



# **IMPROVING THE U.S. ASSET RECOVERY FRAMEWORK: NOVEL APPROACHES FOR FINANCING CLIMATE ADAPTION AND MITIGATION PROJECTS**

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## **INTRODUCTION**

Financing for mitigating and responding to the worst impacts of climate change is woefully short of the projected need. Comparisons between appropriated funding and estimated need from the International Monetary Fund<sup>1</sup>, the United Nations<sup>2</sup> and others paint a dire picture with trillion-dollar gaps. Many low- and moderate-income countries play a comparatively minor role in global greenhouse gas emissions and yet face some of the most significant impacts of climate change<sup>3</sup> including droughts and severe weather incidents that disrupt food supplies, undermine economic development, threaten public health and safety, and destabilize national and regional security. These same countries are also least equipped financially to address the harm.

In this precarious global environment, all creative and accountable climate financing vehicles must be explored. Direct aid from wealthier nations, accountable climate bonds, loan guarantees and other forms of private finance are all currently part of the climate finance architecture. But an under-appreciated, logical source of funds is the repatriation of the illicit proceeds of environmental crime – specifically illicit funds from resource rich, cash strapped countries that are held in accounts and investments in wealthier countries.

Globally, environmental crime generates an estimated \$281 billion annually<sup>4</sup>. According to a report by the Financial Accountability and Corporate Transparency (FACT) Coalition, the U.S. is “the perfect playground for criminals looking to stash the illicit proceeds of environmental crimes<sup>5</sup>” and was the most mentioned jurisdiction in a review of hundreds of cases involving environmental crimes. We do not have a definitive total of illicit proceeds linked to environmental crime hidden in the U.S. but considering that the country is home to a large illicit economy, growing over five percent per year<sup>6</sup>, it is safe to say that a sizeable sum of funds has been laundered through the U.S. financial system. This is corroborated

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<sup>1</sup> Simon Black, Florence Jaumotte, Prasad Ananthakrishnan, “World Needs More Policy Ambition, Private Funds, and Innovation to Meet Climate Goals,” IMF, November 27, 2023, available at <https://www.imf.org/en/Blogs/Articles/2023/11/27/world-needs-more-policy-ambition-private-funds-and-innovation-to-meet-climate-goals>.

<sup>2</sup> “A new climate finance goal is on the horizon. How can developing countries benefit?” United Nations Conference on Trade and Development, November 4, 2024, available at <https://unctad.org/news/new-climate-finance-goal-horizon-how-can-developing-countries-benefit>.

<sup>3</sup> “The climate crisis disproportionately hits the poor. How can we protect them?” World Economic Forum, January 13, 2023, available at <https://www.weforum.org/stories/2023/01/climate-crisis-poor-davos2023/>.

<sup>4</sup> “Environmental Crime,” Financial Action Task Force, available at <https://www.fatf-gafi.org/en/publications/Environmentalcrime/Environmental-crime.html>.

<sup>5</sup> Sofia Gonzalez, Sophia Cole, Ian Gary, “Dirty Money and the Destruction of the Amazon,” FACT Coalition, October 2023, available at [https://thefactcoalition.org/wp-content/uploads/2023/10/Feb-08\\_English-Full\\_FACT-Report.pdf](https://thefactcoalition.org/wp-content/uploads/2023/10/Feb-08_English-Full_FACT-Report.pdf).

<sup>6</sup> “The Rise of Environmental Crime: a UNEP-INTERPOL Rapid Response Assessment,” INTERPOL, June 8, 2016, available at <https://www.cms.int/en/document/rise-environmental-crime-unep-interpol-rapid-response-assessment>.

by the fact that the Department of Justice (DOJ) has seized billions of dollars tied more broadly to foreign corruption schemes over the past decade.<sup>7</sup> A combination of financial secrecy and a lack of clear guardrails to identify and prosecute environmental crimes position the U.S. to be a prime repository for the illicit proceeds of these types of transnational offenses.

The U.S. already engages in asset recovery and return in corruption cases involving foreign public officials. With an updated framework in place, the U.S. could expand their efforts to begin recovering proceeds of transnational environmental crimes hidden in the country, then return funds to the victim country to support climate mitigation and adaption projects. Complimentary measures such as updating anti-money laundering laws, increasing transparency of the forfeiture and return process, and increasing stakeholder engagement would also provide a faster and more effective pathway to all types of asset recovery cases.

