

**LOST BILLIONS:
RECOVERING PUBLIC
MONEY IN EGYPT, LIBYA,
TUNISIA AND YEMEN**

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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EXECUTIVE SUMMARY

Nearly four years have passed since an unprecedented wave of uprisings swept across the Arab world, fuelled by atrocious economic conditions and endemic corruption among public officials.¹ Revolution led to regime change in Egypt, Libya, Tunisia and Yemen, where tens of billions² of dollars in assets were stolen by previous regimes.³ Public funds were used by former officials and their families to pay for luxury vehicles and foreign homes, and to secure even greater power.⁴ Now, as each nation struggles to put itself back together, it is paramount to assess how effectively new regimes are responding to the demands of citizens. By recovering public assets, leaders have the opportunity to cultivate faith, confidence and a public role in newly constructed governments.

This report outlines the findings and lessons learnt from asset recovery activities in Egypt, Libya, Tunisia and Yemen. It builds on the Transparency International desk-based research report *Lessons Learnt in Recovering Assets from Egypt, Libya and Tunisia*. The results are based on interviews with local Transparency International chapters, partners in each of the four countries and experts from international organisations and research institutions carried out by JMW Consulting on behalf of Transparency International.

Average estimates indicate that more than US\$165 billion has been stolen from Egypt, Libya, Tunisia and Yemen combined, yet less than US\$1 billion has been returned.⁵ The total value of illegal assets is very difficult to determine, as a wide range of estimates have been published by national authorities and NGOs working on the subject, but the recovery process has been stagnant. As each nation experiences the growing pains of developing good governance, officials face a number of exceptional challenges in dealing with corruption, including technical complications, social instability and a lack of serious political will. Civil war in Yemen and insurgencies in Libya demonstrate not only the challenge of ending corruption but also its necessity. The embezzlement of public funds has been a major source of discontent in the region, showing that the notion of asset recovery as a priority must be strengthened in order for leaders to build lasting credibility and social cohesion.

Some key findings regarding the four countries' approaches to asset recovery are as follows:

- *Lack of a clear, long-term strategy*: Each country has adopted a different approach to asset recovery and, except for Tunisia to a certain extent, is lacking a thorough policy on asset recovery. Following regime change, attention focused mainly on attempts to quickly recover assets, with less attention given to developing realistic and comprehensive strategies, such as prioritising cases, building skilled teams, collecting information and conducting investigations.
- *Establishment of multiple, competing asset recovery committees*: Each country, except for Yemen, has established working group committees on asset recovery. While Tunisia has succeeded in establishing a single multi-agency committee involving all relevant stakeholders (government and non-government), Libya and Egypt have established multiple committees on asset recovery over time without a clear delineation of mandates, roles and responsibilities.
- *Targeting assets located domestically and in foreign jurisdictions*: Egypt and Tunisia have targeted misappropriated assets, both in the country and abroad. Although this may not have been planned and premeditated from the beginning, the fact that internal and external assets are being targeted is a positive lesson learnt that should be adopted by other countries when targeting cases of public corruption.

¹ New Statesman, 2011.

² Transparency International takes "billion" to refer to one thousand million (1,000,000,000).

³ Page 10, Figure 3: *Stolen Asset Estimations*.

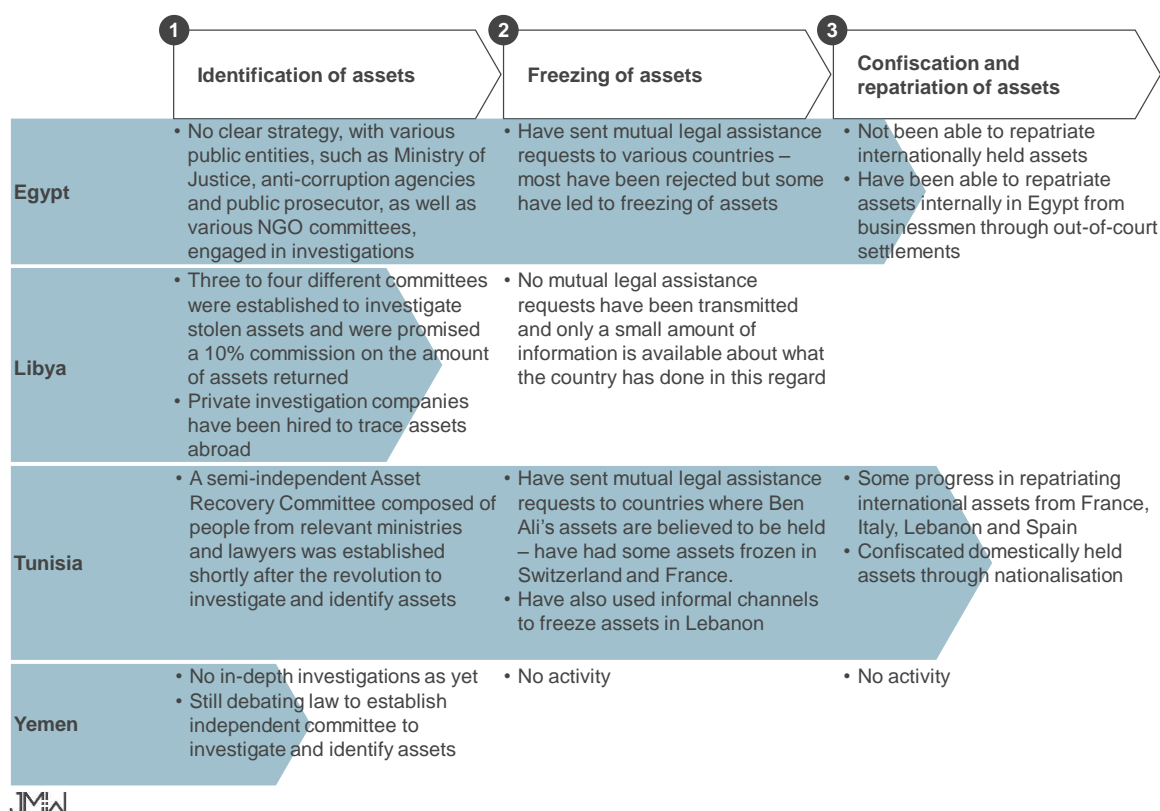
⁴ BBC News, 2012.

⁵ Page 11, Figure 4: *Estimation of Assets Frozen, Assets Recovered, and Remaining Assets*.

- *Use of diverse legal paths to recover assets:* It is important to note that Egypt, Libya and Yemen have utilised different legal avenues to recover stolen assets. While Egypt has used domestic criminal prosecutions and out-of-court settlements, Libya conducted civil recovery proceedings in the UK and Tunisia used a nationalization process to target locally stored assets.

The figure below summarises the approaches and activities of the four countries in each phase of asset recovery.

Figure 1: Asset recovery approach overview



The four countries have faced a broad range of challenges through the different phases of the asset recovery process and have made only limited progress. The primary challenges were related to the capacity of the authorities to effectively pursue asset recovery, but they were also correlated with poorly designed strategies, very limited data regarding the amounts of assets stolen and a lack of political will on both sides. The key common challenges can broadly be categorised as internal and external to the four countries:

Internal challenges:

- *Lack of transparency* on the part of public agencies working on investigating and tracing assets, making it difficult for civil society and non-state actors to engage and assist in the process, as well as to hold the institutions accountable.
- *Lack of human, financial and technical resources* in the institutions tasked with investigating and tracing assets has hampered their ability to conduct investigations and to secure

international cooperation. The lack of a comprehensive legal framework or gaps in the legal framework that exists has also hampered engagement in the asset recovery process.

