Panama	1
	Sweden	1	Total		3
	Switzerland	1	Liberia	Netherlands	1
	United States	1		Switzerland	1
Total		8		United States	1
Thailand	Jersey	1	Total		3
	Singapore	1	Kenya	Switzerland	1
	Thailand	1		United Kingdom	1
	United Kingdom	1	Total		2
	United States	2	Indonesia	Guernsey	1
Total		6		Indonesia	1
Egypt	European Union	1	Total		2
	Spain	1	Gabon	France	1
	Switzerland	1		Malta	1
	United Kingdom	1	Total		2
	Various unnamed jurisdictions ²²	1	Zambia	United Kingdom	1
Total		5		World Bank	1
Equatorial Guinea	France	1	Total		2
	Netherlands, Switzerland	1	Congo, Republic of	France	1
	Spain	1	El Salvador	Panama	1
	Switzerland	1	Guatemala	United States	1
	United States	1	Honduras	United States	1

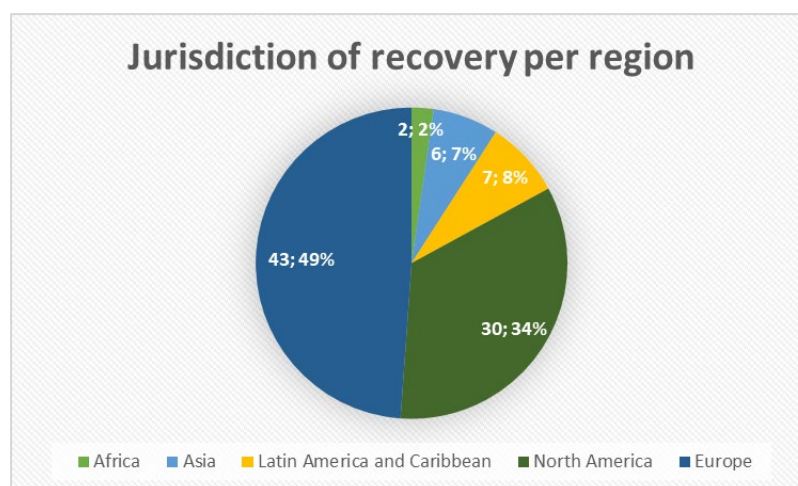
²² Indicated as such in the StAR Asset Recovery Watch Database.

Total		5	Malaysia, Saudi Arabia, United Arab Emirates	United States	1
Philippines	Switzerland	1	Mozambique	Jersey	1
	United States	4	Tanzania	United Kingdom	1
Total		5	Trinidad and Tobago	Bahamas	1
Brazil	Jersey	1			
	Switzerland	2			
	United States	1			
Total		4			
TOTAL					82

Source: StAR Asset Recovery Watch Database. Authors' compilation.

Figure 1: Progress on asset recovery in developing countries (ongoing cases) per region





As can be seen from Table 5, it is only a few names that repeatedly appear as the most favoured destinations of the stolen assets. Table 6 provides the details of recovery jurisdictions from which more than four countries are waiting to get their assets back. The United States is the leader by a wide margin, followed by UK, Switzerland and France. Jersey, Bermuda and Guernsey have been taken as part of the UK as they are British Overseas Territories and Crown Dependencies. It is also clear that all the countries waiting to have their assets returned belong to the G-77+China, with the exception of Mexico. Nigeria accounts for the highest number of pending cases (15), followed by Libya (8), Thailand (6), Egypt (5) and Equatorial Guinea (5).

A region-level examination shows that the majority of jurisdictions of origin are from Africa, with 65% of the cases, followed by Latin America and the Caribbean with 18% of the cases, and Asia with 17% of the cases. For the jurisdictions of recovery, half of the countries (49%) are from Europe, 34% from North America, with the United States accounting for the bulk of the cases. Latin America and the Caribbean represent 8% of the jurisdictions of recovery, while Asia and Africa represent respectively 7% and 2%.

