

“You Can Run But You Cannot Hide”

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Tracing and Recovering Stolen Public Assets

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In July 2018, Kenya's and Swiss presidents, Uhuru Kenyatta and Alain Berset, signed an agreement known as FRACCK, “Framework for the Return of Assets from Corruption and Crime in Kenya”. It aims at recovering money stolen by corrupt Kenyan officials and stashed away in Swiss banks: the Swiss government would assist in finding stolen assets and in blocking them, before transferring them back to Kenya. Furthermore, within Kenya, all public servants were to be submitted to a “lifestyle audit” whereby they would have to justify the sources of their assets.

What has been possible between an African and a European country should serve as a model for Lebanon. But before delving into the mechanism of tracing and recovering looted public assets, several issues should be demystified. Those that I will call the **Public Assets Thieves**, and whose legal and social status should first be qualified, are trying to muddy the waters to cover their traces and to complicate straightforward situations.

A- LEGAL AND SOCIAL QUALIFICATIONS OF PUBLIC ASSETS THIEVES

It is important to keep in mind the following :

1- Public Assets Thieves are common and vulgar offenders who should be treated as such, and who, despite the prestige and power of their positions, will always fall from grace.

2- Public Assets Thieves are not solitary wolves who hunt alone for their prey. They always constitute what the Lebanese Criminal Code identifies as “*association de malfaiteurs*” (article 335), and they should be held in the same contempt as organized crime syndicates such as the mafia.

3- Public Assets Thieves are murderers, because corruption is a cancer with which they have willingly and deliberately infected Lebanon. This cancer is now killing its victim.

B- DISPELLING FIVE COMMON MYTHS

We should dispel five common myths that are meant to discourage people from understanding how to track Public Assets Thieves, to trace their loot and to recover them.

1- First Myth : contrary to current belief or allegations, there is not a need for new laws to punish Public Assets Thieves.

The venerable Lebanese Criminal Code of 1942 would alone suffice. A whole chapter (articles 351 *et seq.*) is dedicated to public office crimes : corruption; trading in influence; misappropriation; bribery; abuse of authority; etc. Who needs new laws when such a detailed road map leading to jail has been available for almost 80 years ? In addition to that Code, various subsequent statutes can also be used, *inter alia* Law No.154 dated November 27, 1999 on Illicit Enrichment which replaced Legislative-Decree No.38 dated February 18, 1953, and Law dated April 14, 1954.

2- Second Myth : contrary to current belief or allegations, there is need neither for new laws nor for voluntary actions to lift the secrecy veil from the bank's accounts of Public Assets Thieves.

The Bank Secrecy Law of 1956, Law No.44 dated November 24, 2015 on Fighting Money Laundering and Terrorist Financing, and Law No.55 dated October 27, 2016 on Exchange of Information for Taxation Purposes, give all the necessary means to lift the bank secrecy veil, either on a voluntary basis (by the Public Assets Thieves themselves) or forcibly by the Special Investigation Commission (at Central Bank of Lebanon) and/or by other administrative and judicial authorities.

3- Third Myth : contrary to current belief or allegations, there is no need for new and specialized courts and tribunals to judge and punish Public Assets Thieves.

The common criminal courts and tribunals, if well organized, are the best forum for that : they are less subject to special rules (and often bespoke procedures and exceptions), and they are manned by common judges and not by hand-picked individuals whose impartiality might be questioned.

4- Fourth Myth : contrary to current belief or allegations, there is no need for a general amnesty with a view to start from a blank slate.

The *tabula rasa* policy will always encourage thieves to steal again. Punishment of all thieves is necessary to set the example, and amnesty laws are just another way to help Public Assets Thieves escape from justice. And even if, against all reason, an amnesty law is voted, a new Parliament might repeal it at any time.

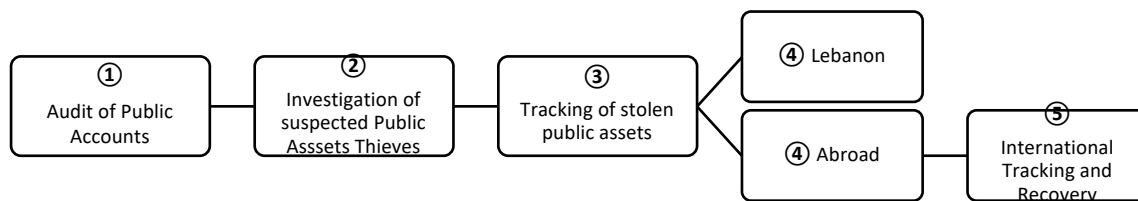
5- Fifth Myth : contrary to current belief or allegations, the stolen assets cannot disappear, cannot be hidden.