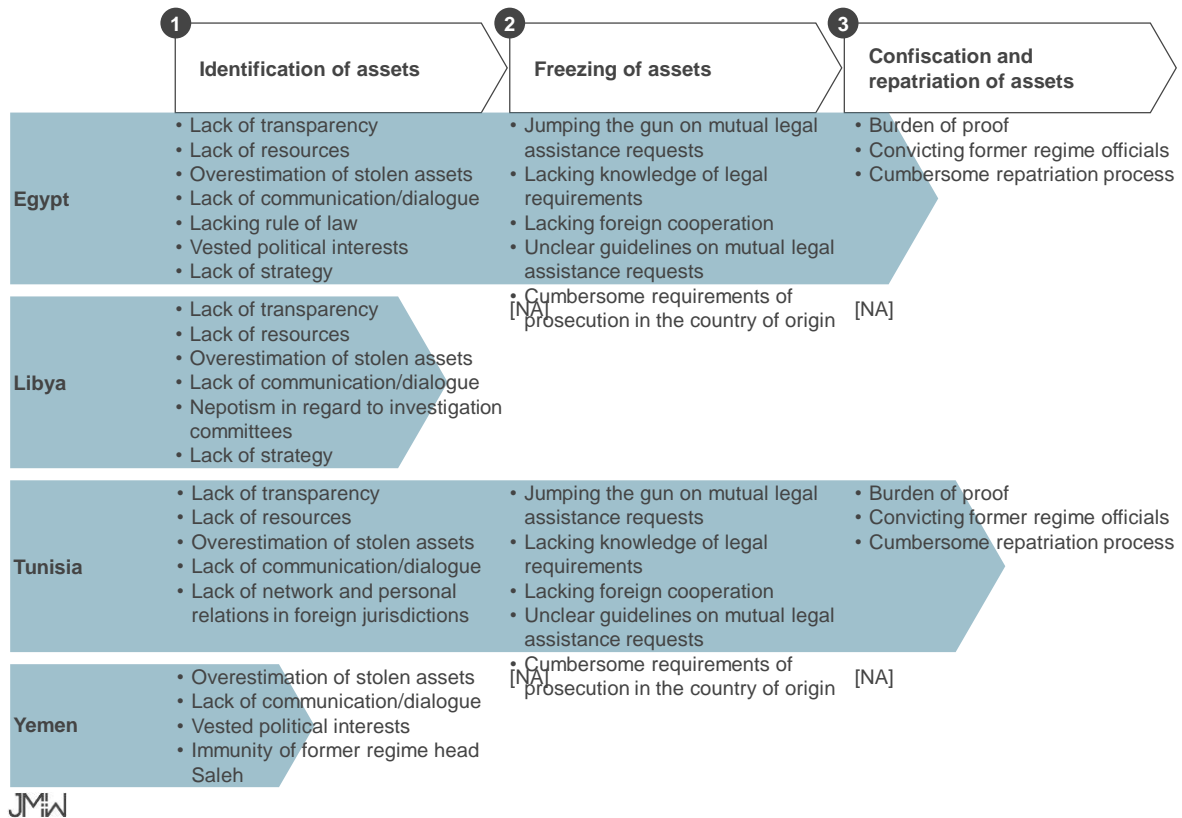
- *Overestimation of the assets stolen* by authorities has raised expectations and a lack of success has created discontent and frustration among the population.
- *Jumping the gun on mutual legal assistance requests* without prior informal communication with foreign jurisdictions and necessary required evidence has led to rejection of requests by, and strained cooperation with, foreign jurisdictions.
- *High (criminal) standard of the burden of proof* in asset-seeking countries making it more difficult to prove beyond a reasonable doubt that identified assets held abroad are linked to a specific criminal activity.

External challenges:

- *Financial secrecy*, which enhances the complexity of financial investigations, allowing the assets' owners to hide behind complex corporate structures (shell companies, trust funds, foundations, etc.), making it difficult to identify and trace the stolen assets.
- *Lack of cooperation by foreign jurisdictions* in the conducting of investigations, identification of assets and subsequent freezing, confiscation and repatriation of assets. In addition, the lack of communication and dialogue with foreign jurisdictions has hampered the ability of countries to gain international assistance in the tracking and investigation of stolen assets.
- *Unclear guidelines on responding to mutual legal assistance requests* have led to delays in responses and unfounded rejections.
- *Cumbersome prosecution requirements in the asset-seeking countries* mean that the four countries have found it difficult to implement the prosecution process and thus have not been able to uphold asset-holding countries' requirements in regard to the prosecution of corrupt officials in order to obtain the confiscation and repatriation of stolen assets.
- *Convicting former regime officials* is a requirement in many foreign jurisdictions before confiscation and repatriation of the stolen assets can proceed. Such trial processes have proven lengthy with the burden of proof unattainable and a high rate of appeal, which further delays the process of repatriating assets.
- *Strict repatriation processes* delay most asset recovery cases, so that even in a successful case it can be 10 or more years before the assets are actually returned to the asset-seeking countries.

In addition to these common challenges, each nation experiences a number of country-specific challenges. The figure below summarises these key challenges.

Figure 2: Key challenge overview



RECOMMENDATIONS

Based on the challenges faced the following recommended actions have been developed, to ensure authorities in each country address the internal and external challenges faced.

Internal challenges:

- **Develop a clear strategy on asset recovery:** An effective strategy on asset recovery should, at a minimum, do the following:
 - **Prioritise cases.** In the early stages, the focus of the strategy should be on low-hanging fruits to ensure progress in the work, prioritising a select number of cases to pursue, with a medium-to-high probability of success. This also means that the authorities should not, at least initially, focus their efforts on cases with a low probability of success.
 - **Clear delineation of responsibilities.** After outlining the cases to pursue, authorities should develop a clear mandate for an asset recovery committee to lead the work. Such committees should ensure that all relevant stakeholders are involved from the outset, including representatives of government agencies and civil society.
 - **Promote transparency and effective cooperation.** In three of the countries (i.e. excluding Yemen), obtaining information from the public agencies working on investigating and tracing assets has proven to be nearly impossible. While it is

common for investigative agencies not to share information pertaining to ongoing investigations, these public agencies have continuously failed to publicly share information related to their approach, activities planned or undertaken and progress made. This poses a challenge for civil society and non-governmental actors as it restricts their ability to engage and assist in asset recovery investigations as well as to hold institutions accountable for their actions.

- *Secure financial resources.* The committees should have adequate financial resources at their disposal to conduct their work comprehensively. Moreover, additional margins of budgetary and institutional independence should be secured, to insulate committees from political interference. Secure financial resources can also help to tackle high staff turnover so as to help preserve the institutional memory of the committees.
- *Develop training programmes in cooperation with international experts.* The key challenge in all countries, even those with a clear strategy, is the lack of human resources to conduct proper investigations. The authorities should seek to ensure international cooperation with multilateral initiatives, such as the Stolen Asset Recovery (StAR) initiative, or with key asset-holding countries, to develop training modules for key employees on topics such as mutual legal assistance, financial investigations and the utility of informal channels.
- *Develop asset-management systems for repatriated assets.* As the countries' performance in asset recovery is likely to become more successful, there is a need for the countries to develop an asset-management system for repatriated assets. Such a system should ensure openness and public access to information at all stages of asset return and management.

External challenges:

- *Cultivate political will in regard to asset recovery.* Challenges faced by asset-seeking countries when seeking to cooperate with asset-holding countries, such as a lack of political will and cumbersome repatriation processes, can to some extent be countered by building a moral imperative for asset recovery. This may put political pressure on the asset-holding countries to improve cooperation. In the cases of the Philippines and Peru, much success was achieved by linking asset recovery to the issue of transitional justice, which helped develop political will around these countries' asset recovery work.
- *Utilise informal networks and lines of communication.* The authorities in the countries under review have under-utilised informal lines of communications and networks in their asset recovery. This is linked to the fact that the countries have jumped the gun on mutual legal assistance requests, side-stepping the informal communication with foreign jurisdictions that could have helped the process of building trust and sharing information regarding legal requirements and processes. The authorities should seek to establish contacts and networks with key stakeholders in asset-holding countries. Establishing such networks is also linked to ensuring the institutional memory of the committees in the asset-seeking countries, which will ensure ongoing communication between relevant employees.

BACKGROUND

In 2011 a wave of uprisings swept through the Arab region against authoritarian regimes that had monopolised power for decades. These uprisings led to regime change in Egypt, Libya, Tunisia and Yemen. These countries have since embarked on transitional processes that have taken different trajectories. The uprisings were fuelled by broken economies, high youth unemployment, and the corrupt nature of the regimes and public officials. Since the outbreak of the revolutions the countries have tried to recover the assets stolen by previous regimes; however, with little previous experience and expertise to build on, they have made only limited progress in this regard. The challenges faced are related to both the capacity of the authorities to effectively pursue asset recovery and to poorly designed strategies that do not correspond with the total size of the stolen assets.

To assist the process of asset recovery, a number of initiatives have been undertaken by international organisations, which include the StAR initiative by the UN Office on Drugs and Crime and the World Bank, the International Centre for Asset Recovery of the Basel Institute for Governance, the Camden Asset Recovery Inter-Agency Network, and the informal network of asset recovery offices in the EU. Additionally, the G8, Commonwealth Secretariat, EU, UN Security Council and Organisation for Economic Co-operation and Development (OECD) have codified the efforts of asset recovery through various resolutions and declarations.⁶

A key aspect of asset recovery is the difficulty involved in estimating the actual amount of assets stolen. This challenge is related to a number of issues:

- *International vs. domestic assets.* When calculating the scope of corruption in the former regime and the recovery of assets, it is necessary to define whether the focus is on assets channelled abroad or assets that still remain in the country. Recovering these two different types of assets presents different challenges that are often conflated.
- *Public vs. private assets.* As in the especially prominent Libya case, figures regarding the stolen assets by the Gaddafi regime are often confused with assets held in government accounts abroad or in public investment companies, such as the Libyan Investment Authorities. These types of assets do not constitute stolen assets, as the regime change also leads to a change in the control of these assets from the previous regime to the new government.
- *Corrupt vs. legitimate income.* The heads of the former regimes received some amount of income from illegal or corrupt activities, but they also had some level of legitimate income, which can be difficult to separate from the illegitimate sources.
- *Former regime vs. broader circle of persons of interest.* Lastly, it is important to define whether the assets being sought are only associated with the former regime heads (and their families) or whether the investigations also include broader circles of friends and business associates who may have benefitted from their relationships with the former regime.

These differences in terminology also lead to great variation in the estimations of the allegedly stolen assets. It is, however, not the terminology that poses the key challenge to estimating the amount of stolen assets, but rather the difficulty in identifying and tracing the stolen assets. This will be analysed in more detail in the next section.

