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U4 Helpdesk Answer 2024: 3

The effectiveness of non-conviction based proceedings in asset recovery.

Non-conviction based (NCB) proceedings have grown in importance as a measure to curb corruption in recent years. Based on civil law, NCB proceedings often allow for the confiscation of assets across a shorter interval and in situations where criminal proceedings are obstructed.

While further evidence is needed, global and national data suggests that NCB proceedings are an effective way to recover the proceeds of corruption as opposed to using criminal law alone.

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Query

Non-conviction based confiscation and non-conviction based forfeiture are frequently cited as a solution in anti-corruption and asset recovery debates. To what extent is there evidence of their success?

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MAIN POINTS

- Non-conviction based (NCB) proceedings are perceived by practitioners as a useful complement to criminal law approaches to corruption, particularly in situations where criminal law cannot adequately respond.
- NCB proceedings should not be seen as separate to criminal proceedings but as a part of a joined-up approach.
- Available data further suggests that NCB proceedings tend to recover proportionally more assets than criminal proceedings and lead to a higher proportion of frozen assets being ultimately confiscated.
- Additional data sources and more granularity in that data would help to gain a deeper understanding of the success levels of NCB proceedings.

Introduction

Asset recovery is a process that, through the confiscation of the assets of corrupt perpetrators, aims to prevent them from profiting from their crimes and deter further corruption (Stolen Asset Recovery Initiative 2023). It can be separated into three essential steps: (i) tracing, identifying and locating the assets; (ii) seizing, freezing and confiscating the assets; and (iii) recovering and returning the assets to their legitimate owners or the victims of their crimes (France 2022: 3).

Non-conviction based (NCB) proceedings refer to a range of techniques used in different jurisdictions that allow courts to confiscate assets, including the proceeds of corruption, without securing a criminal conviction.

While sometimes referred to in the literature as non-conviction based forfeiture, non-conviction based confiscation or non-conviction based seizure, there does not appear to be distinct meaning given to each of those terms and all broadly refer to the civil confiscation proceedings (King 2022, 106; Azwar and Karim 2022, 2616).

NCB proceedings may, however, take place in parallel to, or as part of, criminal proceedings, focusing on the illicit nature of the assets rather than the criminality of the individual (France 2022: 12–13). As outlined in a report published by the Council of Europe (Bright Line Law 2020: 9), NCB proceedings cover both actions:

“brought in connection with criminal proceedings but are not dependent on a criminal conviction and actions that are brought against the property itself independently of any criminal proceedings.”

Four types of NCB proceedings have generally been identified in the literature (King 2022: 106–7):

- Classic non-conviction-based proceedings: used when a final criminal conviction is not possible due to death, absconcence or when the defendant is unfit for trial due, for example, to immunities or age.
- Extended proceedings: where confiscation is possible for assets unrelated to the crime the person is being prosecuted for; for example, other assets the defendant owns. However, extended confiscation may rely on an original criminal conviction.
- Civil confiscation against property (in rem): where the property itself is the target of proceedings, rather than the concerned person(s).
- Unexplained or illicit wealth tools: where confiscation is based on the disparities judged between the property owned by the individual and their declared income, without the need to establish a predicate offence. If a disparity has been established, the individual generally must prove to the satisfaction of the court the legal origin of those assets or they can be subject to NCB proceedings (Brun et al. 2023).

There is no one standard for NCB proceedings. Across jurisdictions, NCB proceedings can differ in several respects. This can include differences in: judicial discretion in the use of NCB proceedings, time limits for bringing claims, standards of proof and evidence, whether or not the burden of proof can be reversed (due to unexplained wealth or illicit enrichment rules), and rules around whether or not their use is in the public interest (Bright Line Law 2020: 10).

Background to NCB proceedings

NCB proceedings developed out of the challenges inherent in prosecuting transnational crime, most notably organised crime (Bright Line Law 2020: 6),

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including: legal, investigative and judicial capacity; financial resources; political will; difficulties in submitting adequate international requests to foreign jurisdictions; lack of responsiveness from foreign jurisdictions; and differing evidentiary and procedural standards (Greenberg et al. 2009: 7–8).