Table 6: Main destinations of stolen assets

Recovery Jurisdictions	Origin Jurisdictions Waiting to Recover their Assets and Number of Cases
United States	<ol style="list-style-type: none"> 1. Brazil 2. Chad (2) 3. Equatorial Guinea 4. Guatemala 5. Haiti (3) 6. Honduras 7. Liberia 8. Libya 9. Malaysia 10. Mexico (5) 11. Nigeria (5) 12. Philippines (4) 13. Saudi Arabia 14. Thailand (2)

15. United Arab Emirates	
Switzerland	<ol style="list-style-type: none"> 1. Brazil (2) 2. Egypt 3. Equatorial Guinea 4. Haiti 5. Kenya 6. Liberia 7. Libya 8. Philippines 9. Tunisia
United Kingdom	1. Brazil
Jersey	2. Chad
Bermuda	3. Egypt
Guernsey	4. Indonesia
	5. Kenya
	6. Mexico (2)
	7. Mozambique
	8. Nigeria (4)
	9. Tanzania
	10. Thailand (2)
	11. Tunisia
	12. Zambia
France	<ol style="list-style-type: none"> 1. Nigeria 2. Equatorial Guinea 3. Gabon 4. Republic of Congo

Furthermore, on average, the recovery process has been ongoing for decades. The details are contained in Table 7 below and show a strong need for more commitment from the developed countries, where assets are mainly hidden, to accelerate the process of returning the assets to the origin countries.

Table 7: Numbers of years taken so far for ongoing asset recovery cases, categorized by jurisdiction of recovery

Jurisdiction of recovery	Number of years					
	05-10	11-15	16-20	>20	Unknown	Total
	Number of ongoing cases					
United States	19	9	4	2		34
Switzerland	6		4	3	1	14
United Kingdom	5	6	1			12
Canada	10					10
Various unnamed jurisdictions ²³	10					10
France	1	3		1		5
European Union	4					4
Jersey	1	2		1		4
Unknown	2				1	3
Luxembourg	1			1	1	3
Bermuda	2					2
Ireland	2					2
South Africa	2					2
Liechtenstein	1		1			2
Spain	1	1				2
Bahamas				1	1	2
Guernsey			2			2
Panama			1		1	2
Australia	1					1
Austria	1					1
Germany	1					1
Netherlands, Switzerland	1					1
Sweden	1					1
Antigua and Barbuda			1			1
Hong Kong SAR, China		1				1
India		1				1
Indonesia				1		1
Lithuania			1			1
Malta		1				1
Mexico					1	1
Netherlands			1			1
Singapore		1				1
Thailand		1				1
World Bank					1	1
Total cases	72	26	16	10	7	131

Source: StAR Asset Recovery Watch Database. Authors' compilation.

The top 5 countries where stolen assets are located account for more than half of the cases (75 out of 131). These countries are the United States, Switzerland, United Kingdom, Canada, and France. 10 cases have been waiting for more than 20 years, 16 cases between 16 to 20 years, 26 cases between 11 to 15 years, and 72 cases between 5 to 10 years.

The data above shows the enormous amount of time involved in recovering assets. Table 7 shows that 19 cases involving the United States have been pending for 5 to 10 years and have

²³ Indicated as such in the StAR Asset Recovery Watch database.

not yet been resolved. It reinforces the adage that ‘justice delayed is justice denied’. This also means an opportunity cost because if these assets were placed in the country of origin, they would have remained in circulation within the domestic economy instead of becoming capital flight. Corrupt officials who place their stolen wealth in bank accounts in developed countries benefit these economies instead of their own countries.

This has enormous macroeconomic effects. In the case of Africa, the Mbeki Panel report notes that “Africa’s capital stock would have expanded by more than 60 per cent if funds leaving Africa illicitly had remained on the continent, GDP per capita would be up to 15 per cent more.”²⁴

Further, it is doubly unjust as the very same financial institutions which enabled and encouraged the wrongdoing by accepting these assets then go on to profit by charging fees for managing these assets.²⁵ The developed countries also earn revenues directly because the countries requesting the asset return have to pay administrative fees to the requested countries.²⁶

The next section outlines the process of asset recovery and examines some salient reforms that can accelerate the pace of recovery.