## **THE U.S. AS A SECRECY JURISDICTION FOR ILLICIT FINANCE**

The United States is a choice destination for the laundering of the proceeds of environmental crimes, as well as other dirty money. Historically, a combination of gaps in the U.S.'s anti-money laundering framework<sup>8</sup>, a \$30+ trillion economy, and a relatively safe and secure investment environment create a trifecta of circumstances that provide opportunity to the criminal and corrupt. While recent advances in U.S. law and policy<sup>9</sup> will, when fully implemented, help financial crime fighters defend the U.S. financial system against rampant abuse, further reforms are needed.

Among several newly adopted reforms in the last fifteen years, the U.S. established the Kleptocracy Asset Recovery Initiative (KARI) in 2010. KARI is a unit within the Department of Justice's Money Laundering and Asset Recovery Section (MLARS) dedicated to the seizure of assets linked to corruption schemes largely involving foreign public officials and the repatriation of those proceeds to the victim country. KARI is comprised of attorneys, investigators, and financial analysts who work in coordination with other U.S. agencies, including the Federal Bureau of Investigations (FBI) and Homeland Security Investigations (HSI).

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<sup>7</sup> "National Strategy for Combating Terrorist and Other Illicit Financing," U.S. Department of the Treasury, May 2022, available at <https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf>.

<sup>8</sup> "United States' progress in strengthening measures to tackle money laundering and terrorist financing," Financial Action Task Force, March 2024, available at <https://www.fatf-gafi.org/en/publications/Mutualevaluations/united-states-fur-2024.html>.

<sup>9</sup> "Fact Sheet: Treasury Actions to Enhance Financial Transparency and Combat Illicit Finance," U.S. Department of the Treasury, February 14, 2024, available at <https://home.treasury.gov/news/press-releases/jy2097>.

The transnational nature of these crimes means that stolen funds are typically scattered across bank accounts and invested in assets around the world. As such, successful prosecutions largely rely on international cooperation and information sharing. There are several multilateral bodies and networks focused on coordination, including the World Bank's Stolen Asset Recovery (StAR) Initiative and the Camden Asset Recovery Inter-Agency Network (CARIN), both of which include the U.S. as a member. The U.S. is also a signatory to the United Nations' Convention Against Corruption (UNCAC), an international agreement that directs parties on best practices for asset recovery.

The global framework for greater accountability is in place. As detailed below, important reforms are needed to ensure the promise matches the practice. The U.S. can start with improving its own internal processes to seize and return the illicit proceeds of environmental and other crime.

## **ASSET RECOVERY: SEIZURE AND RETURNS**

Asset recovery cases involving foreign corruption, both environmental and nonenvironmental related, are often complex and transnational by nature. These cases require cross-border investigations into corporate accounts, financial transactions, and telecommunications records. Timely international cooperation is critical for success. Formal requests for foreign assistance to "follow the money" are typically channeled through Mutual Legal Assistance Treaties (MLATs), bilateral agreements between governments for gathering and sharing evidence. Foreign governments pursuing their own investigations submit Mutual Legal Assistance (MLA) requests for information to the DOJ's Office of International Affairs (OIA). The U.S. also provides informal assistance in gathering evidence, which can be arranged through forums like CARIN.

When KARI pursues an asset recovery case, the link between the underlying criminal conduct and the asset is first established, followed by a court order to restrain or freeze the asset before the ultimate motion of forfeiture is filed. Non-conviction based forfeiture, a mechanism recommended by UNCAC that allows for the confiscation of kleptocratic assets without a criminal conviction, is often used.

With the assistance of other governments, the U.S. can sometimes exercise jurisdiction over assets located outside of the country if legal processes establish that any associated funds were laundered in part through the U.S. financial system, such as wire transfers using U.S. banks. Due to the length of time for the U.S. to build a case and successfully obtain a forfeiture decision, U.S. officials encourage governments of countries of origin to initiate their own proceedings and file forfeiture orders with U.S. authorities.



When the U.S. DOJ successfully prosecutes a forfeiture case, the asset becomes property of the U.S. government. The DOJ can then secure the cash or sell the asset with the intent of returning the proceeds to the victims of corruption in the country of origin. The DOJ relies on a voluntary and discretionary legal framework for returning assets, often signing sharing agreements with the government of the victimized country.<sup>10</sup> The timely repatriation of funds is important, though disputes over the sharing agreements and/or the risk that returned funds would be lost again to corruption often delay the process.

The U.S. has successfully repatriated billions of dollars to countries where the crime occurred, but exact figures are unclear. Information regarding actions undertaken by KARI is scattered across press releases and provides insufficient information as to the total value of what has been frozen, forfeited, and returned. Asset sharing and return agreements, contractual stipulations on how forfeited assets will be disbursed, are not always made public thereby preventing interested parties, including victims, from exercising appropriate oversight.

