



Asset recovery in the light of covid-19 – five questions open to debate



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The disruptive force of the covid-19 pandemic is sweeping around the world. Anti-corruption and asset recovery assistance programmes, such as those in which our International Centre for Asset Recovery specialises, are caught up in the waves – for better or for worse.

It's tempting to be gloomy. True, we've seen remarkable creativity from our partner institutions and embedded experts, with critical work taking place successfully in cyberspace for the first time. Yet despite best efforts to maintain progress, many ongoing corruption and money laundering cases are paralysed and new cases are on hold.

Investigators simply don't have the space or protective equipment to conduct searches and interview witnesses safely and while maintaining social distancing requirements. Courts without video conferencing technology are at

a standstill while the clock ticks on suspects' maximum remand periods. In many corruption cases, covid-19 is handing suspects a "get out of jail free" card or at least raising the risk of them interfering with witnesses and dissipating assets while out of custody. In others we see it being used as another excuse for delays. Justice, fears one of our experts, will get stuck.

These challenges come at a time when the risk of corruption is higher than ever. This is partly because countries with weak governance systems will receive substantial loans – and thus a big inflow of money – and partly because emergency procurement is typically very corruption-prone. Several countries have already reported on corruption cases related to the covid-19 emergency response, and our experts are expecting many more.

But beyond the gloom, the pandemic is bringing light and urgency to many long-standing challenges in asset recovery. Our more optimistic team members predict that the current situation will trigger a traditionally conservative sector to embrace modern times.

We certainly don't have all the answers. Only time will tell whether the optimists or the pessimists were right, or whether it is a bit of both. For now, we want to start by asking the right questions. Here are five for your consideration:

1. Closing the “digital divide”: necessary but not sufficient?

It is clear that the gap between the technological “haves” and “have-nots” will widen the longer the pandemic restrictions on working in offices, meeting in person and travel continue.

In Basel, our team could switch overnight to virtual working with little disruption. In some of the low-income countries in which we work, in contrast, even high-ranking politicians and civil servants have no professional email or laptops to take home. Anti-corruption agencies use paper filing cabinets and levels of IT resources, skills and personnel are low. Internet is often weak, unreliable and expensive even in major cities. There's only so much that our partners can do on a cell phone using mobile internet connections, never mind the very real issues of security and suspicion of new technologies.

The challenges are similar but different in some of the middle-income countries with which ICAR partners. There, access to technology and wireless data transmission is usually readily available, but people are nonchalant in using it. Even before covid-19, we have seen instances where sensitive case files were transmitted using private email addresses and non-encrypted messaging services. The risk is that this dangerous practice will only increase as people don't have access to their offices and printing facilities or are unable to hold in-person case meetings.

This situation shows us that investment in technology is dearly needed. For a start, it can be hoped that countries will speed up the development

of digitalised case management systems, as we intend to support soon in Malawi. The judiciary in Peru is launching a project to digitalise case files using repatriated funds, in line with the asset return agreement. Countries may also apply for funding to upgrade IT equipment and internet access, as a Swiss Development Cooperation-funded project we are implementing in Mozambique has been able to do for the prosecution services. The introduction of professional email services with end-to-end encryption should certainly be made a priority to avoid the insecure transmission of sensitive case files.

Early investment in technology and training for practitioners will have additional benefits too. One clear advantage is increasing the ability to access open-source intelligence using open online databases and tools such as our [Basel Open Intelligence](#) (which, by the way, is offered free to partner public institutions in developing countries). Another is increasing access to virtual learning opportunities such as [eLearning](#) and workshops delivered over video conference, which the training teams at ICAR and in our Latin America office are currently working hard to develop.

But does that mean funding for travel and conferences should simply be switched to technology and training? Our experts' view is that ICT is necessary but not sufficient.

- First, if a country's public institutions are not able to access high-quality internet and related communications technologies, then new computers, free mobile internet, case management systems and secure file transfers may not have the instant impact we would like.
- Second, a country's legislation needs to be adapted to technical innovation, for example being able to receive evidence that has been gathered via open-source research on the internet.
- Third, when you work in a field as sensitive as anti-corruption, personal relationships and speaking to people are essential to building trust. With pre-existing relationships, you can sustain the contact and trust via phone calls or video conferences for some time, but never being able to meet in person in our experience is going to be challenging. The same goes for virtual learning, which is complementary to but not a substitute for in-person training or on-the-job mentoring
- Last but certainly not least, technology comes with significant costs, from equipment, infrastructure and software to personnel, training and security. Even with costs going down, these are simply not available in some countries. And with the added financial burden of the covid-19 response and related economic downturn, it is unlikely that more money will become available anytime soon.

But youth and private-sector energy are on our side. The younger demographics of many low- and middle-income countries present an enormous opportunity to overcome resistance to technology and drive change. We are seeing this already in government institutions, particularly in some Latin American countries, where massive private investment in recent years has resulted in good ICT infrastructure and internet quality.

What can we, as anti-corruption practitioners, do to help local teams and institutions access better technologies to continue their work without putting all our hopes in cyberspace?

2. Legal hurdles may remain, but there's scope to streamline procedures

Covid-19 changes many things, but not the fact that the law remains the law. Legal steps for obtaining a conviction and confiscation or forfeiture order before any funds can be repatriated will remain as they are.

It is true that the crisis is an opportunity for practitioners to think laterally and find creative solutions. So maybe there are opportunities for innovation, for example in terms of public-private partnerships and information-sharing. But realistically, in the timescale of covid-19, these are not easy wins and we must in any case be careful to respect fundamental rights and protections.