Furthermore, issues such as death, defendants being outside of the jurisdiction, or immunities that block criminal investigation and prosecution made asset recovery “even more difficult or impossible” (Greenberg et al. 2009: 7–8).

While other multilateral treaties addressing transnational criminal law have included provisions on interstate cooperation, only the United Nations Convention against Corruption (UNCAC) specifically includes provisions on the use of NCB proceedings (Greenberg et al. 2009: 18). Art. 54 (1) (c) requires state parties to

“consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.”

It further requires state parties to allow for other states to take action for the recovery of their property through civil action in foreign courts, under Art. 53 (a).

UN member states explicitly referred to forms of NCB proceedings in paragraph 47 of the non-binding UNGASS 2021 political declaration:

“We commit to using the available tools for asset recovery and asset return, in accordance with domestic law, such as conviction-based and non-conviction-based confiscation, as well as direct recovery mechanisms as outlined in chapter V of the convention.”

In terms of money laundering and confiscation, the Financial Action Task Force (FATF: 2023) uses stronger language the fourth of its 40 recommendations, stating that

“countries should have measures, including legislative measures, to enable their competent authorities to... confiscate criminal property through non-conviction based confiscation.”

The prevalence of NCB proceedings

NCB proceedings exist in several legal systems worldwide. This includes, among others, Australia, Antigua and Barbuda, Bulgaria, Canada, Columbia, El Salvador, Fiji, Georgia, Kenya, Ireland, Italy, Malaysia, Netherlands, New Zealand, Nigeria, Peru, The Philippines, South Africa, the United States, the United Kingdom and Zambia (Bright Line Law 2020: 9; France 2022: 18–22; Gikonyo 2020: 27–51).

Further, in several jurisdictions it is possible to enforce foreign NCB confiscation orders, even in the absence of domestic NCB legislation. In some countries this is explicitly provided for in the law, such as in Cyprus, where legislation allows the direct enforcement of NCB orders from foreign jurisdictions under certain circumstances (Betti et al. 2022: 25–26). In others, this is possible using general enforceability provisions, such as in Singapore, where the enforcement of foreign confiscation orders is not specifically limited to criminal proceedings (Betti et al. 2022: 26).

Limited data exists on the use of NCB proceedings as a percentage of overall asset freezing and recovery, particularly when considering proceedings which take place only at the national level and do not include a cross border element. The most comprehensive dataset is found in the Stolen Asset Recovery (StAR) Initiative’s Asset

Recovery Watch database (Stolen Asset Recovery Initiative, n.d.) which was relaunched in 2023. As of January 2024, it contains 566 cases of international asset recovery. Overall, it indicates NCB procedures being used in 19% of these cases. The earliest NCB proceedings listed in the database took place in 2000 for countries of origin and 1986 for countries of asset location, with most cases occurring in the year 2000 with no particular increase in cases more recently. Given the lack of data, no definitive conclusions can be drawn as to whether NCB proceedings are growing or declining in importance in international recoveries; however, this data does indicate that there has been some consistency in using NCB proceedings for the past 24 years, (Stolen Asset Recovery Initiative, n.d.) and therefore a perceived utility by practitioners.

Surveys conducted by the United Nations Office on Drugs and Crime (UNODC) and StAR, however, indicate that its use may be more widespread. In a survey conducted in 2021, respondent states reported NCB proceedings accounting for 28% of the 228 international asset recovery cases reported between 2010 and 2021; this increased to 46% when only asset confiscations and returns were considered at the exclusion of asset freezes (Stolen Asset Recovery Initiative 2021: 19–20). Similarly in a 2023 survey, respondent states reported NCB proceedings accounting for between 30% of the 153 international asset recovery cases reported between 2010 and 2023 (United Nations Office on Drugs and Crime 2023: 9–10).

Success factors of NCB proceedings

There have been several reports and studies published indicating the advantages of NCB

proceedings and the specific contexts when NCB proceedings can be most successful.

Advantages of NCB proceedings

A UNODC note to the Open-ended Intergovernmental Working Group on Asset Recovery highlighted that NCB proceedings can “be particularly effective in divesting the corrupt of the proceeds of their crimes and restoring those funds to the victim state” (United Nations 2019: para. 7).