3.2. International cooperation for asset recovery

The UN General Assembly adopted on 31 October 2003 by resolution 58/4 the UN Convention against Corruption (UNCAC)²⁷. This convention entered into force in December 2005. In August 2021, the UNCAC accounted for 188 parties to the convention. This convention is the main tool for developing a comprehensive response to the global problem of corruption and the only legally binding universal anti-corruption instrument. The Convention targeted five areas:

- Adoption of preventive measures
- Criminalization and law enforcement
- Enhancing international cooperation
- Accelerate asset recovery
- Technical assistance and information exchange

Regarding the recovery of assets, Parties to the Convention are obliged to render mutual legal assistance in gathering and transferring evidence to identify and facilitate the return of assets to their rightful owners and countries of origin.

The UNCAC established a policymaking body called the “Conference of the States Parties (COSP)”, which gives policy guidance in order to develop and implement anti-corruption activities, enhance cooperation among States and review the process of implementation of the Convention. The COSP meets every two years and adopts resolutions and decisions. The last ordinary meeting was held in December 2021 in its ninth session. The COSP also holds special sessions.

²⁴ African Union, Draft Common African Position (CAP) on Asset Recovery (AR).

²⁵ Greta Fenner Zinkernagel and Anja Roth, “Practical Hurdles to Effective International Recovery of Stolen Assets”, *Jurnal Opinio Juris*, Vol. 11, No. 1 (2012), p. 102.

²⁶ Page 26 of the FACTI Panel Report. Available from https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf.

²⁷ United Nations Office on Drugs and Crime, United Nations Convention Against Corruption. Available from https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

The COSP has set up working groups as its subsidiary bodies, in charge of implementing and processing the agreed issues and providing outputs to the Conference for decision-making. One of these working groups is the “Intergovernmental Working Group on Asset Recovery”. The main responsibility of this Working Group is to assist and advise the COSP on the implementation of measures for the return of proceeds of corruption in the countries where they have been taken. The Working Group on Asset Recovery was established in 2006 and holds one intersessional meeting per year to exchange information and make recommendations on Asset Recovery. The fifteenth session was held in September 2021.

According to the Resolution 1/4²⁸ of the Intergovernmental Working Group on Asset Recovery, its functions are advisory and limited to “developing cumulative knowledge” and assisting the Conference in transmitting best practices on the issue of asset recovery. Decision-making, including those on practical measures to return proceeds of corruption, is reserved for the COSP.

On that issue, the rules of procedure²⁹ for the COSP state in rule 56 that decisions may be adopted in the Conference by consensus. If consensus cannot be reached, decisions shall be taken by a two-thirds majority of the States Parties present and voting (rule 57.1 and rule 58). Based on rule 61, the Conference may decide if a matter is one of substance or not.

The question arising from this institutional setting is whether developing countries are able to reach a majority for decision-making in this Conference and whether the Conference is able to effectively accelerate the process of return of stolen assets. The emphasis on consensus and special majority might pose challenges in the process of asset recovery. Therefore, developing countries can consider amending the decision-making process as contained in the rules of procedure which may enable them to better assert their interests.

3.2.1. Asset recovery process

The process of asset recovery consists of five steps, as outlined in Chapter 5 of the United Nations Convention against Corruption (see Figure 2)³⁰.

²⁸ United Nations Office on Drugs and Crime, “First session of the Conference of the States Parties to the United Nations Convention against Corruption: Resolutions and Decisions”.

²⁹ United Nations Office on Drugs and Crime, “Rules of Procedure for the Conference of the States Parties to the United Nations Convention against Corruption” (New York, United Nations, 2007). Available from https://www.unodc.org/documents/corruption/Publications/MainPublications/RulesOfProcedure/07-80230_Ebook.pdf.