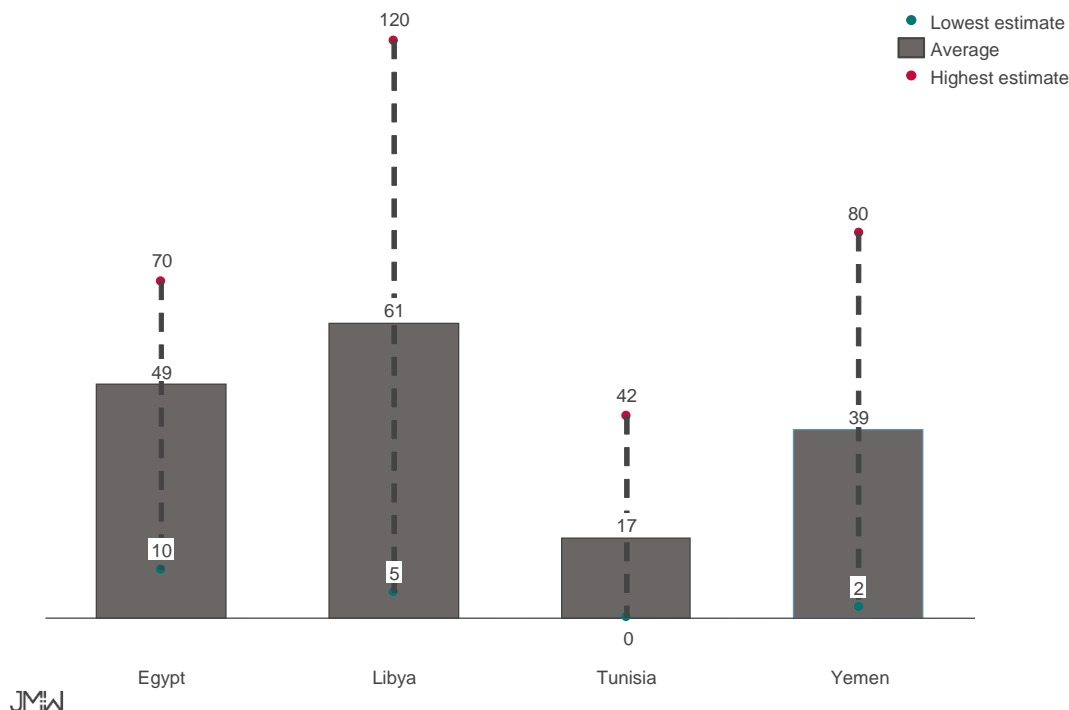
The figure below presents the average estimates of the assets stolen from each of the four countries. The average estimates have been developed by identifying all figures approximated by public

⁶ CEART Project, White Paper on Best Practices in Asset Recovery, 2012.

officials and NGOs, as well as through interviews with the national chapters. As Figure 3 clearly shows, there is a great deal of variation in the estimated size of stolen assets.

Figure 3: Stolen asset estimations⁷

Estimates of assets stolen by the former regimes in Egypt, Libya, Tunisia and Yemen (US\$ billion)



While the estimated worth of the stolen assets in the four countries seems to be in the billions, a much smaller amount of assets has been frozen and repatriated. Here, the average estimates of the

⁷ Sources:

Egypt: Interview with experts for this study, by JMW Consulting, August 2014; D. Kar and B. LeBlanc, "Illicit Financial Flows from Developing Countries: 2002–2011". Retrieved from www.gfintegrity.org/wp-content/uploads/2014/05/Illicit_Financial_Flows_from_Developing_Countries_2002-2011-HighRes.pdf; The Economist, "Making a hash of finding the cash". 2013. Retrieved from www.economist.com/news/international/21577368-why-have-arab-countries-recovered-so-little-money-thought-have-been-nabbed; E. Johnson. "What do we know about stolen assets in the Middle East?" Transparency International blog. Retrieved from <http://blog.transparency.org/2011/09/23/what-do-we-know-about-stolen-assets-in-the-middle-east/>; D. Ball and C. Bryan-Low. "Nation Seeks Ben Ali's Assets". *Wall Street Journal*, 2011. Retrieved from <http://online.wsj.com/news/articles/SB10001424052970203752604576643081871334992>

Libya: Interview with experts for this study, by JMW Consulting, August 2014; Kar and LeBlanc, 2013; *The Economist*, 2013; Libya TV, "Abushagur estimates Libya's stolen assets abroad at \$40", 2013. Retrieved from <http://libya.tv/en/abushagur-estimates-libyas-stolen-assets-abroad-at-40-billion/>

Tunisia: Interview with experts for this study, by JMW Consulting, August 2014; Kar and LeBlanc, 2013; The Economist, 2013; Johnson, 2011; E. Byrne, "Tunisia struggles to trace up to £11bn hidden abroad by Ben Ali regime". *The Guardian*, 2012. Retrieved from www.theguardian.com/world/2012/jan/13/tunisia-11bn-hidden-funds-ben-ali; R. Baker "Bravo for Tunisia: Hope Springs Eternal". *Huffington Post*, 2013. Retrieved from www.huffingtonpost.com/ramond-baker/bravo-for-tunisia-hope-sp_b_3111255.html;

Tunisia Times. "28 million to be retrieved by the Tunisian government as Ben Ali stolen assets". 10 April 2013. Retrieved from www.thetunisiatimes.com/2013/04/28-million-to-be-retrieved-by-the-tunisian-government-as-ben-ali-stolen-assets-99900/

Yemen: Interview with experts for this study, by JMW Consulting, August 2014; Kar and LeBlanc, 2013; Johnson, 2011; F. Al-Alwai, "GCC immunity does not cover the embezzlement of public funds". *Yemen Times*, 2012. Retrieved from www.yementimes.com/en/1555/business/574/GCC-immunity-does-not-cover-the-embezzlement-of-public-funds.htm; Shakdam, C. (2014). Yemen: 'Injustice Anywhere is a Threat to Justice Everywhere'. *Eurasia Review*. Retrieved from www.eurasiareview.com/15062014-yemen-injustice-anywhere-threat-justice-everywhere-oped/.

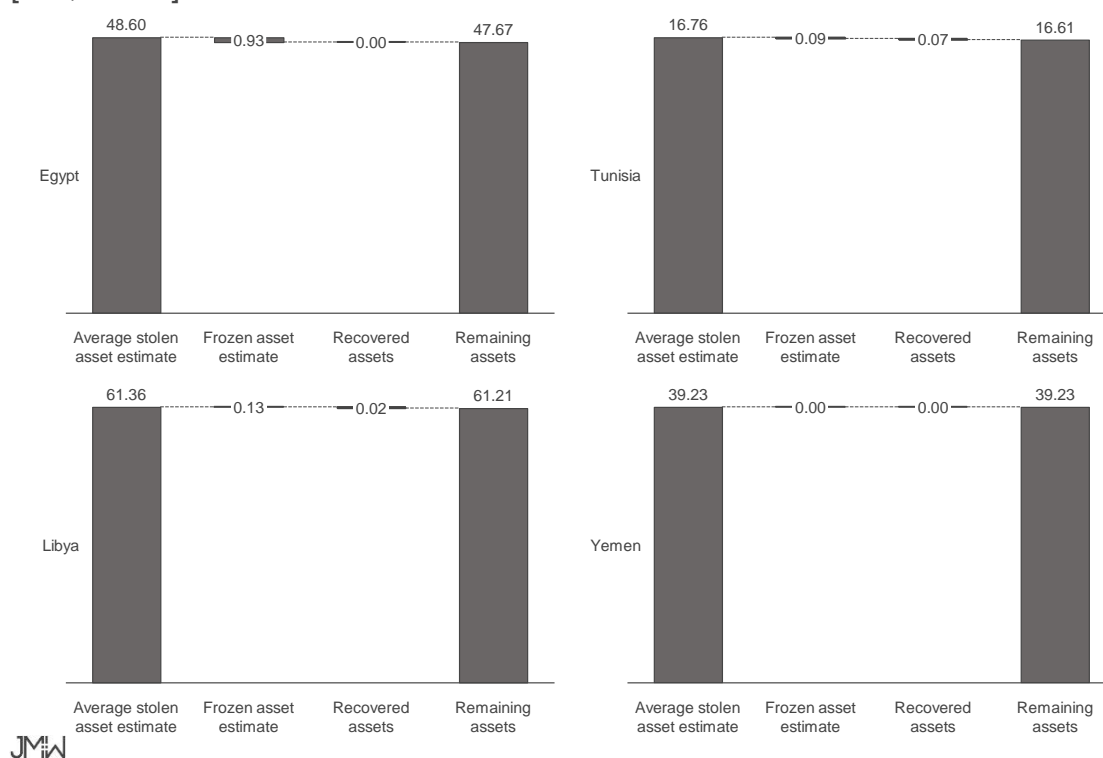
In the analysis the claims by the Egyptian prosecutor in 2011 that Mubarak stole US\$700 billion has not been included as this has been deemed preposterous by experts. See C. O'Connor, "Egyptian Estimate of Mubarak's Wealth Soars to \$700 Billion". *Forbes*, 2011. Retrieved from www.forbes.com/sites/clareoconnor/2011/04/11/egyptian-estimate-of-mubaraks-wealth-soars-to-700-billion/.

stolen assets have been used as a baseline to compare the progress made in freezing and repatriating stolen assets. As with the estimates of stolen assets, the size of frozen and repatriated assets has been developed through extensive desk-based research, at the StAR Corruption Case Search Centre among other institutions, and via numerous interviews.