Within the current policy and legal framework, KARI has made substantial progress in seizing and repatriating stolen funds. KARI is less equipped to pursue asset recovery cases where the proceeds are sourced specifically from foreign environmental crimes. Deforestation and mining practices that are illegal in countries with the raw materials are not considered predicate offenses in the U.S. federal anti-money laundering statute. The matter is further complicated by the difficulty in demonstrating a direct pecuniary loss by victims in cases involving illegal logging, mining, and wildlife trafficking, a precondition for asset return.

## **CASES STUDIES**

The DOJ has successfully seized and repatriated some stolen foreign assets to the benefit of the local populations. These few cases represent the art of the possible for asset return, and suggest that changes in U.S. law and policy could generate similarly successful outcomes in instances where the U.S. is able to forfeit the proceeds of foreign environmental crime.

- **NIGERIA:** In 2022, the DOJ announced the return of approximately \$332.4 million in forfeited assets to Nigeria, the result of a decades-long international investigation into the kleptocratic regime of former Nigerian dictator General Sani Abacha and his co-conspirators. Under a public binding agreement signed by the U.S. and Nigerian governments, assets would be used to finance three infrastructure projects in the

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<sup>10</sup> Michael J. Biondi, “Building Trust(s): Rethinking Asset Return in Kleptocracy Forfeitures,” Duke Law Journal, 2023, available at <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4151&context=dlj>.

country. The agreement appropriately mandated oversight of the spending, including a financial review by an independent auditor and monitoring by a civil society organization with expertise in engineering.<sup>11</sup>

- **MALAYSIA:** The 1Malaysia Development Berhad (1MDB) scandal, where more than \$4.5 billion was embezzled from Malaysia's sovereign wealth fund and laundered through banks around the world, marks the U.S.'s largest asset recovery case to date. In 2024, the DOJ announced that it had returned approximately \$1.4 billion to the Malaysian people. The asset sharing agreement was not made public.<sup>12</sup>
- **KYRGYZSTAN:** In 2019, the DOJ returned \$4.5 million of \$6 million ordered to be forfeited and repatriated to the Kyrgyz Republic, stemming from an investigation into assets misappropriated by former president Kurmanbek Bakiyev and his son Maxim Bakiyev. While the full agreement was not made public, the U.S. Embassy and the Kyrgyz Government announced in a joint statement that the returned assets would be used to finance social projects and anti-corruption initiatives, including the purchase of medical equipment for regional hospitals and the purchase of audio and video equipment for district courthouses to increase transparency in legal proceedings.<sup>13</sup>

## **CONCLUSION**

With potentially billions in assets from the proceeds of environmental and other crimes sitting idle in the U.S., there is a unique opportunity to mobilize those resources for currently underfunded climate change mitigation and adaptation efforts in the countries least responsible and least equipped to address the harms.

First and foremost, before expanding U.S. efforts to pursue the proceeds of environmental crime, current U.S. law and policy should be amended to improve the overall asset recovery process. A lack of transparency, red-tape restrictions, and the failure to engage key stakeholders slow the process and undermine the ability of the DOJ to effectively seize and repatriate ill-gotten gains.

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<sup>11</sup> "United States Repatriates Over \$20 Million in Assets Stolen by Former Nigerian Dictator," U.S. Department of Justice, November 17, 2022, available at <https://www.justice.gov/archives/opa/pr/united-states-repatriates-over-20-million-assets-stolen-former-nigerian-dictator>.

<sup>12</sup> "Justice Department Recovers an Additional \$20M in Misappropriated 1MDB Funds," U.S. Department of Justice, January 17, 2025, available at <https://www.justice.gov/archives/opa/pr/justice-department-recovers-additional-20m-misappropriated-1mdb-funds>.

<sup>13</sup> "Justice Department Repatriates Forfeited Funds to the Government of the Kyrgyz Republic," U.S. Department of Justice, February 26, 2019, available at <https://www.justice.gov/archives/opa/pr/justice-department-repatriates-forfeited-funds-government-kyrgyz-republic>.

The climate crisis demands that we explore every resource option available. Returning proceeds of the very crimes contributing to climate change to the country where the crime occurred is a commonsense way to pay for climate mitigation and resilience efforts in otherwise economically struggling nations. Easing the DOJ's ability to recover and return the proceeds of environmental crime to address environmental damage would be the very definition of justice.