A 2022 report by the Council of Europe noted several advantages of NCB proceedings (Bright Line Law 2020: 14–15). Depending on the jurisdiction and type of legal system, it can be easier to meet the legal threshold for obtaining a confiscation order under NCB proceedings in comparison to criminal proceedings, which tend to have more onerous evidentiary standards and additional procedural safeguards accorded to defendants (Bright Line Law 2020: 14). Indeed, in some jurisdictions a reversed burden of proof may be placed on the defendant, requiring them to prove that the asset is not tainted (Bright Line Law 2020: 15). NCB proceedings can especially be a strategic option in common law countries where civil claims must often meet a lower standard of proof than criminal trials, with a “balance of probability” standard compared to a “beyond reasonable doubt” standard. Conversely, civil law countries tend to use a more exacting and similar standards for all cases (Clermont and Sherwin 2002: 245–253). NCB proceedings can therefore “be more straightforward to confiscate ill-gotten gains” where less strict standards of proof are used for civil trials (France 2022: 11).

Another advantage is the ability to target offenders against whom criminal prosecution is not possible. Particularly where the would-be defendant is

overseas and not-extraditable, NCB proceedings can help close the door to using those avenues for future theft (Cassella, n.d.: 3)

Situations where it may be useful to use NCB proceedings and where they may prove advantageous for asset recovery include (Cassella, n.d.: 14–20):

- bringing a swift NCB proceeding when criminal defendants do not oppose forfeiture. In this case there is no need to wait for the conclusion of a criminal trial, meaning NCB proceedings can therefore result in a swifter confiscation. Cassella (2015: 22) found that typically 80% of NCB proceedings initiated in the US per annum are uncontested.
- when the statute of limitations has expired for a criminal prosecution. For example, in the US, the statute of limitations for a crime is usually five years from the date of the offence. For NCB proceedings, the similar five year period begins only from the date the crime is discovered, therefore providing additional time for asset forfeiture (Cassella, n.d.: 16).
- in situations where there is a lack of clarity on exactly who has committed the crime and so it is preferable to focus on the asset.
- if the defendant has been convicted of a different crime than that relating to the asset in question and there is therefore no direct causal link between the conviction and the asset.
- when the defendant has already been convicted of the crime in a foreign jurisdiction and cannot therefore be prosecuted again due to double jeopardy provisions.

- in situations when justice would not necessarily be served by a criminal conviction, for example, due to the defendant's age or infirmity.
- if there is a danger that the asset would be removed from the jurisdiction, then NCB proceedings can be used as a mean to freeze the asset without having to file criminal charges.

A further benefit is that NCB proceedings are typically less onerous than criminal proceedings and so can lead to greater resource efficiency and enable law enforcement to process a greater number of cases (Kolarov 2021: 3).

Important considerations for using NCB proceedings

The StAR Initiative has identified key factors in determining when NCB proceedings should be used for corruption cases (Greenberg et al. 2009: 29–36). They highlight that NCB proceedings should be used:

- as a complement to but not a replacement for criminal proceedings, meaning that where criminal proceedings are viable, then these should be used. Otherwise, NCB proceedings can create the perception of the ability to buy oneself out of prosecution.
- when there is a defined relationship between NCB and criminal proceedings, meaning that involved institutions coordinate the timing and use of NCB proceedings to avoid double work or collision between procedures.
- after the failure or impossibility of criminal proceedings. NCB proceedings should be available for situations where the person

cannot be prosecuted, such as due to death, absconce or immunity. Additionally, it should be a route available after criminal acquittal if there is evidence to suggest civil proceedings would still be viable.

- with specific and defined evidentiary rules. This is important in cases where the judiciary is inexperienced with NCB forfeiture or where there is corruption in the judicial system.

The last factor has been particularly emphasised as an important factor in ensuring that NCB proceedings do not violate human rights norms or are abused by those in power. While NCB proceedings have been adjudicated as human rights compatible by the European Convention on Human Rights system (Greenberg et al. 2009: 20–21), there have also been human rights concerns related to NCB proceedings.