³⁰ United Nations Office on Drugs and Crime, United Nations Convention Against Corruption.

Figure 2: Five-step process for asset recovery under UNCAC



Source: Stolen Asset Recovery Initiative/The World Bank - UNODC

Article 55.2 of the Convention states that *“Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested States Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party”*.

In addition, the Convention provides in article 57 the following:

Article 57.1: *“Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law”*.

Article 57.2: *“Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties”*.

The recovery process starts with the tracing of the assets and the gathering of evidence. Thus, the jurisdiction where the asset is hidden may be requested by the original jurisdiction to freeze and confiscate the asset. The process ends when the jurisdiction where the asset is hidden (the recovery jurisdiction) takes the required measures according to its domestic law to return the asset to the original jurisdiction. For developing countries, the most important step is when the asset is actually returned to them.

Stolen assets that are frozen or confiscated benefit neither the developing country concerned nor the one who has stolen the asset. However, as mentioned earlier, this asset can still benefit the developed country where it has been hidden. Delaying the return of assets benefits the country where it is hidden, which, as has been demonstrated through the data mentioned

above, are overwhelmingly the developed countries, and is a damage for the origin countries, which are almost entirely developing countries.

This is specifically mentioned in the African Union's Nouakchott Declaration and in the 'Decision on the Common African Position on Asset Recovery', in which paragraph 7 "[expresses] concern on the present practices by destination countries of keeping identified African assets in foreign jurisdictions during the lengthy processes involved in recovery which result in source/such countries losing out on the potential monetization, use and enjoyment of such assets to the detriment of Africa's development."³¹

The FACTI Panel took this up as one of the issues to be examined and gave two recommendations in its final report. The last section of this paper examines these.

³¹African Union, Decision on the Common African Position on Asset Recovery, document Assembly/AU/Dec.774(XXXIII). Available from <https://codafrica.org/wp-content/uploads/2020/10/EN-Decision-Assembly-AU-Dec.774XXXIII-CAPAR-1.pdf>.

IV. REFORMING THE ASSET RECOVERY PROCESS: FACTI RECOMMENDATIONS

4.1. Recommendation 5A: Multilateral Mediation Mechanism

This recommendation calls for the creation of a multilateral mediation mechanism “to fairly assist countries in resolving difficulties on international asset recovery and return, and to strengthen compensation.”

The mechanism would be voluntary, hosted by a multilateral institution, would act as a neutral third party and help the requested and requesting States to iron out issues such that the assets can be returned more quickly. It is also envisaged to “use common standards and procedures, building on good practice guidance already developed, to ensure that asset return is fairer and that victims are compensated.”

Such a mechanism certainly has the potential to accelerate the process of asset recovery, and the FACTI Recommendation can be fleshed out further. Some suggestions are provided below.

Institutional Host

This is the most important question – which multilateral institution should host it? The answer is clear – the United Nations. The COSP of UNCAC can be further strengthened by establishing the mediation mechanism as a subsidiary body. This will enable delegates to the COSP to take an integrated view of the issue. It will also provide valuable inputs to the other subsidiary bodies, such as the Working Group on Asset Recovery, which can benefit from understanding the real-world issues that cause the delay of asset return.

It is essential that this body remains inside the United Nations. Hosting such a body in any other institution like the World Bank or OECD would effectively mean ceding control to the developed countries, which will invariably neutralize the body.

Compliance with Recovery Jurisdictions

The mechanism is envisaged to be voluntary. This is fine, as mediation by nature is non-binding. However, given that the bulk of actions is required by the recovery jurisdictions, there is the risk that they may not respond to the requests of origin jurisdictions to use this mechanism. Therefore, some incentives are required, which will encourage the recovery jurisdictions to respond positively whenever they receive a request.

One option can be ‘naming and shaming’, where the mechanism contains a list of recovery jurisdictions which rejected such requests. Similarly, those recovery jurisdictions which accepted such requests and quickened the pace of return should be appreciated.