Figure 4: Frozen and recovered asset estimations⁸

Estimation of assets frozen, assets recovered and remaining assets

[US\$ billion]



⁸ The numbers only include private assets and not public assets. In the case of Libya significant amounts of public assets were frozen and subsequently returned to the Libyan authorities. Sources: **Egypt:** J. Gulhane, "EIPR: New information about Gamal Mubarak's assets". *Daily News Egypt*, 2013. Retrieved from www.dailynewsegypt.com/2013/03/29/eipr-new-information-about-gamal-mubarak-s-assets/. **Libya:** StAR, Muammar el-Qaddafi / Saadi Quaddafi / London Mansion Case. 2013. Retrieved from <http://star.worldbank.org/corruption-cases/node/19587>; Vella, M. (2013). "American investigators target Malta companies for Gaddafi assets". *Malta Today*. Retrieved from www.maltatoday.com.mt/news/national/30455/american-investigators-target-malta-companies-for-gaddafi-assets-20131005#.VAm7wGNvDhB; S. Bell, "Ottawa puts freeze on Saadi Gaddafi's \$1.6M Toronto condo". *National Post*, 2012. Retrieved from <http://news.nationalpost.com/2012/01/05/ottawa-puts-freeze-on-saadi-gaddafis-1-6m-toronto-condo/> **Tunisia:** Gulhane, 2013; R. Miron, "Counting the cost of corruption - a week at a time..." StAR. Retrieved from <http://star.worldbank.org/star/content/counting-cost-corruption-week-time>.

Three steps in asset recovery

The process of asset recovery in relation to the proceeds from corruption can be divided into three main stages (i) identification and tracing of assets; (ii) freezing; and (iii) confiscation and repatriation.⁹

Identification and tracing of assets

The first step in any asset recovery effort is to identify and trace the stolen assets. This can be done by law enforcement, prosecutors, government committees, private investigators or civil society organisations.¹⁰ The key in this step is to locate the assets and find evidence that links the assets to a criminal activity. It is up to the asset-seeking country to lead these investigation efforts, but the countries may ask for external support from the alleged asset-holding countries. This can include informal assistance, usually in the form of peer-to-peer communication and cooperation, to facilitate information sharing and to align strategies on mutual legal assistance requests, which are formal requests for legal assistance from a foreign jurisdiction either during the investigation phase or seeking the enforcement of domestic orders in that jurisdiction.¹¹

Freezing of assets

This step is instrumental in avoiding capital flight. In recent cases, including in the Middle East and North Africa (MENA) countries, this step has actually preceded the first step, as asset-holding countries have frozen assets either based on their own initiatives or on the basis of international resolutions by institutions such as the EU or the UN Security Council.

In a typical legal proceeding, a court order is required before assets can be frozen. For any court to issue an asset-freezing order, the prosecution needs to convince the court that such action is necessary to prevent the dissipation of illegal assets. However, it is important to note that assets can be frozen temporarily without a court order for a limited period of up to 48 hours, or, as noted above, via international or country-level resolutions, as in the case of Egypt, Libya and Tunisia. Freezing of assets can be done at the request of the asset-seeking country or on the initiative or request of the country where assets are held. In some jurisdictions, the authority to freeze assets may be granted to prosecutors, investigating magistrates or law enforcement agencies, which eases the process and lessens the time needed to implement this step.¹²

Confiscation and repatriation

In the final step of asset recovery there are various actions countries can take to repatriate the stolen assets, depending on the jurisdiction in which the assets are being held. The possible avenues include:¹³

- domestic criminal prosecution and confiscation, followed by a mutual legal assistance request to enforce orders in foreign jurisdictions
- non-conviction-based confiscation, a legal mechanism that enables forfeiture of stolen assets without the need for a criminal conviction, by a mutual legal assistance request or other form of international cooperation to enforce orders in foreign jurisdictions
- private civil actions, including the formal insolvency process

⁹ M. Martini. *Lessons Learnt in Recovering Assets from Egypt, Libya and Tunisia* (Berlin: Transparency International, 2014). Retrieved from www.transparency.org/files/content/corruptionqas/Lessons_Learnt_in_recovering_assets_from_Egypt_Libya_and_Tunisia_2014.pdf

¹⁰ J.-P. Brun, L. Gray, C. Scott and K. Stephenson, *Asset Recovery Handbook: A Guide for Practitioners* (Washington D.C.: World Bank, 2011).

¹¹ Brun et al., 2011.

¹² Brun et al., 2011.

¹³ Brun et al., 2011.

- criminal confiscation or non-conviction-based confiscation initiated by a foreign jurisdiction, which requires jurisdiction over an offence and cooperation from the jurisdiction harmed by the corruption offences
- administrative confiscation

Once the confiscation has been ordered in the country in which assets have been held, then the actual transfer of the assets to the asset-seeking country can take place. In general terms, there are two main methods for asset return. The first is direct recovery through a judicial process, when a foreign jurisdiction permits the court to order compensation or damages to be paid directly to the asset-seeking country. The second and more common method is the repatriation of assets to the asset-seeking country based on treaties, agreements (multilateral or bilateral) or a statutory authority to distribute assets after a final order of confiscation. Asset repatriation is often followed by an asset-management monitoring plan implemented by the country ordering restitution, so as to ensure the judicious use of assets.¹⁴

¹⁴ K. Stephenson, L. Gray, R. Power, J.-P. Brun, G. Dunker and M. Panjer, *Barriers to Asset Recovery* (Washington D.C.: World Bank, 2011).

ASSET RECOVERY IN EGYPT, LIBYA, TUNISIA AND YEMEN

PHASE 1: IDENTIFICATION OF ASSETS

Summary

The countries have taken different approaches to investigating and tracing stolen assets. A common approach has been the establishment of committees and groups to lead the work. In this regard, Tunisia has established a semi-autonomous committee with members from various ministries. In Egypt, a number of different public institutions are involved in and lead the investigations. Libya has similarly set up several different committees. Yemen, however, has yet to establish a mandate for an institution to lead the investigations.

The key common challenges facing the countries in this phase have been a lack of transparency in the institutions working on asset recovery; a lack of human, financial, and technical resources; overestimation of the assets stolen; financial secrecy, which has enhanced the complexity of financial investigations; and a lack of communication and dialogue with foreign jurisdictions.

Country approaches

Egypt has a strategy, to some extent, for its work on asset recovery and for procedures to investigate and trace stolen assets. The primary government institution working on investigating asset recovery in Egypt is a committee under the Ministry of Justice. In addition to this, the public prosecutor's office is also leading investigations into stolen assets abroad. Domestic stolen assets are being investigated by the Administrative Monitoring Authority. As Egypt's public authorities lacked the experience and capacity to draft a mutual legal assistance request, the UK provided an expert to assist in this process. In addition to the public institutions involved in asset tracking and investigation, a number of NGOs and committees were formed after the revolution.¹⁵ One such group was led by the prominent academic Hossam Eissa, who later became Deputy Prime Minister for Social Justice and Minister of Higher Education in the Hazem El-Beblawi cabinet.¹⁶

Libya has not developed a clear strategy for its work on investigating and tracing assets. The country's rapid succession of governments, first led by Abdul Rahim Al Keab from November 2011 to November 2012, followed by the Ali Zeidan government from November 2012 to March 2014, has resulted in the establishment of different committees working on asset recovery. The former established the Asset Recovery Committee and the latter established the Tracing and Assets Recovery Support Bureau, both of which are working on investigating and tracing the stolen assets of the Gaddafi regime. No clear distinction of responsibilities or authorisation exists between these different committees. This disunion has led to institutional infighting.¹⁷ The committee members are largely appointed through a patronage system and the committees were promised a commission of 10% of the assets returned to Libya.¹⁸ This clause was later cancelled in response to criticism. The

¹⁵ Interview with experts for this study, by JMW Consulting, August 2014

¹⁶ "Who's who: Egypt's full interim Cabinet", *Ahram Online* (web), 17 July 2013. Retrieved from <http://english.ahram.org.eg/News/76609.aspx>

¹⁷ Maghreb Confidential, "Hunting Gaddafi's missing billions". Maghreb Confidential, 2014a.

¹⁸ D. Samuels, "How Libya Blew Billions and its Best Chance at Democracy". *Businessweek*, 2014. Retrieved from www.businessweek.com/articles/2014-08-07/libya-waste-fraud-erase-billions-in-national-wealth.

committees outsourced investigations to foreign private companies, such as US-based Command Global Services and Kroll. The establishment of the Tracing and Assets Recovery Support Bureau by Prime Minister Ali Zeidan was initially undertaken to avoid outsourcing investigations to foreign companies and to establish a strong investigatory team in Libya. However, the funding never materialised to enable the establishment of such a team.¹⁹ Generally, the work of these committees has been wrapped in secrecy and little-to-no information is available about their activities. Moreover, the committees have not submitted any mutual legal assistance requests.²⁰

Tunisia has had a relatively clear asset recovery strategy, including tracing and investigating stolen assets. Immediately after the revolution the Tunisian authorities established the semi-independent Asset Recovery Committee, which is composed of officials from the Ministry of Foreign Affairs and the Central Bank, the Minister of Justice and Human Rights, and lawyers. In addition to the Asset Recovery Committee, the Truth and Dignity Committee also conducts minor activities related to asset recovery as part of its work on transitional justice. The strategy of the Tunisian authorities has been to focus their efforts on a few selected cases, where progress and investigation was regarded as more achievable. In addition, they have been able to work simultaneously on domestic and international asset recovery cases, with the former feeding into the investigatory efforts of the latter.²¹

Yemen has made the least progress on asset recovery out of the four countries. The National Body for Recovering Stolen Assets (AWAM) was established as an outcome of the Arab Spring. AWAM is a coalition of NGOs, professionals and activists working to contribute to the detection of stolen assets. Their work, along with that of other NGOs in Yemen, has been primarily focused on drafting a law to establish an independent committee to lead investigations. The Ministry of Legal Affairs has submitted the draft law to the Parliament but, as no progress has been made, the NGOs are now working on a second draft law. Due to the lack of a legal framework, Yemen has not engaged in any systematic asset recovery efforts.²²

Key common challenges

The four countries have experienced a variety of challenges in this initial stage of asset recovery. Some are common to a majority of the countries while others are more context-specific.