## **RECOMMENDATIONS**

- 1. Classify all environmental crimes as predicate offenses in the U.S. federal money laundering statute.** The Lacey Act currently prohibits the illegal trade of any wildlife or plants, including plant products like timber and paper, but U.S. law should be amended to classify all foreign environmental crimes as predicate money laundering offenses.<sup>14</sup> In addition to equipping U.S. authorities with more tools to pursue what is now the third largest category of criminal activity in the world, the change would also draw the U.S. in line with standards set by the Financial Action Task Force (FATF), the intergovernmental body dedicated to crafting and supporting policies to fight financial crime.
- 2. Conduct a review of other foreign crimes that could be added to the list of predicate offenses for money laundering statute.** The DOJ is able to prosecute U.S. citizens for money laundering if the proceeds are the result of over 200 predicate offenses, or individual crimes like tax evasion or narcotrafficking that fit into wider schemes. However, for the U.S. to prosecute a foreign individual for money laundering, there are currently only seven categories of foreign offenses that would lead to a charge. Appropriate additions would strengthen the U.S.'s authority to pursue foreign corrupt actors and their assets in the U.S.
- 3. Allow U.S. authorities to temporarily freeze assets following an arrest or charge abroad while the foreign government prepares a formal Mutual Legal Assistance request to initiate their own forfeiture proceedings, and expand the duration of temporary restraint from 30 to 90 days;** The U.S. is currently able to freeze an asset following a foreign arrest or charge for 30 days while the foreign government prepares to submit an MLAT request provided that the U.S. initiates *its own forfeiture proceedings* against the asset. Since it is often more efficient for foreign governments to order the forfeiture of an asset located inside of the U.S. than for the U.S. to initiate its own proceedings, the policy should be revised. Due to the threat of assets being sold or moved, this reform would allow the U.S. to preserve an asset while a foreign government builds a forfeiture case.

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<sup>14</sup> "Lacey Act," U.S. Fish & Wildlife Service, available at <https://www.fws.gov/law/lacey-act>.

4. **Grant the U.S. broader discretion in repatriating forfeited foreign funds, such as authorizing their disbursement to be overseen by other federal agencies and multilateral bodies that have projects in the countries of origin.** The DOJ is comprised of investigators and prosecutors trained to build strong cases against corruption, but they often lack the localized expertise and resources needed to determine the best use and monitoring of returned funds. Granting the DOJ broader discretion in asset return, such as transferring proceeds to other federal agencies actively engaging with and funding local development and aid organizations in countries of origin, could help expedite the return process.
5. **Suspend the running of a statute of limitations for up to three years in criminal and civil forfeiture cases while the U.S. files for evidence abroad.** Evidence critical to the success of a U.S. case is often located abroad and requires prolonged coordination between governments. Suspending the statute of limitations while the U.S. obtains the evidence it needs to move forward with a forfeit action would prevent cases from being dismissed due to procedural and administrative delay.
6. **Publicly report in a database the initiation and conclusion of asset recovery cases brought by the KARI and KleptoCapture Task Force, including the amounts forfeited, amounts expected to be returned and amounts repatriated.** Information regarding asset recovery cases is often fragmented and scattered across press releases and speeches. The ability to track assets that the U.S. has frozen, seized, planned to repatriate and repatriated for all cases would allow for improved outside monitoring and demonstrate a good-faith commitment to the transparent return of funds to the victims of corruption. The U.S. should also publish its return and sharing agreements for each case. For best practices, the U.S. should look to the UK, which became the first country to publish its framework and data on international asset recovery cases in 2022.<sup>15</sup>
7. **Consult local stakeholders, including civil society, throughout the asset return process for feedback on the destination of funds and engage independent monitors, including civil society where appropriate, to ensure integrity and accountability in throughout the entire process.** Civil society is willing and eager to engage in efforts to ensure the responsible return and use of forfeited assets to the benefit of the victims harmed by corruption. Local civil society organizations are often best placed to make recommendations for how the returned funds should be used, for example suggesting the financing of adaption infrastructure in a region that has experienced increased flooding as a result of illegal deforestation and climate

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<sup>15</sup> “Asset recovery statistical bulletin: financial years ending 2019 to 2024,” UK Home Office, September 12, 2024, available at <https://www.gov.uk/government/statistics/asset-recovery-statistics-financial-years-ending-2019-to-2024/asset-recovery-statistical-bulletin-financial-years-ending-2019-to-2024>.



change. And one concern that often delays the return of assets is the risk that the funds would once again be stolen. Consulting with in-country independent experts on areas of risk would help ensure a responsible return and expenditure of assets, and return agreements should include provisions for the monitoring of projects or initiatives financed by asset return.

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