A particular concern is around the reduction in due process rights under NCB proceedings that would otherwise be afforded to persons undergoing criminal trials, such as the presumption of innocence (Bingham Centre for the Rule of Law 2019: 3). Indeed, given the nature of NCB proceedings and the power they provide to authorities, there is a risk where there is limited judicial oversight and in jurisdictions where accountability over government actions is low, that NCB proceedings could be used as tools of corruption or as part of an oppressive regime (Tromme 2019: 191 – 193). Rule of law safeguards, including independent courts and strong judicial structures, have been identified therefore as essential success factors for the implementation of NCB proceedings (Bingham Centre for the Rule of Law 2019: 2). Similarly, in moving away from criminal guilt standards and in reversing the burden of proof, NCB proceedings should then include safeguards to ensure human rights laws are

respected and to assess the impact NCB proceedings have on the defendant and their families (Boucht 2019: 17–23; King 2022: 119–20). In many jurisdictions, for example, in the US, the burden of proof to “establish the connection between the property and a criminal offence” in NCB proceedings is placed on the state actor seeking to confiscate the asset rather than the suspect (Cassella 2015: 26).

Another concern raised by some is that settlements offered under NCB proceedings can be overly generous to offenders and damage future asset recovery efforts. Kolarov (2021: 5-6) highlights how, by agreeing as part of NCB proceedings against an individual who acted as an aide of the former Nigerian President Abacha to drop certain civil and criminal liability claims against him, the Nigerian government was hampered from pursuing the recovery of other assets tied to the individual.

Effective coordination between institutions has also been highlighted as a success factor for NCB proceedings (International Centre for Asset Recovery 2022: 5). Given the emphasis on ensuring that all options, including criminal proceedings, are considered, it is important that agencies discuss cases and work together to determine the right course of action, including the timing in using criminal and NCB proceedings.

A further factor to consider in the utility of NCB proceedings for international asset recovery cases are the enforceability of proceedings in other jurisdictions. In cases where no confiscation order has been obtained in the country of origin, NCB proceedings may be the only option for recovering assets, due to rules preventing trial in absentia. On the other hand, if the foreign jurisdiction does not allow for the enforcement of confiscation orders from NCB proceedings, taking that path in the country of origin will limit options for recovering assets overseas (Betti, Kozin and Brun 2022: 59).

Indeed, in the 2021 StAR survey on asset recovery, the biggest barriers to successful asset recovery in countries without NCB proceedings were listed as relating to “the lack of availability of NCB confiscation in their own jurisdiction or to problems with enforcing NCB orders in foreign jurisdictions” (Stolen Asset Recovery Initiative 2021: 29). Similarly, in the 2023 UNODC survey (UNODC 2023: 13), 50 out of 73 responding states identified “problems related to enforcements of non-conviction-based confiscation orders in a foreign jurisdiction” as a major barrier to international asset recovery.

The effectiveness of NCB proceedings

Global data on the recovery of assets using NCB proceedings

Statistics on the recovery of assets using NCB proceedings are limited; however, there has been a growth in available, global-level data in recent years.

A 2021-published survey conducted by the StAR Initiative indicated that NCB proceedings can be successful in recovering stolen assets. The 78 responding jurisdictions reported 338 cases conducted between 2010 and 2021, for which NCB proceedings accounted for 28%. When not counting asset freezes, NCB proceedings 46% of all confiscations and 34% of all returns achieved (Stolen Asset Recovery Initiative 2021: 19–20), meaning a higher proportion than the number of cases (28%). This data then indicates that NCB proceedings have a higher rate of return and

confiscation than criminal proceedings tend to achieve.

Table 1: 2021 StAR survey

	% criminal proceedings	% NCB proceedings
As a % of total cases in database	72%	28%
As a % of value of total asset confiscations in database (excluding freezes)	54%	46%
As a % of value of total asset returns in database (excluding freezes)	66%	34%

A follow up survey published in 2023 by UNDOC covering 2021–2023 built on the previous results. The new data indicated a slight increase in the percentage of cases using NCB proceedings at 30% (United Nations Office on Drugs and Crime 2023: 9–10).