- *Lack of transparency.* In three of the countries (i.e. excluding Yemen) obtaining information from public agencies working on investigating and tracing assets is next to impossible. While it is common for investigative agencies not to share information pertaining to ongoing investigations, these public agencies have continuously failed to share information related to their strategy, approach, activities planned or undertaken and current progress. This presents a challenge in relation to civil society and non-governmental actors' ability to engage and assist in asset recovery investigations, as well as their ability to hold institutions accountable for their actions. In Libya, for example, no information is available on the specific contracts these committees have made with foreign companies, nor is there any available information on whether they have submitted mutual legal assistance requests.²³
- *Lack of human, financial, and technical resources.* In three of the countries (i.e. excluding Yemen) the institutions tasked with investigating and tracing assets have lacked the necessary financial, human and technical resources to carry out proper financial investigations. This includes a lack of knowledge regarding mutual legal assistance requests, lack of resources to hire an adequate number of well trained staff, lack of know-how in regard to conducting financial investigations and a lack of institutional memory due to high staff turnover. In addition, a number of technical challenges have been identified, such

¹⁹ Maghreb Confidential, 2014a.

²⁰ Interview with experts for this study, by JMW Consulting, August 2014

²¹ Interview with experts for this study, by JMW Consulting, August 2014

²² World Bank, "Report of the Arab Forum on Asset Recovery", 2012. Retrieved from https://star.worldbank.org/star/sites/star/files/report_arab_forum_on_asset_recovery.pdf.

²³ Interview with experts for this study, by JMW Consulting, August 2014.

as translations of requests, the order of attaching applications and annexes, English/Arabic spelling and transliteration, and sending the request to the wrong authorities.²⁴ The lack of resources has significantly hampered the ability of the countries to trace stolen assets abroad.²⁵

- *Overestimation of the assets stolen.* The authorities in all four countries have given very high figures of estimated stolen assets. For example, Egyptian prosecutors claim that Mubarak stole US\$700 billion while in power, meaning that his fortune would exceed the richest man in the world by eight times.²⁶ This overestimation of stolen assets, which can be used as a tool to put pressure on foreign jurisdictions, also raises expectations in the country, hampers the success of efforts to recover assets, and creates discontent and frustration among the population.²⁷
- *Financial secrecy.* An overarching challenge for these countries – and in asset recovery in general – is the complexity of conducting financial investigations and identifying the beneficial owner of the recoverable assets. Usually the owner of the assets is hidden behind a complex corporate structure (shell companies, trust funds, foundations, etc.), including companies established in tax havens, making it very difficult to obtain information about assets. For example, former President Mubarak’s son Gamal owns a British investment company that is part of a complex international financial network, meaning that opportunities to trace the funds are limited.²⁸ This complexity makes it very difficult to trace assets and heavily underlines the necessity of having appropriate expertise and resources allocated to the task.
- *Lack of communication and dialogue.* All four countries have suffered from poor lines of communication with foreign jurisdictions. Communication helps build trust between jurisdictions, facilitates the investigation process through information sharing and helps build alignment on requirements, rules and procedures. The lack of dialogue, among other impediments to progress, has been further encouraged by the ongoing political instability, which has led to a high turnover of staff working on asset recovery. This prevents countries from gaining international assistance in tracing and investigation stolen assets.²⁹

Egypt-specific challenges

- *Weak rule of law has hindered international cooperation.* Outcomes in the justice system have led to growing concern among the international community and have hindered that community’s willingness to cooperate with Egyptian authorities. Rule of law issues have also been a call for alarm with regard to the confiscation of assets held domestically in Egypt.³⁰ An example of how the domestic authorities in Egypt could have dealt with domestic stolen assets is the Tunisian nationalisation law, which was designed and implemented so as not to be an impediment to international cooperation. In addition, the Tunisian authorities were able to use domestic asset tracing to feed into the international asset tracing.
- *Vested political interests.* In Egypt remnants of the former regime still occupy key positions within the public sector, judiciary and law enforcement, and this hampers the investigations. These elements oppose investigations into the corruption of the former regime in order to protect political allies, and they create a lack of political will in Egypt to comprehensively engage in asset recovery efforts. This challenge is linked to the lack of independence of prosecutors and the judiciary in Egypt.³¹
- *Lack of strategy.* The absence of a coherent asset recovery strategy and a plethora of investigative and prosecutorial bodies involved in asset recovery efforts have led to poor

²⁴ Martini, 2014.

²⁵ Interview with experts for this study, by JMW Consulting, August 2014.

²⁶ O’Connor, 2011.

²⁷ Interview with experts for this study, by JMW Consulting, August 2014.

²⁸ Martini, 2014.

²⁹ Interview with experts for this study, by JMW Consulting, August 2014.

³⁰ Interview with experts for this study, by JMW Consulting, August 2014.

³¹ Interview with experts for this study, by JMW Consulting, August 2014.

coordination and information sharing. This has in turn emphasised the need for better internal communication between various bodies.³²

Libya-specific challenges

- *Political and economic instability.* As with Egypt, there has been a lack of a coherent asset recovery strategy and revolving governments have taken different approaches, each setting up its own committees. Instead of developing a long-term strategy and authorising a single institution or consortium of institutions to implement it, the changing governments have disregarded previous efforts, leading to a lack of a clear delineation of responsibilities and authority. This reduces cooperation with foreign jurisdictions, which are reluctant to engage with institutions without a clear mandate.³³ Furthermore, the persistence of violence and the lack of progress in terms of normalisation of the country have obvious implications for the capacity for asset recovery.

Tunisia-specific challenges

- *Lack of networking and informal communication with foreign jurisdictions.* Tunisia has arguably been the country that has made the most progress in terms of investigating and tracing assets. The country's specific challenge, which is also a testimony to the rather more successful approach of the country, has been the lack of contacts and networks in foreign jurisdictions. An absence of networks and personal communication has hampered the ability of the asset recovery committee to utilise informal channels to obtain information during the investigation phase. It should, however, be noted that, with the assistance of StAR, the Tunisian Financial Intelligence Unit gained access to global financial networks, which helped solve problems related to access to information.³⁴

Yemen-specific challenges

- *Vested political interests.* As in Egypt, Yemen is faced with the issue of vested political interests, which are opposed to investigations into asset recovery. Unlike the other three countries Yemen did not experience a complete regime change, as it is now a hybrid regime composed of the former regime and the opposition. This is the main cause for the lack of progress on asset recovery investigations in Yemen, as actors tied to the former regime oppose the draft law on asset recovery.³⁵
- *Immunity of former president Ali Abdullah Saleh.* In an attempt to resolve the crisis in the country, the Parliament granted immunity to president Saleh in exchange for him stepping down.³⁶ This complicates asset recovery investigations, as the Yemeni authorities will not be able to put Saleh on trial.

³² Martini, 2014.

³³ Maghreb Confidential, "Swiss get moving on asset hunt". Maghreb Confidential, 2014b.

³⁴ Martini, 2014.

³⁵ Interview with experts for this study, by JMW Consulting, August 2014

³⁶ L. Kasinof, "Yemen Legislators Approve Immunity for the President", *New York Times*, 2012. Retrieved from www.nytimes.com/2012/01/22/world/middleeast/yemens-parliament-approves-immunity-for-president-saleh.html?_r=0.

PHASE 2: FREEZING OF ASSETS

Summary

Most of the assets frozen following the Arab Spring have been frozen based on international sanctions or the actions of the asset-holding countries. The Arab Spring countries have only had limited success in getting foreign jurisdictions to freeze assets based on their investigations. Both Egypt and Tunisia have used mutual legal assistance requests to freeze assets in foreign jurisdictions, with varying degrees of success.

