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UZBEK
ASSET RETURN
NETWORK

Evaluating the Swiss-Uzbek Return Principles for Stolen Assets Warehoused Abroad

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This paper reviews the asset return principles set out in the Memorandum of Understanding between Uzbekistan and Switzerland. The authors note that the principles demonstrate a laudable commitment to international benchmarks of best practice in the area of responsible international asset return. The primary challenge, it is argued, will be defending these principles in a governance environment still deeply impacted by grand corruption, opaque dealings, internal repression, and an absence of substantive accountability or oversight.

Introduction

Gulnara Karimova, eldest daughter of Uzbekistan's first President Islam Karimov, is currently serving a custodial sentence in the Zangiota penal colony following her conviction for a range of corruption related offences. According to US authorities, Karimova 'headed a powerful organised crime syndicate that leveraged state actors to expropriate businesses, monopolize markets, solicit bribes, and administer extortion rackets'.² Karimova, her companies and accomplices have also been prosecuted in foreign jurisdictions, including the Netherlands, Switzerland, and the US.

In parallel with these prosecutions, the US and Swiss Governments initiated asset forfeiture proceedings primarily against moneys and assets linked to the telecoms

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² US Department of the Treasury, 'United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe', 21 December 2017, available online: <https://home.treasury.gov/news/press-releases/sm0243> (accessed 20 November 2020)

bribery scandal, where Karimova was accused of taking significant bribes from foreign telephone companies in return for granting lucrative market access rights. In effect, these bribes are private transfers of wealth that come at the direct cost of consumers, and legitimate forms of public taxation.

Much of the illicit proceeds accumulated by the Karimova syndicate have been exported to Western Europe. There, these proceeds are safe from domestic political turbulence in Uzbekistan. However, a global commitment to stolen asset return has exposed these assets to forfeiture actions initiated by the US and Switzerland, where rigorous judicial oversight presides.

Now the Government of Switzerland has signed a Memorandum of Understanding (MoU) with the Government of Uzbekistan, which will allow a major tranche (US\$131 million) of this money to be returned back to the people of Uzbekistan who continue to suffer significant harm as a result of endemic grand corruption.³

The MoU promises that the signature parties will engineer a comprehensive return mechanism that will ensure the repatriated moneys are applied in a transparent, accountable, and inclusive manner, for the public benefit.

The repatriated money will be returned into a challenging governance terrain.

³ Memorandum of Understanding on the Framework for the Restitution of Illegally Acquired Assets Forfeited in Switzerland to the Benefit of the Population of the Republic of Uzbekistan between the Swiss Federal Council and the Government of the Republic of Uzbekistan, 8 September 2020, available online: <https://www.newsd.admin.ch/newsd/message/attachments/62897.pdf> (accessed 20 November 2020)

The Governance Environment in Uzbekistan

The Government of Uzbekistan under President Shavkat Mirziyoyev's leadership has initiated a significant reform agenda that is primarily focused on deregulation, privatisation, modernising market infrastructure and professionalising the civil service. These are primarily technical reforms designed to boost economic growth, open up the national economy to international capital flows, and improve local access to commercial, industrial and financial technologies.

Uzbekistan has also seen several corporate groups recently emerge to national prominence, with rapidly expanding market shares in heavy and light industries, finance, retail, construction, to name just a few examples.⁴ Commanding billions in capital, the origins of these groups and their ties to senior public officials, remain carefully guarded secrets. Also shrouded in darkness is Uzbekistan's resource sector, where gas and mineral interests are held through opaque offshore companies incorporated in secrecy jurisdictions.

State power continues to be administered in a partial manner, providing aid and stimulus to certain privileged economic actors who have gained commanding footholds in some of the most prosperous national sectors, while at the same time engineering market structures, which aim to sustain the private investment strategies of these elite corporate groups.

Public procurement and auctions remain heavily impacted by corruption, a perilous factor given the slate of privatisations under way in Uzbekistan. Significant evidence has been uncovered of improper tender processes, and major contractual awards made without tender. This takes place alongside cut price sale of state assets either through flawed auctions won by opaque corporate entities, or via direct award by decree, where essential investor condition precedents for state largesse (i.e. making a certain quantity of investment) have not actually been met by the benefiting companies.