Both surveys, however, indicated that NCB proceedings are used to a slightly lesser extent for foreign confiscation orders. The 2021 survey found that, while 14% of all returns involved a criminal foreign confiscation order, only 5% involved foreign NCB proceedings – or a little more than 1 in

4 of foreign confiscated order cases (Stolen Asset Recovery Initiative 2021, 19–20). The 2023 survey results showed a slight decrease from that: 12% involving a foreign criminal confiscation order and 4% a foreign NCB order (United Nations Office on Drugs and Crime 2023: 9–10).

The StAR Initiative's Asset Recovery Watch database includes listings of publicly available information on asset recovery cases, alongside data directly reported to StAR by governments (Stolen Asset Recovery Initiative, n.d.). Accordingly, the StAR Initiative acknowledges that “the cases included in the database do not represent a comprehensive accounting of all relevant freezes, confiscations, and returns related to corruption offenses globally”. Furthermore, it should be noted that there is potential duplication in the data as a few cases have multiple listings due to case proceedings taking place in one or more jurisdiction; for example, the Abacha cases relating to former Nigerian president Sani Abacha, and the 1MDB case. Furthermore, there is likely duplication in the data between the database and the 2021 and 2023 surveys considering the possibility that the same cases were reported for both.

Of the 566 listings in the database as of January 2024, 110 have been classified as the result of NCB proceedings, meaning 19% of all listings were the result of NCB proceedings. The value of these returns, however, amounts to a significantly higher value than the percentage of NCB proceedings in terms of listing. It can be estimated the NCB proceedings listed in the database led to the return of a total of US\$2.9 billion or almost 29% of the total US\$10.1 billion returned by both criminal and

NCB proceedings. This percentage is slightly lower than the proportion reported by both the 2021 and 2023 surveys, which estimated 34%.

Table 2: Asset Recovery Watch database (criminal proceedings compared to NCB proceedings)

	Criminal proceedings	NCB proceedings
As a % of total cases in database	81%	19%
As a % of value of total asset returns in database	71%	29%

The 110 NCB proceedings listed can be further disaggregated into those cases being led in the jurisdiction of the country which served as the origin of the asset and those cases being led in the jurisdiction of the country which served as the location of the asset.¹ As of January 2024, there were 32 country of origin proceedings and 78 country of location proceedings recorded in the database; the former reportedly led to a total return of US\$1.36 billion from country of origin proceedings, while the latter led to a total return of US\$1.5 billion. Therefore, from this albeit limited

¹ According to the StAR initiative, all cases featured in the database “must involve a foreign jurisdiction, e.g. as the country of asset location where proceeds of corruption were

transferred to, or as the country of origin where the public official involved serves or where the corruption offense took place” (Stolen Asset Recovery Initiative, n.d.).

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small sample size, country of origin proceedings correspond with a higher rate of return of assets than country of location proceedings.

Table 3: Asset Recovery Watch database (NCB proceedings: country of origin compared to country of location)

	NCB proceedings (country of origin)	NCB proceedings (country of location)
As a % of total listings	6%	14%
As a % of value of total returns	13%	15%

It is important to note that the data on NCB proceedings in the Asset Recovery Watch database is affected by NCB proceedings having been used in the large 1MDB and Abacha cases. The Abacha and 1MDB cases include return listings of US\$1.1 billion and US\$1.2 billion respectively, meaning that they make up 79% of the value of all NCB returns listed. While that does not invalidate the findings, as several large cases are also present in purely criminal returns, it nevertheless should be taken into account when reflecting on the data around NCB proceedings.

The database also includes information on foreign confiscation orders and their use in asset recovery. While it is not always precise enough to fully

determine the orders used, of the total of 32 listings involving foreign confiscation orders, a maximum of six of these involved the criminal or civil enforcement of NCB based confiscation orders received from another jurisdiction. This means that foreign NCB proceedings were used in only 18% of all proceedings involving enforcement orders and, according to the database, foreign enforcement proceedings made up only 5.6% of all returns – much less than reported in the 2021 survey.