The key common challenges in this phase have been that all three countries have been too quick to submit mutual legal assistance requests – failing to conduct the necessary preparatory work prior to submission. In addition, a lack of knowledge regarding the legal requirements and processes of foreign jurisdictions in respect to mutual legal assistance requests, as well as a weak domestic policy framework for requesting formal mutual legal assistance, are two of the factors impeding cooperation with other countries. Furthermore, foreign jurisdictions have shown little political will to cooperate with Arab Spring countries on asset recovery cases. Lastly, the cumbersome prosecution requirements in the asset-seeking countries have proven a challenge for their weak judicial systems.³⁷

Country approaches

Egypt has made a number of mutual legal assistance requests to have assets frozen in foreign jurisdictions. The Egyptian authorities worked with the UK government and the UK embedded asset recovery advisor to develop the requests. On the basis of mutual legal assistance requests, the Egyptian authorities were able to get some assets frozen in the UK. However, many requests were rejected due to technical issues with the requests.³⁸

Libya has seemingly not used mutual legal assistance requests and the lack of transparency makes it difficult to conclude what approach the authorities have taken to the freezing of assets abroad.³⁹

Tunisia, like Egypt, has made a number of mutual legal assistance requests to have assets frozen in foreign jurisdictions. Unlike Egypt, however, Tunisia did engage in a few informal discussions with the jurisdictions in question prior to sending the requests, in order to ensure alignment on the requirements and expectations of the requests in the foreign jurisdictions. However, informal contact was still rather limited, due to the lack of a network and contacts in foreign jurisdictions, as mentioned in the previous section.⁴⁰

Yemen has not reached this step due to the lack of a law granting an institutional mandate to lead the efforts on asset recovery.

Key common challenges

- *Jumping the gun on mutual legal assistance requests.* Egypt and Tunisia acted too soon in some cases: sending mutual legal assistance requests without having the required evidence or an understanding of the requirements in foreign jurisdictions. This situation may have been improved by a signal of engagement being sent prior to the submission of formal requests. Premature submissions led to many mutual legal assistance requests being rejected. Furthermore, such actions also complicated informal communication between the

³⁷ Martini, 2014.

³⁸ Interview with experts for this study, by JMW Consulting, August 2014.

³⁹ Interview with experts for this study, by JMW Consulting, August 2014.

⁴⁰ Interview with experts for this study, by JMW Consulting, August 2014.

asset-seeking and asset-holding country, as well as multi-jurisdiction discussions, such as in the context of Europol, Interpol, etc.⁴¹

- *Lack of knowledge regarding legal requirements and processes when seeking mutual legal assistance.* Although a more thorough approach to mutual legal assistance has been pursued, the countries have struggled to understand the processes and legal requirements of mutual legal assistance in different jurisdictions. Thus, many technical challenges were faced, including a lack of translation of requests, the order of applications and annexes, English/Arabic spelling, and sending the request to the wrong authorities.⁴²
- *Lack of cooperation by foreign jurisdictions.* It should be recognised that many asset-holding countries took a very proactive role in freezing assets. Some jurisdictions implemented administrative freezing, while some identified and froze assets on their own initiative and found creative ways of sharing information. However, emerging financial centres and off-shore tax havens have shown very limited or no political will to cooperate.⁴³ Even some of the more proactive jurisdictions have significantly delayed their responses to mutual legal assistance requests, which, among other things, has been attributed to a lack of allocation of necessary resources in asset-holding countries to the processing of requests. In the US, for instance, there is a backlog 4,500 requests. Generally, the requesting process needs streamlining to reduce the number of requests to only those that are strictly necessary.⁴⁴ The lack of cooperation by foreign jurisdictions is related to a lack of trust, with asset-holding countries being reluctant to share information or order the repatriation of assets due to their lack of trust in the investigative and judicial system in the asset-seeking country.⁴⁵ The lacking cooperation can also be related to the economic and political interests of foreign jurisdictions. For example, some experts have asserted that the close ties of Mubarak's business elites in foreign jurisdictions were a reason for the slowness by certain countries in regard to freezing Egyptian assets.⁴⁶
- *Unclear guidelines for responding to mutual legal assistance requests.* There is a lack of guidelines and clear procedures in asset-seeking countries, which leads to asset-holding countries providing insufficient responses, or no response, to mutual legal assistance requests, or enjoying broad discretion when deciding whether or not to accept a mutual legal assistance request. Due to the lack of guidelines, MENA countries have reported that many responses to mutual legal assistance requests were received only after considerable delays, while a number of requests were denied on unfounded grounds. Representatives from Egypt have also reported that countries have failed to recognise the UN Convention against Corruption as a sufficient basis for mutual legal assistance requests.⁴⁷
- *Cumbersome prosecution requirements for asset-seeking countries.* Actions by asset-holding countries are only taken if criminal charges have already been initiated in the asset-seeking country, which makes the process of freezing assets very challenging. In countries where corruption is widespread and the judicial system is weak, such requirements create real impediments to the confiscation and recovery of assets.⁴⁸

Country-specific challenges

The challenges experienced by Egypt and Tunisia do not differ; therefore, outlining the country-specific challenges related to the freezing of assets is not necessary here.

⁴¹ Interview with experts for this study, by JMW Consulting, August 2014.

⁴² Martini, 2014.

⁴³ Interview with experts for this study, by JMW Consulting, August 2014.

⁴⁴ Martini, 2014.

⁴⁵ Martini, 2014.

⁴⁶ Martini, 2014.

⁴⁷ Martini, 2014.

⁴⁸ Martini, 2014.

PHASE 3: CONFISCATION AND REPATRIATION OF FROZEN ASSETS

Summary

Egypt and Tunisia have taken similar approaches to confiscating and repatriating foreign assets through domestic criminal prosecution. Domestically, Tunisia has confiscated assets held by the former regime through a nationalisation process, while Egypt has been able to recover some domestic assets through out-of-court settlements with business affiliates of the former regime. Libya has only taken limited action in this phase, but it has been able to recover private assets from the UK through a civil law suit.

The key common challenges for all countries in this phase are the burden of proof, the requirement of a prior conviction before assets can be confiscated and the cumbersome process involved in repatriating the stolen assets.

Country approaches

Egypt has mainly approached the repatriation of stolen assets through domestic criminal prosecution and confiscation. However, the lack of convictions has been an impediment to the confiscation and repatriation of assets.⁴⁹ In one case, Mubarak and his two sons, Alaa and Gamal, were sentenced to prison and required to repay US\$17.7 million for embezzlement of public funds in the so-called “Presidential Palace Case”.⁵⁰ Despite their conviction, however, no assets from foreign jurisdictions have been recovered. Domestically, there have been out-of-court settlements with business affiliates of the former regime, which have led to the recovery of approximately US\$1.2 billion (9 billion Egyptian Pounds).⁵¹

Tunisia has taken a similar approach to Egypt and has focused on domestic criminal prosecution and confiscation. As mentioned earlier, Tunisia confiscated a significant amount of assets by enacting a nationalisation law. The confiscation by decree involved 114 individuals and the seized assets included 550 properties, 48 boats and yachts, 40 stock portfolios, 367 bank accounts and approximately 400 enterprises, with an estimated value of US\$13 billion.⁵² In addition to this, Tunisia managed to recover US\$28.8 million held by the former president’s wife in a Lebanese bank account. The effective repatriation of the money was possible following judicial procedures in both countries for the return of the funds. The international community played a key role throughout the process, facilitating bilateral meetings between Tunisian and Lebanese authorities, as well as providing technical assistance.⁵³ Additionally, Tunisia has had physical assets returned from France, Italy and Spain.⁵⁴

Libya has had some of the public funds frozen abroad returned, but it has made limited progress in repatriating the privately held assets of the Gaddafi family and their associates, although the Libyan government did recover a £10 million (US\$16.8 million) property through a civil law suit brought to the English High Court. The property was held in the name of a shell company, but the Libyan government proved that it was in fact owned by Gaddafi’s son.⁵⁵

⁴⁹ Martini, 2014.

⁵⁰ T. El-Tablawy, “Egypt’s Mubarak Gets 3 Years in Palace Funds Embezzling Case”. *Bloomberg*, 2014. Retrieved from www.bloomberg.com/news/2014-05-21/egypt-s-mubarak-gets-3-years-in-palace-funds-embezzling-case.html.

⁵¹ Interview with experts for this study, by JMW Consulting, August, 2014.

⁵² B. Rijkers, C. Freund and A. Nucifora, “All in the Family: State Capture in Tunisia”, 2014. Retrieved from www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/03/25/000158349_20140325092905/Rendered/PDF/WPS6810.pdf.

⁵³ Martini, 2014.

⁵⁴ Miron, 2013.

⁵⁵ Martini, 2014.

Key common challenges

- *Burden of proof.* A key challenge for the countries has been the issue of the criminal standard of burden of proof, which means that the state should collect sufficient evidence to convince the court beyond reasonable doubt that the assets in question are derived from a specific criminal action. It is often very difficult for the authorities in the asset-seeking countries to clearly establish this link between corrupt or illegal practices and specific assets. An example is the corruption case against Mubarak, known as the “Presidential Palace case”, in which Mubarak was convicted of corruption but the case did not lead to any assets being repatriated because the Egyptian authorities were unable to establish a link between the case and particular assets held abroad.⁵⁶
- *Impunity for former regime officials.* Most foreign jurisdictions require a conviction in a court in the asset-seeking country before they will engage in the repatriation of stolen assets – only a few jurisdictions allow for non-conviction-based asset forfeiture, such as Switzerland, the US and the UK.⁵⁷ These trial processes have proven lengthy and the burden of proof high (e.g. the acquittal of Mubarak on most corruption charges) and convictions are often appealed, which further delays the process.⁵⁸
- *Cumbersome repatriation process.* Even if the countries have been able to establish a link between foreign-held assets and corrupt or illegal practices, the actual process of getting the assets repatriated is very slow. With the exception of the case against former Ukrainian Prime Minister Pavlo Lazarenko,⁵⁹ most asset recovery cases take 10+ years before the assets are actually returned to the asset-seeking countries.⁶⁰

Country-specific challenges

The challenges experienced do not differ across countries and there are thus no country-specific challenges related to the confiscation and repatriation of assets.