4.2. Recommendation 5B: Escrow Accounts to Manage Frozen Assets

The recommendation says, “Assets that are subject to return or negotiation of return should be held and invested in escrow accounts, at the behest of requesting states. Some value may be added to funds that are subject to protracted negotiations, and the requesting state may

get more than face value at the end of the day. Regional development banks may be well placed to hold these funds.”

This builds on a similar recommendation made by the African Union in the CAPAR. Pillar Two of CAPAR focuses on the recovery and return of assets and calls on AU Member States to ensure that “source countries benefit from frozen or seized assets pending their recovery and return through the establishment of funds, trusts or dedicated African escrow accounts, to be held by regional financial institutions.”³²

The FACTI Recommendation, if successfully implemented, will end the present bizarre system where the very same financial institutions which enable wrongdoing are rewarded by charging fees for managing the frozen assets. Banks such as JPMorgan and HSBC routinely figure in exposes such as the Panama Papers, Pandora Papers, etc., for accepting dirty money and turning a blind eye to its origins.³³ It is high time these institutions stopped profiting from the very crime they enabled. By taking away the assets from their control, it will end this perverse reward system.

By placing these in regional development banks, there is also the potential to reduce, if not eliminate, altogether the fees for managing the assets. Since such banks have been specifically designed to promote development, it is within their mandate to consider such a measure. However, it is important that these only be banks within the developing country regions of Asia, Africa, Latin America, and the Caribbean, such as the African Development Bank, New Development Bank or the Inter-American Development Bank. Such banks are under the political control of developing countries, and it will be easier to reduce or eliminate such fees. Any related regulations for the eventual asset return can also be made simpler.

In its interpretative note to recommendation 2 regarding national cooperation and coordination, the Financial Action Task Force (FATF) also recommended that countries establish appropriate inter-agency frameworks for combating money laundering. Such frameworks could include asset recovery and prosecution authorities³⁴.

³² African Union, Draft Common African Position (CAP) on Asset Recovery (AR).

³³ Alicia Tatone, “Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists”, International Consortium of Investigative Journalists, 20 September 2020. Available from <https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists/>.

³⁴ Financial Action Task Force, International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation (March 2022). Available from <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf%20recommendations%202012.pdf>.

V. CONCLUSION

This research paper has shown how IFFs disproportionately harm developing countries. It then shows, through data contained in the StAR Database, that almost all the stolen assets are parked in developed countries. An analysis of the ongoing asset recovery cases further reveals a clear North-South dimension, where all the countries waiting to have their assets returned belong to the Global South, while those delaying this return are in the Global North. The amount of time involved is also significant, with half the pending cases taking more than ten years. This not only damages the developing countries, who suffer from capital flight but ironically further enriches the developed countries and the financial institutions which enable the wrongdoing. It also increases the inequality between the Global North and South.

ANNEX – I

Jurisdiction of Origin of Public Official or Entity Allegedly Involved	Jurisdiction of Asset Recovery	Asset Recovery Start	Status of Asset Recovery
Brazil	Switzerland	1999	Ongoing
	United States	2002	Ongoing
	Jersey	1999	Ongoing
	Switzerland	2002	Ongoing
Chad	United Kingdom	2014	Ongoing
	United States	2014	Ongoing
	South Africa	2014	Ongoing
	United States	2014	Ongoing
China	United States	2015	Ongoing
	United States	2010	Ongoing
Congo, Republic of	France	2007	Ongoing
Egypt	Spain	2011	Ongoing
	United Kingdom	2011	Ongoing
	Various unnamed jurisdictions	2011	Ongoing
	European Union	2011	Ongoing
	Switzerland	2011	Ongoing
El Salvador	Panama	2004	Ongoing
Equatorial Guinea	Switzerland	2016	Ongoing
	Netherlands, Switzerland	2016	Ongoing
	France	2007	Ongoing
	Spain	2008	Ongoing
	United States	2004	Ongoing
Gabon	France	2007	Ongoing
	Malta	2010	Ongoing
Germany			Ongoing
Guatemala	United States	2009	Ongoing
Haiti	United States	2009	Ongoing
	United States	2009	Ongoing
	United States	2009	Ongoing
	Switzerland	1986	Ongoing
Honduras	United States	2014	Ongoing
Indonesia	Guernsey	2002	Ongoing
	Indonesia	1998	Ongoing
Kenya	United Kingdom	2008	Ongoing
	Switzerland	2004	Ongoing
Liberia	Netherlands	2003	Ongoing
	Switzerland	2003	Ongoing
	United States	2010	Ongoing