There are no more black holes in the international banking and financial universe. With the various multilateral treaties and mechanisms, *inter alia* the Multilateral

Convention on Mutual Administrative Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreements (MCAA) to which Lebanon has adhered by virtue of Law No.55 dated October 27, 2016, and with the willingness of the Organisation for Economic Co-operation and Development (OECD) as well as other international organizations and networks to assist countries plagued by public corruption, the exchange of information has never been easier. As for the infamous ability of the Public Assets Thieves and their army of lawyers, advisors and accountants to hide their booty in the labyrinthine tax havens and offshore jurisdictions, we must note that the number of such havens is shrinking as fast as the number of specialists of financial and accounting forensics is increasing. With the tracing and recovery of assets looted by various deposed dictators, fallen international financial embezzlers, and drug traffickers, these specialists have shown that painstaking number-crunching and investigative work always reap vast rewards.

C- MECHANISMS FOR TRACING AND RECOVERING STOLEN ASSETS

Whenever Lebanon is ready to start the long, arduous but very fulfilling journey of tracing its public assets looted for decades by thousands of public servants, officials and politicians, it will not be on its own, and will not navigate uncharted waters. As shown above, bilateral agreements could be entered into with countries that have traditionally been safe havens for Public Assets Thieves. Besides, parties to multilateral agreements and existing networks will readily assist.



1- First : Classic audit of public accounts.

A comprehensive forensic audit of all public accounts since 1990 should be conducted in Lebanon by independent (and preferably international) accountants who should scrutinize the accounts, the justification of disbursement, the regularity of tenders and contracting, etc. The current model of budget, discharge bill, court of accounts, etc. is clearly not working. And it is not advisable to keep those who failed to fulfill their duties (for whatever reasons and often unconvincing excuses) and who might themselves be suspect, in charge of this critical mission.

2- Second : Investigation of each and every suspected Public Assets Thieves.

No time and energy should be wasted on a Don Quixotic fight to pierce bank secrecy, before an elementary “lifestyle audit” is conducted on suspected Public Assets Thieves. Any averagely motivated tax inspector in any averagely honest tax administration knows that tax cheaters are often caught by the mere display

of their greed and lust. A simple comparison between the remuneration of public servants or officials and their “*train de vie*” is often enough.

3- Third : Tracing of stolen public assets.

Public Assets Thieves are, as said above, at heart, common offenders, whose long impunity and arrogance are matched by their vulgar show off. Their houses, their cars, their secondary residences, their investments, those of their families, advisors, etc. are the evidence of their loot. Public records, as Registers of Commerce, Registers of Real Estate, Registers of Vehicles, Ministry of Finance’s records, are a good starting point. Additionally, private investigators, specialists of financial and accounting forensics, and IT technicians, are now routinely called upon to trace the outflows of monies from public accounts, their transfer to private individuals or entities, and the routing within Lebanon (bank deposits; corporate and real estate investments; purchase of financial instruments; loans; fiduciary structures; etc.) or abroad. When the routing leads outside Lebanon, international tracking and recovery is needed.

4- Fourth : International tracking and recovery.

A major international instrument was put in place by the United Nations and came into force in December 2005 : the “UN Convention against Corruption”. It was the first UN instrument that ever referred to the recovery of stolen assets as a priority in the fight against corruption, and that aimed to function as a multilateral legal assistance treaty (Y. Equivel, Basel Institution on Governance, 2009). Since then, and besides the bilateral ad hoc mechanisms, several international initiatives have been put in place to support efforts to trace and recover public assets stolen by corrupt officials. The “Stolen Asset Recovery Initiative”, which is a partnership between the World Bank and the UN Office on Drugs and Crime (UNODC), works with developing countries to facilitate the return of stolen assets and proceeds of corruption. The OECD has joined the fray and contributed to this partnership. From the moment they are stolen, the assets leave a trail; local incorruptible accountants and inspectors, assisted by international auditors and forensic specialists, can count on the international community to assist in the recovery.

Public Assets Thieves are put under notice: they have stolen, they have run, and they still do, but they will never be able to hide. Their criminal activities have left an indelible trail in Lebanon and abroad for those who sought hideout in what became unsafe havens for them. Public Assets Thieves will be tracked, and the stolen assets will be traced and recovered. This is an efficient way to help shore up the national economy without incurring new heavy debts.

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