⁵⁶ Interview with experts for this study, by JMW Consulting, August, 2014.

⁵⁷ T.S. Greenberg, L.M. Samuel, W. Grant and L. Gray, “A Good Practice Guide for Non-Conviction Based Asset Forfeiture”, 2009.

⁵⁸ Martini, 2014.

⁵⁹ World Bank, “Pavel I. Lazarenko”. 2013. Retrieved from <http://star.worldbank.org/corruption-cases/node/18662>.

⁶⁰ Interview with experts for this study, by JMW Consulting, August, 2014.

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ANNEX I: METHODOLOGY

This report builds on the Transparency International desk-based research report *Lessons Learnt in Recovering Assets from Egypt, Libya and Tunisia*. It also provides information about Yemen, and it tests the conclusions of that report via interviews and published and online sources, and the production of estimated figures on stolen, frozen and recovered assets in Egypt, Libya, Tunisia and Yemen.

Rather than looking at individual cases, the report seeks to draw out lessons learnt in:

- successes and failures in inter-state cooperation for the return of assets
- barriers and conditions set by asset-receiving states, including in regard to procedural assistance
- procedural issues, including coordination nationally and internationally
- engagement with international organisations

The main sources were as follows:

- *Desk-research*. This has focused on publicly available reports and newspaper articles. The desk-research has been utilised to identify some of the key challenges mentioned publicly as well as to develop the estimates of the assets stolen, frozen and repatriated from the four countries in question. The StAR Corruption Case database has been particularly useful in developing these estimates.
- *Semi-structured expert interviews* with local Transparency International chapters, partners in each of the four countries and experts from international organisations and research institutions. These interviews have been used to test, validate and refine the hypotheses developed on the basis of the desk-research.

The research was carried out in the period from 18 August 2014 to 7 September 2014. It was carried out by JMW Consulting, together with the independent consultant Pranvera Recica-Kirkbride.

For a list of interviewees and the interview guides, see Annex II and Annex III respectively.

ANNEX II: LIST OF INTERVIEWEES

Name	Organisation
Belal Bargouthi	AMAN Coalition, TI-Palestine
Fouad Zirari	Transparency Morocco
Hamdan Ali	Yemen Team for Transparency
Ibrahim Ali	Libyan Transparency Association
Jean Pesme	World Bank, StAR Initiative
Jean Pierre Brun	World Bank, StAR Initiative
Laryssa Gray	World Bank, StAR Initiative
Emile van der Does de Willebois	World Bank, StAR Initiative
Pedro Gomes Pereira	Basel Institute on Governance
Ruben Carranza	International Centre for Transitional Justice
Yasser Gawad	Arab Law Office
Youssef Belgacem	I Watch, Tunisia

ANNEX III: INTERVIEW GUIDES

INTERVIEW GUIDE FOR NATIONAL EXPERTS/CHAPTERS

QUESTIONS

Could you describe in brief the work you and your organisation have done on asset recovery?

Does [country] have an asset recovery strategy in place?

- Can you tell us more about it?
- When was it developed?
- Which public entities are involved?
- Is there a clear delineation of roles and responsibilities?
- What international organisations/entities have provided technical or any other type of assistance?

Based on the experience of [country], what are the key lessons learnt in recent years in regard to asset recovery?

Are you aware of any best practices outside your country regarding asset recovery initiatives or strategies?

- [If yes] Do you think that these best practices can be transferred to and used by your country?
- There have been many discussions in relation to the size of assets removed and stolen. Are there any estimates as to the size of assets removed in total from your country under the previous regime (in USD)?
- What is the estimated amount of assets identified and traced?
- What is the estimated amount of frozen assets originating from your country that have been frozen in total since the Arab Spring (in USD)?
- What is the estimated amount of assets originating from your country that have been confiscated in total since the Arab Spring (in USD)?
- What is the estimated amount of assets originating from your country that have been repatriated in total since the Arab Spring (in USD)?

Identification of assets

In this section we would like to hear your views on the initial process of identifying hidden assets.

QUESTIONS

How has [country] approached the initial step of collecting the required information in order to identify and locate assets that have been stolen from [country]?

- Which (how many) public agencies are active in the process?
- Do they tend to cooperate and share information on investigations regularly? If not, why not? What are some of the key challenges?

- What types of resources (human/technical/financial) have been allocated to aid the identification and tracing of assets?
- Were sufficient resources allocated to investigating asset recovery cases? What was missing?
- What key issues/challenges have been faced in collecting information regarding where stolen/hidden assets are located?
- From your perspective, does your country have the required capacity to collect evidence regarding assets that have been hidden abroad?
- [If no] Which specific capacities are missing?
 - lack of technical capacity
 - lack of coordination between various agencies engaged in asset recovery
 - limited use of informal channels for investigations
 - difficulties with identifying the beneficial owner of the assets to be seized
 - difficulties in establishing an evidential link between the assets and the crimes
 - lack of independence of law enforcement bodies
 - limited proactive role on the part of countries receiving requests
- Can you give us some examples?
- Have any lessons been learnt in this regard?
- [If yes] Have any of these lessons resulted in initiatives being launched in either your country or in a country receiving a request?
- [If no] Why not?
- Which challenge has in your view had the largest negative effect on the identification of stolen assets for your country?
- Why does this particular challenge represent the biggest impediment to the identification phase?
- Did [country] cooperate with foreign countries or international organisations (e.g. StAR, Basel Institute, foreign experts) during the investigation or seek assistance in gathering evidence? If not, why not?

Mutual legal assistance (MLA) is a crucial legal instrument in asset recovery cases. Does (country) have sufficient knowledge of, and experience in, preparing and submitting MLA requests to foreign jurisdictions?

- Were MLA requests used as an instrument to collect information and evidence?
- What are some of the main challenges in preparing and submitting an MLA?
- Has an MLA been submitted following a prior consultation with the foreign country?
- Did you have sufficient knowledge of the MLA procedures and legal requirements of the foreign country?
- How many MLA requests have been submitted since the Arab Spring?
- How many responses have you received?
- What was the main reason cited for refusals of MLA requests?

A common underlying challenge that has been identified regarding the submission of an MLA request is that the requesting country often does not have the necessary evidence to build the case. Does this observation apply to your country?

- [If yes] Can you give one or more examples of a case where a premature submission has hindered the process of asset recovery for your country?

How many cases of stolen assets do you estimate your country has investigated since the Arab Spring in total?

Freezing of assets

This section focuses on the freezing of assets that have been identified in the previous phase.

QUESTIONS

Can you describe in detail the steps that your country has taken in order to have assets frozen?

- How many MLA requests to freeze assets have you submitted?
- How many of them have been successful? How many were denied? How many were not responded to?
- Are MLA requests in general filed from your country without any previous contact with the country receiving the request?
- Did you have a clear understanding of the legal requirements to seek a freezing order in a foreign jurisdiction?

What have been some of the main challenges in freezing assets in foreign jurisdictions?

- How do you see the following challenges in relation to having hidden assets frozen?
 - lack of knowledge regarding legal requirements and processes when making MLA requests
 - procedural challenges
 - delays in responding to requests
 - lack of clear rules for denying MLA requests
 - large amount of evidence that has to be provided in a MLA request
 - lack of trust between requesting countries and countries receiving requests
 - lack of political will and/or political influence
 - requirement of prosecution in the country of origin
 - numerous opportunities to appeal against asset-freeze decisions
- Can you give examples?
- Have any lessons been learnt in this regard?
- [If yes] Have any of these lessons resulted in initiatives being launched in either your country or in a country receiving a request?
- [If no] Why not?

In your view, do additional challenges hinder the process of freezing assets?

- [If yes] What challenge(s)?
- Can you give an example?
- Have any lessons been learnt in this regard?
- [If yes] Have any of these lessons resulted in initiatives being launched in either your country or in a country receiving a request in order to counter this problem?
- [If no] Why not?

In your view, which challenge has the largest negative effect on the freezing of stolen assets originating from your country?

- Why does this particular challenge represent the largest impediment to asset freezing?

In which country(ies) have the most assets been frozen?

- What is the reason why the largest proportion of assets has been frozen in this/these particular country/countries?

Confiscation and repatriation of assets

In this last section we would like to hear your thoughts on the process of confiscating and recovering assets that have been identified and frozen.

QUESTIONS

Can you describe in detail how you see the process of confiscating and repatriating frozen assets?

There are several legal avenues that can be used to confiscate and recover frozen assets.

- Which legal avenues have been used to confiscate assets originating from [country]?
 - domestic criminal prosecution and confiscation, followed by an MLA request
 - non-conviction-based confiscation/forfeiture, followed by an MLA request
 - private civil actions
 - criminal prosecutions and confiscation initiated by a foreign jurisdiction
 - administrative confiscation, through a non-judicial mechanism
- What approaches have been taken in your country and the countries you are trying to repatriate funds from?
- Which approach has been most successful?
- Have any lessons been learnt as to how any of the aforementioned legal avenues can be improved to facilitate asset recovery?
- [If yes] Have any of these lessons resulted in initiatives being launched either in your country or in a country receiving a request to improve these legal avenues?
- [If not] Why not?