Libya	South Africa	2011	Ongoing
	Australia	2011	Ongoing
	Canada	2011	Ongoing
	European Union	2011	Ongoing
	Germany	2011	Ongoing
	Sweden	2011	Ongoing
	Switzerland	2011	Ongoing
	United States	2011	Ongoing
Malaysia, Saudi Arabia, United Arab Emirates	United States	2016	Ongoing
Mexico	United States	2014	Ongoing
	United States	2012	Ongoing
	United States	2012	Ongoing
	United States	2013	Ongoing
	Bermuda	2013	Ongoing
	Bermuda	2011	Ongoing
	United States	2011	Ongoing
Mozambique	Jersey	2010	Ongoing
Nigeria	United States	2017	Ongoing
	Ireland	2014	Ongoing
	Jersey	2014	Ongoing
	France	2014	Ongoing
	United Kingdom	2014	Ongoing
	United States	2013	Ongoing
	India	2008	Ongoing
	Hong Kong SAR, China	2008	Ongoing
	United Kingdom	2008	Ongoing
	United States	2012	Ongoing
	United States	2012	Ongoing
	United Kingdom	2008	Ongoing
	Bahamas	1999	Ongoing
	Luxembourg	2000	Ongoing
	United States	2011	Ongoing
Panama	France	1999	Ongoing
Peru	Luxembourg		Ongoing
	Mexico		Ongoing
	Panama		Ongoing
Philippines	United States	2015	Ongoing
	United States	2011	Ongoing
	Switzerland	2003	Ongoing
	United States	1990	Ongoing
	United States	2003	Ongoing
Russian Federation	Switzerland	2000	Ongoing
Tanzania	United Kingdom	2013	Ongoing

Thailand	United States	2009	Ongoing
	United States	2007	Ongoing
	Jersey	2009	Ongoing
	Singapore	2009	Ongoing
	Thailand	2009	Ongoing
	United Kingdom	2009	Ongoing
Trinidad and Tobago	Bahamas		Ongoing
Tunisia	Canada	2011	Ongoing
	European Union	2011	Ongoing
	Switzerland	2011	Ongoing
	United Kingdom	2011	Ongoing
Turks and Caicos	United Kingdom	2009	Ongoing
Ukraine	Lithuania	2004	Ongoing
	Liechtenstein	2004	Ongoing
	Guernsey	2004	Ongoing
	Austria	2014	Ongoing
	European Union	2014	Ongoing
	Switzerland	2014	Ongoing
	Liechtenstein	2014	Ongoing
	United States	2010	Ongoing
	United Kingdom	2010	Ongoing
	Antigua and Barbuda	2004	Ongoing
	United States	1999	Ongoing
	Switzerland		Ongoing
	United States	2005	Ongoing
United Kingdom	Various unnamed jurisdictions	2011	Ongoing
Unknown	United States	2014	Ongoing
Uzbekistan	Luxembourg	2015	Ongoing
	Ireland	2015	Ongoing
		2015	Ongoing
	Switzerland	2012	Ongoing
	United States	2015	Ongoing
Venezuela		2015	Ongoing
Zambia	World Bank		Ongoing
	United Kingdom	2002	Ongoing

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ISSN 1819-6926