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978-1-107-05850-7 - Corruption, Asset Recovery, and the Protection of Property in Public International Law: The Human Rights of Bad Guys

Radha Ivory

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CORRUPTION, ASSET RECOVERY, AND THE PROTECTION OF PROPERTY IN PUBLIC INTERNATIONAL LAW

In recovering assets that are or that represent the proceeds, objects, or instrumentalities of grand corruption, do states violate the human rights of politically exposed persons, their relatives, or their associates? Radha Ivory asks whether cooperative efforts to confiscate illicit wealth are compatible with rights to property in public international law. She explores the tensions between the goals of controlling high-level, high-value corruption and ensuring equal enjoyment of civil and political rights. Through the jurisprudence of regional human rights tribunals and the literature on confiscation and international cooperation, Ivory shows how asset recovery is a human rights issue and how principles of legality and proportionality have mediated competing interests in analogous matters. In cases of asset recovery, she predicts that property rights will likewise enable questions of individual entitlement to be considered in the context of collective concerns with good governance, global economic inequality, and the suppression of transnational crime.

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The Human Rights of Bad Guys

by

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ABBREVIATIONS

ACHR	American Convention on Human Rights
ADB	Asian Development Bank
ADRDM	American Declaration of the Rights and Duties of Man
AfCHPR	African Charter on Human and Peoples' Rights
AfCmHPR	African Commission on Human and Peoples' Rights
AfCtHPR	African Court on Human and Peoples' Rights
AHRD	ASEAN Human Rights Declaration
AHRLR	African Human Rights Law Reports
APEC	Asia-Pacific Economic Cooperation
ArCHR	Arab Charter on Human Rights
ArHRComte	Arab Human Rights Committee
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUCPCC	African Union Convention on Preventing and Combating Corruption
BGE	<i>Bundesgerichtssentscheide</i>
BIS	Bank for International Settlements
CDIHR	Cairo Declaration on Islamic Human Rights
CIS	Commonwealth of Independent States
CISCHR	Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms
COE	Council of Europe
COECivCC	Council of Europe Civil Law Convention on Corruption
COECrimCC	Council of Europe Criminal Law Convention on Corruption
COECrimCC-AP	Additional Protocol to the Council of Europe Criminal Law Convention on Corruption
COEMLC 1990	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)
COEMLC 2005	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
COSP	Conference of the States Parties to the United Nations Convention against Corruption

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DEM	Deutsche Mark
DRC	Democratic Republic of Congo
EBRD	European Bank for Reconstruction and Development
EC	European Community(ies)
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR-P1	Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR-P7	Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	Court of Justice (of the European Union)
ECmHR	European Commission of Human Rights
ECOWAS	Economic Community of West African States
ECOWAS-PAC	Protocol on the Fight Against Corruption to the Treaty on the Economic Community of West African States
ECtHR	European Court of Human Rights
EGC	General Court (of the European Union)
EHRR	European Human Rights Reports
EIF	entry into force
EITI	Extractive Industries Transparency Initiative
EmbA	Federal Act of March 22, 2002 on the Implementation of International Sanctions (Swiss) (or Embargos Act) (<i>Bundesgesetz vom 22. März 2002 über die Durchsetzung von internationalen Sanktionen, Embargogesetz, EmbG</i>)
EMRK	<i>Europäischen Menschenrechtskonvention</i>
ESC	Economic and Social Council (of the United Nations)
ETS	European Treaty Series
EU	European Union
EUCFR	Charter of Fundamental Rights of the European Union
EUCPFI	Convention on the protection of the European Communities' financial interests
EUCPFI-P1	Protocol to the Convention on the protection of the European Communities' financial interests
EUCPFI-P2	Second Protocol to the Convention on the protection of the European Communities' financial interests
EU Dec.	European Union (Framework) Decision
EUOCC	Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union
FAC	Federal Administrative Court (Switzerland)
FAO	Food and Agriculture Organization (of the United Nations)
FATF	Financial Action Task Force
FCPA	Foreign Corrupt Practices Act (USA)