While the database also includes some information on confiscated and frozen assets, this is much less complete than on returns. For all listings involving NCB proceedings, a total of approx. US\$440 million is listed as confiscated and US\$1.4 billion is listed as frozen. This compares to an overall total of approximately US\$650 million listed as confiscated and US\$5.5 billion as frozen. This means that NCB proceedings make up 67% of confiscated assets and 25% of frozen assets listed in the database as of January 2024.

While the data allows for this comparison, it does not include data on historical frozen or confiscated amounts for returned assets. It is not therefore possible using the Asset Recovery Watch database to calculate the rate of conversion from freezing to confiscation and to return using NCB proceedings or to make a meaningful comparison with criminal proceedings.

Both the surveys and the database prioritise asset recovery of an international nature, which tends to be more focused on criminal proceedings due to the limited use of NCB proceedings worldwide, with availability being far from uniform across UNCAC states parties (United Nations 2021: 4–9).

What both sources do indicate, however, is that, for international returns, NCB proceedings make up a substantial part of all cases and amounts returned. This global level data also points to the success of

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NCB proceedings in terms of constituting a higher proportion of returned assets than criminal proceedings, relative to its frequency of use, with the caveats above in mind. This conclusion though needs to be contextualised as, for example, it does not account for why decisions are being taken to use NCB proceedings and the types of cases it is being used for.

National data on the recovery of assets using NCB proceedings

The availability of national level data on returns using NCB proceedings is generally low as statistics exist only for those jurisdictions that have NCB proceedings and collect and publish data on their use. There is also little in the way of data disaggregation of national level NCB proceedings against international. This means that it is difficult to assess whether there is more use of NCB proceedings for national cases than international, and the comparative success rates.

Nevertheless, national statistics of jurisdictions that do have NCB proceedings suggest that they make up a higher proportion of both cases and returned funds than global averages. This would tend to indicate that where NCB proceedings exist, they are felt by law enforcement authorities to be an effective route to asset recovery.

Kenya

Asset recovery efforts in Kenya are coordinated across three agencies. The Office of the Director of Public Prosecutions (ODPP) is responsible for all criminal prosecutions, the Assets Recovery Agency uses NCB proceedings to recover assets for all crimes, while the Ethics and Anti-Corruption Commission (EACC) is specifically responsible for referring corruption offences for prosecution and

for using NCB proceedings for the recovery of the proceeds of corruption, including enforcing unexplained wealth orders (Wanjiru 2022: 6–7; Kundai 2023: 16).

Although overall statistics of the use of criminal and NCB proceedings for general criminal offences are not available, reports on the use of NCB proceedings in corruption cases are public. The 2020/2021 report of the EACC indicates that there are similar levels of frequency for authorities' use of criminal and NCB proceedings for corruption cases. Of the cases opened in 2020/2021, the EACC reported that 104 cases were sent to the ODPP for review, of which 70 were taken forward for prosecution. During the same period, 74 civil suits were pursued by the EACC – so roughly equal to the number of criminal referrals (Kenya Ethics and Anti-Corruption Commission 2021: 18, 34). From these civil proceedings, the EACC filed suits to recover assets valued at KES2.3 billion (US\$14.5 million) (Kenya Ethics and Anti-Corruption Commission 2021: 34, 43).

In the 2019/2020, the EACC forwarded 163 cases to the ODPP for review, of which 116 were taken forward for prosecution. It only initiated civil proceedings in 23 cases, but these were with claims to recover assets estimated in value at KES5 billion (US\$32 million) (Kenya Ethics and Anti-Corruption Commission 2020: 20, 35, 40).

While it is not possible to compare relative recovery rates with criminal proceedings using the data provided by EACC, these reports nevertheless indicate that NCB proceedings are an important part of the anti-corruption case work in Kenya and are considered by practitioners to be useful based on its high level of use.

United Kingdom

In the UK, it is possible to obtain the confiscation of the proceeds of crime through criminal proceedings (confiscation orders) and through NCB civil proceedings (civil recovery orders and forfeiture orders) (Sharp, n.d.). Data published around asset recovery is extensive compared to other jurisdictions and points to NCB proceedings playing an important role in the UK for the confiscation of the proceeds of crime.