These challenges are compounded by weak corporate governance. With lax company laws, there is an absence of corporate transparency or Know Your Customer standards

⁴ UzInvestigations and Uzbek Forum for Human Rights are publishing forensic data-sets on grand corruption in Uzbekistan, via their respective websites. This forms the evidentiary basis for the analysis presented in this paper. To survey these investigations see <http://uzinvestigations.org/> and <https://www.uzbekforum.org/>

in Uzbek markets. This allows illicit and licit financial flows to intermix through shadowy corporate groups, who of late have spent large on real-estate development and construction.

Twinned with the government's market modernisation and professionalisation strategy, the benefits of which are skewed in favour of kleptocratic circles, is an ambitious rebranding campaign. A number of PR firms have been recruited by the Mirziyoyev Government to rehabilitate the authoritarian state's international image. The Mirziyoyev regime has also successfully courted patronage from a number of notable international institutions such as the EBRD, UNDP and ILO. They have proven willing to act as a character witnesses for the authoritarian regime, praising the Mirziyoyev government in important public settings.

With investigative journalists and activists facing the real risk of persecution in Uzbekistan for any investigation implicating senior ring-leaders in national corruption circles, it is extremely difficult for audiences to see through this PR fog, and view with clarity the core cronyistic and oligarchical structures that remain firmly in place. Perhaps not surprisingly, given this challenging backdrop, some members of independent Uzbek civil society have called upon the Swiss Government to pause return until a number of elementary good governance preconditions have been achieved in Uzbekistan.

Nevertheless, the Swiss government has chosen to push forward with the return process now with the emphasis being placed on rigorous return procedures to address civil society concerns.

Evaluating the Swiss-Uzbek Memorandum of Understanding Principles

The MoU signed with the Mirziyoyev regime commits both governments to a comprehensive return mechanism that will ensure the repatriated assets are applied in a transparent and accountable manner, for the benefit of a public who have recently endured serious calamities as a result of grand corruption, including collapsing health infrastructure, egregious human rights abuses and catastrophic man-made disasters.

The MoU sets out broad principles that will govern the return process. A further set of agreements are promised in the MoU, which will iron out the details. It is these details that are critical to get right if the US\$131 million is to be restituted successfully.

Paragraph four of the MoU sets out the principles that will guide these foreshadowed return agreements. This paragraph is broken down into a series of bullet points that set out the guiding principles.

The first bullet point states: 'Restitution of the Funds should benefit the population of the Republic of Uzbekistan and follow the objective of improving its living conditions, strengthening the rule of law or fighting impunity'.

Restitution is an important phrase. It denotes that the people of Uzbekistan have suffered harm as a result of grand corruption, and it confirms that these moneys are being returned in order to help repair this harm. The return process will achieve this by supporting vulnerable populations in line with UN Sustainable Development goals, which are discussed in the third bullet point of paragraph four.

The reference to 'fighting impunity' should not be overlooked either. This recognises that a critical task of restitution is supporting the cause of non-recurrence. That is, helping to forge an environment in Uzbekistan where the type of state crimes engineered by Karimova and her accomplices are not replicated again. This will require significant collective efforts given the ongoing examples of grand corruption in Uzbekistan.

The second bullet point in paragraph four notes 'all steps should be taken to ensure that the funds do not benefit persons involved in the commission of the offences'.

This is a laudable statement in principle. In practice, it will prove exceedingly difficult to guarantee. Part of the problem is full public disclosure has yet to be made publicly on those involved in the commission of the offences referred to. Given that the telecoms scandal alone would have implicated senior regime officials, some of whom are still in senior posts and hold significant corporate interests, this remains an area of high risk.

Compounding this risk is the aforementioned lack of corporate transparency in Uzbekistan. It is likely that part of the returned moneys will be used to purchase goods and services from the corporate sector, where oligarchs and public officials exert control through proxy shareholders and opaque offshore holding vehicles. For any party wishing to avoid repatriated assets benefiting dirty hands, this is a roulette wheel type situation.

The forth bullet point in paragraph four of the MoU states: 'Transparency and accountability should be guaranteed'.

Arguably, this is the boldest statement made by the Swiss and Uzbek governments in this MoU.

Again, it will be one thing to set up mechanisms, which on paper achieve transparency and accountability, but delivering them in practice is going to be a serious challenge in light of the above factors. Independent civil society in Kazakhstan has learnt this from bitter experience.

