Stolen Asset Recovery - An End to Public Fund Mismanagement by PEPs: Applicability of Learned Lessons to Sri Lankan Context

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Allegations into corruption and public fund mismanagement, and consequentially, money laundering, have reportedly increased at a rapid rate in Sri Lanka. The country predominantly relies on Conviction-Based procedures to curtail such cases. While a rudimentary legal framework is in place, the case success rate for Politically Exposed Persons (PEPs) has been discouraging. UNODC and UNCAC-backed Stolen Asset Recovery (StAR) initiative provides for Non-Conviction Based (NCB) Confiscation, which was initially recommended for local implementation. The study aims to explore and assess the applicability of the Non-Conviction Based confiscation procedure as a legal remedy. A qualitative single case study method is used, and the case analysis is conducted under the holistic approach. The case study selected is from a country that relies on a similar English Law driven common law system for criminal prosecution. Legal applications made in the selected country to foster NCB, can be provisionally applied in the local context due to similarity in the existing framework. Holistic analysis into legal, political, social, and economic impact reveals possible consequences that can be expected in Sri Lanka post-application. The study ensures that the SDG 16 is achieved as far as the specific targets of Substantially reducing corruption and bribery and Developing effective, accountable, and transparent institutions are concerned. The study sets the framework and identifies potential barriers to implementing NCB to address legal and social barriers and to accomplish the universally compatible application.

Keywords: *Corruption, Non-Conviction Based Confiscation, Public Fund Mismanagement, SDG 16, Stolen Asset Recovery*

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Background and the Purpose:

- Public Fund Mismanagement & Corruption
- Involvement of Politically Exposed Persons to Money Laundering
- Conviction Based Legal Procedure
- Low case success rate due to high Standard of Proof
- Reasonable Doubt Vs. Probability of Occurrence
- Explore Non-Conviction Based Legal Procedure as an Alternative Remedy

Research Methodology

Research Approach/Type	Qualitative Research – Case Study Analysis
Sample	Single Case Study – Holistic Approach
Unit of the analysis	Single Case - Country Level (Best Practices)
Data collection method	Secondary Data – Reported by StAR initiative
Data analysis method	Qualitative Data Analysis

Results

Legal Remedy → Conviction Based → Standard of Proof

Legal Remedy → Non-Conviction Based → Standard of Proof → P L E S

Conclusion

Non-Conviction Based Procedure is readily applicable:

- Under the English Common Law system (Existing Criminal Law procedure and substantive law)

Consequences:

- **Politically** → Political victimization and instability
- **Legally** → Lesser burden of proof | Case success rate improvements | Lesser burden for the Courts (Case build up and time)
- **Economically** → Confiscation and asset recovery | Financial recovery at a high success
- **Socially** → Political divisions, movements in society, favorable outset for anti-corruption

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