The 2023 Asset Recovery Statistical Bulletin allows for the comparison of data on frozen/seized and confiscated proceeds of crime. Between 2022 and 2023, it indicates that just over GBP202 million (US\$257 million) was seized or frozen under NCB proceedings, against GBP370 million (US\$470 million) under criminal proceedings (UK Home Office 2023). This then means that NCB proceedings made up approximately 35% of total assets frozen or seized.

In terms of the full recovery of assets, it also reports that GBP160 million (US\$203 million) was then recovered from civil proceedings, against GBP179 million (US\$227 million) recovered through criminal proceedings (UK Home Office 2023). This means that recoveries from NCB proceedings made up 47% of total recoveries for the year. It also indicates that around 79% of the value of assets frozen under NCB were recovered, higher than the 48% of assets frozen under criminal proceedings that were recovered in the same time period. These values recovered are reported to be largely in line with previous years, with NCB recoveries increasing by 2% year-on-year (UK Home Office 2023).

This data then broadly indicates that NCB proceedings in the UK are proportionally more effective in recovering assets and in translating

frozen or seized assets into confiscated assets than criminal proceedings.

United States

Under US legislation, authorities are able to recover criminally acquired assets for some but not all crimes. Further, while all offences that allow for NCB proceedings also allow criminal forfeiture, not all crimes that allow criminal forfeiture also allow NCB proceedings (Cassella, n.d.: 5). This means that authorities need to be particularly aware of which crime is being prosecuted to understand whether criminal forfeiture is possible, and then, if so, whether NCB proceedings are also possible (Cassella, n.d.: 5).

Some statistics are available on the use of NCB proceedings in the US, although these are not as accessible or as granular as in the UK. They indicate that NCB proceedings are an important part of the US response to crime.

Cassella (n.d.) carried out a study of 2017 data on the use of NCB proceedings in the US, finding US\$1.64 billion in assets related to criminal offences was recovered, of which US\$480 million came from uncontested NCB forfeitures (for example, settlements), US\$580 million from contested NCB forfeitures, and US\$590 million through criminal forfeitures (Cassella, n.d.: 1). This means that NCB proceedings made up approximately 64% of the total recovered assets.

Overall, it is estimated that, in the course of an average year, half of the assets recovered by the US as the proceeds of crime are a result of criminal proceedings and half are recovered from NCB proceedings (Cassella, n.d.: 2). While breakdowns into the relative rate of frozen to recovered assets are not available, this statistic also indicates the relative success of NCB proceedings in terms of percentage of asset recovery.

Concerns have been raised by the American Civil Liberties Union (ACLU, n.d.) that civil asset forfeiture is vulnerable to abuse, especially by law enforcement who use confiscation as a source of funding for their own operations.

Limitations in data availability

As has been highlighted throughout, measuring the success of NCB proceedings is not easy. While the growing availability of global statistics is a point of progress and, for some countries, solid data on national use exists, this is very limited and, where existing, lacks the granularity needed to assess the relative success of NCB proceedings, particularly in comparison to criminal proceedings.

Even where there is more data available, further research would be needed to fully understand the contextual reasons for the selection of NCB proceedings. Given the interactions between criminal and NCB proceedings, data without contextual factors would not explain why certain decisions were taken to use NCB proceedings. In a high-profile case, for example, it could be decided that although there is a higher chance to recover assets through NCB proceedings, criminal liability ought to be established to signal a higher level of accountability for corruption crimes, even if criminal proceedings occur at the expense of asset recovery. Factors such as levels of coordination and relative funding levels of agencies are likely also have an impact on both the use and effectiveness of NCB proceedings.

NCB proceedings, like other confiscation proceedings, are intended to deprive offenders of the proceeds of their crimes as well as to deter reoffending and new offenders (Boucht 2015: 155). However, it is not possible to determine the deterrent effect of NCB proceedings from the

available data, which does not appear to feature cases involving repeat offenders.

This does not, however, mean that it is not possible to say whether NCB proceedings are effective or not as a method of confiscation of the proceeds of crime. It is clear from the data and the literature that NCB proceedings are an effective and successful part of anti-corruption frameworks and can meaningfully contribute to recovering the proceeds of corruption.

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