What covid-19 does provide, though, is the motivation and justification to reduce bureaucracy and re-think the need for some cumbersome procedures. Some ideas:

- Why insist that witnesses appear in court hearings in person when they can appear by video link, as they are already starting to do in Peru and Kenya?
- How can we speed up information-sharing, which is by nature an informal process and therefore quicker to adapt?
- Mutual legal assistance has long been up for innovation: a digital system that bypasses the archaic transmission of evidence between central authorities or diplomatic channels would save time and money in the long run, especially now that diplomatic mail services have stopped in many jurisdictions.
- And what can we do to fast-track asset restraining orders in pre-conviction cases, or confiscation orders after a conviction?

Encouraging innovation when it comes to information-sharing and investigation practices, and being courageous in seeking a wider interpretation of laws, are real possibilities. In a crisis people are more willing to be flexible. But first, there need to be safeguards and proper oversight to prevent abuse of fast-tracked processes and legislative interpretations. Second, history warns that newly streamlined systems need to be sustainable and institution-alised to prevent things going back to their old ways after the crisis subsides. This may require domestic legislative change.

Our experts agree, though, that in asset recovery, legal and bureaucratic hurdles come after the issue of political will.

3. Can pressure from citizens trigger political will – on both sides?

Prompted by the pandemic and related media coverage, more and more citizens may make the link between corruption and poor public service outcomes, particularly in healthcare. We can expect greater pressure on governments to do more about corruption and invest concretely in public services.

The result? Governments hopefully keep a closer eye on covid-19-related emergency healthcare procurement. Good of course – but as one devil's advocate in our team points out, covid-19 procurement still only makes up a very small proportion of government spending. Diverting the resources and attention of supervisory bodies to covid-19 alone may put other procurements, investments and social programmes at greater risk of corruption.

Another possible result: governments use recovered assets from corruption cases to fund healthcare. Kenya's President recently announced that USD 19 million in recovered stolen assets would be used in the fight against covid-19 (see our expert's [opinion column](#)). This is good news for Kenyans. It illustrates very pertinently that while corruption can kill, asset recovery has the potential to save lives.

Such a pragmatic use of political capital may be a way to turn around fears that states will marginalise asset recovery efforts and cut funding for assistance programmes. Many of our experts point to the overwhelming immediate problems faced by all countries, including economic collapse, healthcare, supply of essential goods, even food production. Some fear that domestic fire-fighting will be a priority, fuelled by demands from citizens to divert foreign aid to support national interests. Covid-19 may even give government development agencies an honourable way out of commitments to funding asset recovery and anti-corruption assistance programmes. Others disagree, with our Latin America team in particular seeing tangible evidence that anti-corruption and asset recovery efforts will be central to economic stimulation strategies.

To turn this around, politicians need to foresee tangible results from which they can gain political capital. This makes communication a critical factor. Unlocking stolen money to help fund covid-19-related aid rather than drawing on public treasuries could be one argument. Or the story that shows how support for law and order has resulted in a new hospital being built.

4. Raised stakes in the debate over the use of returned assets and other contentious topics

This example also galvanises the long-standing and often acrimonious debate over who has the right to dictate the use of returned assets. In one case where we have been experiencing difficulties in getting an agreement on the repatriation of around USD 4 million, covid-19 has already helped to break the standstill – the parties have agreed on the use of funds to procure

essential medical equipment and the transfer should soon go ahead. There are other international cases where we see similar potential.

In these times of crisis, what do we think about requested states agreeing to fast-track the repatriation of funds subject to a clear agreement on how they are used? Is it a pragmatic way to get money desperately needed for citizens or does it set a problematic precedent? The debate is far from cut and dried. In another ongoing case in which we are involved, assets awaiting repatriation are still stuck while the governments disagree over the proposed use of the funds.

This is where agreements based on bilateral and trilateral cooperation, such as [FRACCK](#), may help to find a win-win solution and facilitate the fast return of assets. (Read more about FRACCK and its role in international cooperation on asset recovery in this [quick guide](#).)

In challenging periods, we are freer to challenge the rules. Perhaps it's time to talk about whether it's indeed possible to return assets to jurisdictions where there is political turmoil, for example, or which are lacking a democratically appointed government. What other issues that are normally taboo might we consider now?

5. How does this change the role of asset recovery in the wider framework of anti-corruption and sustainable development?

We have talked a lot in recent years about the benefits of asset recovery in terms of soft assets, such as strengthening institutions and the rule of law (see our [Working Paper 29](#)). To some extent, covid-19 is putting hard assets – cash – back in the spotlight.

This has implications for the approach to asset recovery and whether it's time to focus more on quick wins. ICAR is already doing a lot to support not only international but also domestic cases. These can sometimes be solved within a reasonable timeframe because international cooperation, which often takes a long time, is not needed. We are also providing partner countries with advice and assistance on the use of alternatives to criminal confiscation, for example non-conviction-based forfeiture or procedures focused on illicit enrichment / unexplained wealth. Should we prioritise these more and work harder to get the high-level political will we need to fully exploit their potential?

Not all our experts share the same view on these points. Many argue that the cases that most matter in terms of hard assets are international. Moreover, some say the full use of criminal asset recovery is a significantly more powerful tool than alternative approaches. The debates clearly show that this is very much a situational decision. A radical move in one or the other direction is not warranted, including not now.

Lighting the road ahead

This analysis is by no means exhaustive. It only aims to point at a first set of issues, none of them new but certainly arising with more prominence in light of the covid-19 crisis. We caution against thinking that we need to reinvent the wheel and do everything differently, which sometimes can be tempting. But we always advocate for thinking outside the box, and if ever there was a time to do so it is now. And then hopefully thinking outside the box will become the new normal.

In that sense, and because answers always come from discourse, debate and argument, we greatly welcome your feedback on this initial set of issues and any other thoughts you have.

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