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FDf	Federal Department of Finance of the Swiss Confederation (<i>Eidgenössisches Finanzdepartement, EFD</i>)
FDFA	Federal Department of Foreign Affairs of the Swiss Confederation (<i>Eidgenössisches Departement für auswärtige Angelegenheiten, EDA</i>)
FIU	financial intelligence unit
FOJ	Federal Department of Justice and Police of the Swiss Confederation, Federal Office of Justice (<i>Eidgenössisches Justiz- und Polizeidepartement, Bundesamt für Justiz, BJ</i>)
FYR Macedonia	The Former Yugoslav Republic of Macedonia
GA	General Assembly (of the United Nations)
GBP	British pounds
GDR	German Democratic Republic
GR	General Register number (Philippines Supreme Court Reports)
GRECO	Council of Europe's Group of States against Corruption
<i>HRLJ</i>	<i>Human Rights Law Journal</i>
IACAC	Inter-American Convention against Corruption
IACMACM	Inter-American Convention on Mutual Assistance in Criminal Matters
IACmHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IBRD	International Bank for Reconstruction and Development
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICJ	International Court of Justice
ILC	International Law Commission
ILM	International Legal Materials
IMAC	Federal Act of March 20, 1981 on International Mutual Assistance in Criminal Matters (Swiss) (<i>Bundesgesetz vom 20. März 1981 über internationale Rechtshilfe in Strafsachen, Rechtshilfegesetz, IRSG</i>)
MESICIC	Mechanism for Follow-up on the Implementation of the IACAC
MLA	mutual legal assistance
MLAT(s)	mutual legal assistance treaty(ies)
MNE(s)	multinational enterprise(s)
MOU	memorandum(a) of understanding
NCB	non-conviction-based
NGO(s)	non-governmental organization(s)
NIEO	New International Economic Order

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OAG	Federal Authorities of the Swiss Confederation, Office of the Attorney General (<i>Die Bundesverwaltung der Schweizer Eignensenschaft, Bundesanwaltschaft</i>)
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OECD-ABC	Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Organisation for Economic Co-operation and Development Anti-Bribery Convention)
OECD-WGB	Organisation for Economic Co-operation and Development Working Group on Bribery in International Business Transactions
OHCHR	Office of the United Nations High Commissioner for Human Rights
OJ	Official Journal of the European Union
PEP(s)	politically exposed person(s)
RIAA	Federal Act of October 1, 2010 on the Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Restitution of Illicit Assets Act) (<i>Bundesgesetz vom 1. Oktober 2010 über die Rückerstattung unrechtmässig erworbener Vermögenswerte politisch exponierter Personen, RuVG</i>)
SADC	Southern African Development Community
SADC-MLAP	Protocol on Mutual Legal Assistance in Criminal Matters to the Treaty of the Southern African Development Community
SADC-PAC	Protocol Against Corruption to the Treaty of the Southern African Development Community
SC	Security Council (of the United Nations)
SRVG	Federal Act on Freezing and Restitution of Assets of Politically Exposed Persons obtained by Unlawful Means (Swiss), Consultation Draft of May 8, 2013 (Freezing and Restitution of Illicit Assets Act) (<i>Bundesgesetz über die Sperrung und die Rückerstattung unrechtmässig erworbener Vermögenswerte politisch exponierter Personen, SRVG, Vorentwurf vom 8. Mai 2013</i>)
StAR	Stolen Asset Recovery Initiative (of the World Bank and the UNODC)
TCL	transnational criminal law
TEU	Treaty on European Union
TI	Transparency International
UDHR	Universal Declaration of Human Rights
UN	United Nations (Organization)
UNC	Charter of the United Nations
UNCAC	United Nations Convention against Corruption

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UNCATND	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
UNCTAD	United Nations Conference on Trade and Development
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UNTS	United Nations Treaty Series
USC	United States Code
USD	United States dollars
VCLT	Vienna Convention on the Law of Treaties
WIPO	World Intellectual Property Organization