Are there additional avenues that can be used to confiscate frozen assets?

- [If yes] What are they?
- What are the advantages and disadvantages?
- Can you give an example of how your country has used these avenues?
- Have any lessons been learnt regarding how to improve these methods?
- [If yes] Have any of these lessons resulted in initiatives being launched either in your country or in a country receiving a request to improve this method?
- [If no] Why not?

Would it be beneficial to combine any of the above methods in order to ease the process of confiscating frozen assets?

- [If yes] In your view which methods would it be most advantageous to combine?
- Can you give an example of cases where these methods were successfully combined?

In your view, which approach is in general the most effective in regard to confiscating and recovering frozen assets?

- Why is this particular approach the most effective?

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QUESTIONS
Please describe your experience of asset recovery.
What do you see as the main lessons that have been learnt in recent years in terms of asset recovery on a general level?
<p>What is the total estimated amount of assets removed from the MENA region during the previous regimes/second part of the twentieth century/prior to the Arab Spring (in USD)?</p> <ul style="list-style-type: none"> • From which country in the MENA region were the most assets removed? • From which country in the MENA region were the fewest assets removed?
<p>Which country in the MENA region has in your view had the best overall strategy in terms of recovering hidden assets since the Arab Spring?</p> <ul style="list-style-type: none"> • Why has this strategy been the best?
<p>Which country in the MENA region has in your view had the worst overall strategy in terms of recovering hidden assets since the Arab Spring?</p> <ul style="list-style-type: none"> • Why has this strategy been the worst?
<p>Do you know of any best practices outside the MENA region regarding asset recovery initiatives or strategies?</p> <ul style="list-style-type: none"> • [If yes] Do you think that these best practices can be transferred to and used by countries in the MENA region?

Identification of assets

In this section we would like to hear your views on the initial process of identifying stolen assets.

QUESTIONS
<p>How do you see the approach taken by the countries in the MENA region in regard to identifying stolen assets?</p> <ul style="list-style-type: none"> • To your knowledge have MENA countries conducted thorough investigations to identify and locate stolen assets? • What or who was the main source of information? • In your view what was the quality of the information and evidence collected? • Were sufficient (human, financial and technical) resources allocated to investigations?
<p>From your perspective, do countries in the MENA region have the required capacity to collect evidence of assets that have been hidden abroad?</p> <ul style="list-style-type: none"> • [If no] Which specific capacities are missing?
<p>A number of factors may hinder countries' efforts to collect information and evidence, such as:</p> <ul style="list-style-type: none"> • lack of technical capacity • lack of coordination between various agencies engaged in asset recovery

<ul style="list-style-type: none"> • limited use of informal channels for investigations • difficulties with identifying the beneficial owner of the assets to be seized • difficulties in establishing an evidential link between the assets and the crimes • lack of independence of law enforcement bodies • a limited proactive role on the part of countries receiving requests <p>To what extent do you see these challenges existing in the MENA countries?</p> <ul style="list-style-type: none"> • Can you give examples? • Have any lessons been learnt in this regard? • [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request? • [If no] Why not?
<p>In your view, are additional challenges hindering the collection of the necessary information for countries in the MENA region?</p> <ul style="list-style-type: none"> • [If yes] What challenge(s)? • Can you give an example? • Have any lessons been learnt in this regard? • [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request? • [If no] Why not?
<p>Which challenge has in your view had the largest negative effect on the identification of stolen assets for countries in the MENA region?</p> <ul style="list-style-type: none"> • Why does this particular challenge represent the biggest impediment to the identification phase?
<p>A common underlying challenge faced by MENA countries during the process of identifying and tracing hidden/stolen assets is the MLA request. What are some of the main challenges/difficulties faced by MENA countries in this process?</p> <ul style="list-style-type: none"> • To your knowledge have MENA countries attempted to establish communication with countries receiving a request (countries where assets are located) to seek support? • To your knowledge have MENA countries had information-based communication with foreign authorities? • Was the first communication with foreign authorities the submission of a formal MLA request? • In your view did MENA countries have sufficient knowledge and information about the legal requirements of foreign jurisdictions? • In your view were they able to provide sufficient information and evidence to meet the legal evidentiary requirements of foreign jurisdictions?
<p>How many cases of stolen assets do you estimate that countries from the MENA region have investigated in total since the Arab Spring?</p> <ul style="list-style-type: none"> • Which country has investigated the most cases? • Which country has investigated the fewest cases?
<p>How many MLA requests do you estimate that countries from the MENA region have filed in total since the Arab Spring?</p> <ul style="list-style-type: none"> • Which country has filed the most cases? • Which country has filed the fewest cases?

Which countries have received the most MLA requests?

- It there a reason why countries from the MENA region have principally requested MLAs from this/these country/countries?

Freezing of assets

This section focuses on the freezing of assets that were identified in the previous phase.

QUESTIONS

Can you describe the steps that countries in the MENA region have taken in order to have stolen assets frozen?

- Did MENA countries have informal communication with foreign jurisdictions before submitting formal requests to freeze assets?
- What type of information have they submitted?
- Did they provide sufficient evidence and information in MLA requests to support requests for freezing orders?
- Did they meet the legal requirements of the foreign jurisdictions?
- Have representatives of MENA countries sought instant freezing orders (lasting 24 to 48 hours) while investigations continue?
- Have they informally sought information from foreign jurisdictions regarding assets belonging to politically exposed persons?
- Have they unofficially (informally) requested access to information such as company registries, bank accounts, property registries, etc.?

A number of challenges have been identified that impede the process of freezing assets:

- lack of knowledge regarding legal requirements and processes when seeking MLA
- procedural challenges
- delays in responding to requests
- lack of clear rules for denying MLA requests
- large amount of evidence that has to be provided in a MLA request
- lack of trust between requesting countries and countries receiving requests
- lack of political will and/or political influence
- the requirement of prosecution in the country of origin
- numerous opportunities to appeal against asset-freeze decisions

In your view, to what extent have these challenges been faced by MENA countries?

- Can you give examples?
- Have any lessons been learnt in this regard?
- [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request?
- [If no] Why not?

In your view, do additional challenges hinder the process of freezing stolen assets originating from the MENA region?

- [If yes] What challenge(s)?
- Can you give an example?
- Have any lessons been learnt in this regard?
- [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request?

<ul style="list-style-type: none"> • [If no] Why not?
<p>In your view, which challenge has the largest negative effect on the freezing of hidden assets originating from the MENA region?</p> <ul style="list-style-type: none"> • Why does this particular challenge represent the biggest impediment to asset freezing?
<p>How many MLA requests filed from countries in the MENA region do you estimate to have been successful since the Arab Spring, i.e. to have resulted in assets being frozen?</p> <ul style="list-style-type: none"> • Which country has been most successful in this regard? • Which country has been least successful in this regard?
<p>How many assets originating from the MENA region would you estimate have been frozen in total since the Arab Spring (in USD)?</p> <ul style="list-style-type: none"> • Which country has been most successful in this regard? • Which country has been least successful in this regard?
<p>In which country(ies) have the most assets originating from the MENA region been frozen?</p> <ul style="list-style-type: none"> • Why have the most assets been frozen in this/these particular country/countries?

Confiscation and repatriation of assets

In the last section we would like to hear your thoughts on the process of confiscating assets that have been identified and frozen.

QUESTIONS
<p>Can you please describe cases in which assets originating from MENA countries have been repatriated (what was done and how were the assets confiscated and repatriated)?</p>
<p>What do you think is the most useful approach that countries in the MENA region can take to asset repatriation?</p> <ul style="list-style-type: none"> • There are several distinct avenues that can be pursued to confiscate and repatriate stolen assets. What is your perception of the following methods? <ul style="list-style-type: none"> ○ domestic criminal prosecution and confiscation, followed by a MLA request ○ non-conviction-based confiscation/forfeiture, followed by a MLA request ○ private civil actions ○ criminal prosecutions and confiscation initiated by a foreign jurisdiction ○ administrative confiscation, through a non-judicial mechanism • Which are, in your view, the most appropriate or easy to utilise avenues to facilitate asset recovery? • Can you give examples? • Have any lessons been learnt on how to improve the various methods? • [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request? • [If no] Why not?
<p>Are there additional methods which can be used to confiscate frozen assets?</p> <ul style="list-style-type: none"> • [If yes] What methods? • What advantages and disadvantages do they have?

- Can you give an example of cases where this method(s) was used?
- Have any lessons been learnt regarding how to improve this method?
- [If yes] Have any of these lessons resulted in initiatives being launched either in countries in the MENA region or in a country receiving a request?
- [If no] Why not?

In your view, which approach is in general the most effective for countries in the MENA region to use in order to confiscate frozen assets?

- Why is this particular approach the most effective?

How many times have frozen assets originating from the MENA region been confiscated and repatriated in total since the Arab Spring?

- Which country in the MENA region has managed to confiscate hidden assets the most times?
- Which country in the MENA region has managed to confiscate hidden assets the fewest times?

How many assets originating from the MENA region do you estimate have been confiscated and repatriated in total since the Arab Spring (in USD)?

- Which country in the MENA region has managed to confiscate the largest amount of hidden assets?
- Which country in the MENA region has managed to confiscate the smallest amount of hidden assets?

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