In neighbouring Kazakhstan, the Government of Switzerland returned US\$48.8 million using a range of transparency and accountability mechanisms administered by the World Bank. While the Swiss government was likely well-intentioned, these mechanisms did not deliver the anticipated levels of transparency and accountability required for responsible asset return.⁵

For example, there was a manifest failure to publish as promised all relevant documentation relating to the application of the returned moneys, including tender documents and contracts. Additionally the restituted money was quickly distributed into a politically exposed network of GONGOs closely tied to the ruling Nur Otan party. The private sector was also engaged. One company in particular swept 40% of contracts tied

⁵ Lasslett, T. and Mayne, T. (2018) *A Case of Irresponsible Asset Return? The Swiss-Kazakhstan \$48.8 million*, Ulster University and Queen Mary University of London: London.

to the return process. But with no substantive corporate transparency in Kazakhstan, explaining this unusual contractual bottleneck proved impossible.

To prevent a repeat, in a governance context with arguably even higher levels of corruption risk, especially robust mechanisms will be needed. It will be critical that all documentation relating to the US\$131 million's application is published in full, on a special, accessible web platform, where the public can scrutinise the information. Additionally, all organisations contracted to deliver goods and services with the returned moneys ought to be carefully vetted, with full beneficial ownership and control information published publicly.

The Government of Uzbekistan has promised to do this for loans provided through the IMF Rapid Credit Facility, which supports the country's COVID-19 response, but subsequently has failed to adhere to this agreement.

This is arguably a powerful warning shot that proactive third party oversight will be needed to ensure full and comprehensive account is made of spending.

Bullet point five in paragraph four acknowledges the need for such a safeguarding mechanism. It states, 'mechanisms monitoring the use of the Funds should be established and financed from the Funds'.

Lasslett and Stanczak have recommended in this special issue channeling the funds through an independent offshore entity, in a jurisdiction with strong corporate governance and transparency standards, which the entity by law would have to adhere to, and where there is also access to independent, open courts, as an additional safeguard.

Certainly, the monitoring mechanism ought to be fully transparent and independent in its working. It should also be proactively administered. It will be critical that all financial, tender and award documents are publicly available and forensically scrutinised to identify red flags and ensure none of these red flags are indicative of something more untoward.

This in effect means the monitoring mechanism will need to be steered by a mix of independent monitors with an outstanding record of integrity, who also possess the requisite forensic skills to identify any breach of the guiding principles. For example, it would certainly be a signal of process integrity if all records in the return process were

opened up to scrutiny by investigative journalists and researchers who have previously helped expose graft in Uzbekistan.

The final bullet point in paragraph four of the MoU states: 'Consideration should be given to the potential role of the public (civil society or community-based organisations) to fulfill these principles'.

This is an important undertaking. Research from the field of transitional justice strongly indicates that engagement of the public in the design, delivery and oversight of justice mechanisms such as this, has a wide range of benefits. Unfortunately we have seen from our research into forced evictions, public engagement can be superficial and heavy handed. This is often twinned to manicured press releases and PR gimmicks, that attempt to gloss over the lack of substance. To overcome these risks, public engagement will require dedicated, experienced facilitators if local voices are to be credibly incorporated.

We also know from asset-return in neighbouring Kazakhstan that public engagement can mean GONGOs closely linked to the ruling party, and indebted to the President, are used to artificially monopolise civic spaces. Uzbekistan has its own astro-turf challenges, that is, a cross-section of 'civil society' that operates as an auxiliary of government. Simply convening consultative NGO roundtables, for example, would be replete with serious risks. Concerted effort, therefore, will be required to engage with a range of independent civic voices.

US\$131 million is the first tranche in a wider asset repatriation process associated with assets looted by the Karimova syndicate. In time there will be more.

While this US\$131 million is a small portion of the total illicit funds that have been spirited away from Uzbekistan to assets abroad, it represents an important step in the restitution process. While there will be pressure on stakeholders to take a 'pragmatic' approach with one or both eyes held shut, however expedient that may be in the short term, it would only open the gates to abuse.

Given the significant investment made by the international community in responsible asset return, time and patience is now required to engineer a framework, which can demonstrate that even in the most difficult geopolitical contexts, something admirable can be achieved.