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Justice and International Mission Unit
Synod of Victoria and Tasmania, Uniting Church in Australia

Submission to Inquiry into
Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014
April 2014

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia (the Unit) welcomes this opportunity to make a submission in support of the *Crimes Legislation Amendment (Unexplained Wealth and Other Measures) Bill 2014*.

The Uniting Church in Australia is committed to working for an end to poverty globally and corruption and financially motivated crimes are often barriers to poverty reduction. For example, we have conducted research into politically exposed persons (PEPs in the language used in anti-money laundering legislation) from PNG who have been charged with corruption related offences in PNG and appear to have been able to transfer assets freely into Australia.

In October 2012 Sam Koim, the head of the Papua New Guinea anti-corruption body Taskforce Sweep, publicly stated that Australia had, at that time, never repatriated any funds stolen through corruption to PNG. He went on to allege that corrupt people from PNG:

> *have bought property and other assets, put money in bank accounts and gambled heavily in your casinos and have never been troubled by having their ill-gotten gains taken off them. Unless the money can be prevented from leaving our country or prevented from entering Australia, the bad guys win and the rest of Papua New Guinea suffers.*

He stressed what was at stake:

> *When money that is supposed to build hospitals, to buy medical equipment is used to buy real estate in Cairns or Brisbane, people die. And, quite frankly, those who turn a blind eye to this are as guilty as the offenders.*

He also said:

> *Be under no illusion, these people have chosen Australia as their preferred place to launder and house the proceeds of their crimes because it is easy. Cairns is only a short flight and property can be bought off the plan without permission. The financial*

> *system is stable and, it has been, up until now, extremely easy to get money into your system….*
>
> *As Chairman of Taskforce Sweep, I am privy to the thinking of our Prime Minister on this topic. I can share with you the fact he has become increasingly unhappy as our Taskforce has progressed, with the fact that the Australian financial system is being used to systematically launder tens of millions and possibly hundreds of millions of kina that should be used to provide healthcare, education and infrastructure for our people – the priority areas of the Government I represent.*

We particularly support Schedule 1 of the Bill that will amend the *Proceeds of Crime Act* to extend the purposes under section 266A for which information obtained under the coercive powers of the *Proceeds of Crime Act* can be shared with a State, Territory or foreign authority to include a proceeds of crime purpose. As noted in the Explanatory Memorandum, proceeds of crime investigations and litigation increasingly involve transnational elements due to the international nature of serious and organised crime. Further, "To effectively pursue the proceeds of crime offshore and assist our foreign counterparts in doing so it is essential that the AFP has the ability to share information for such purposes."

We support the position of the Police Federal of Australia and the Australian Federal Police Association on the need for a pure unexplained wealth regime without a predicate offence to be able to target assets at the layering and integration stages of a money laundering operation.[1] We note the experience of these bodies that the inclusion of the requirement for a predicate offence meant the unexplained wealth provisions had never been used in practice.[2] At the same time we understand that constitutional requirements limit Commonwealth unexplained wealth provisions.[3] We support recommendation 15 of the previous Parliamentary Joint Committee on Law Enforcement inquiry into unexplained wealth legislation that supported a "national unexplained wealth scheme, where unexplained wealth provisions are not limited by having to prove a predicate offence."[4]

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[1] Police Federation of Australia and the Australian Federal Police Association, Submission to the Senate Committee on Legal and Constitutional Affairs on *Crimes Legislation (Organised Crime and Other Measures) Bill,* 31 January 2013, p. 6.
[2] Police Federation of Australia and the Australian Federal Police Association, Submission to the Senate Committee on Legal and Constitutional Affairs on *Crimes Legislation (Organised Crime and Other Measures) Bill,* 31 January 2013, pp. 5-7.
[3] Parliamentary Joint Committee on Law Enforcement, 'Inquiry into Commonwealth unexplained wealth legislation and arrangements', March 2012, pp. 30-32.
[4] Parliamentary Joint Committee on Law Enforcement, 'Inquiry into Commonwealth unexplained wealth legislation and arrangements', March 2012, p. xvi.

1. Theft from Developing Countries

The Unit notes that the World Bank and UN Office on Drugs and Crime (UNODC) believe that $20 to $40 billion a year is lost from developing countries due to corruption (and this excludes money lost by tax evasion by multinational companies), only $5 billion in total has been repatriated to developing countries in the last 15 years.[5] They noted most of the legal barriers are onerous requirements to the provision of mutual legal assistance, a lack of non-conviction based asset confiscation procedures and an overly burdensome procedural and evidentiary laws.[6]

In cases of the theft of assets from governments and cases of corruption, often the only tangible evidence that a crime has taken place is the money that changes hands between the corrupt official and his or her partner in crime. Thus the enrichment of the corrupt official becomes the most visible manifestation of corruption. An offense such as bribery, which requires the demonstration of an offer by the corruptor or acceptance by the official, is difficult to prosecute in these circumstances. Similarly, once an offense has been established in a court of law, linking the proceeds to an offense for the purposes of recovering assets can often be a complex endeavour. Efforts to combat corruption are further challenged by the anonymity and fluidity with which assets can be moved, concealed, and transferred before effective means can be taken to seize, freeze, and return them to their rightful owners.[7]

2. International Standards and Laws in Other Jurisdictions

By 2010, over 40 jurisdictions has introduced legislation criminalising illicit enrichment.[8] Illicit enrichment was introduced as a mandatory offence in the 1996 Inter-American Convention against Corruption. The *UN Convention Against Corruption*, to which Australia is a state party, adopted a position in Article 20 that states should consider criminalising illicit enrichment by public officials "subject to the requirements of their constitutions and the fundamental principles" of their legal systems.[9] Article 12(7) of the UN *Convention on Transnational Organised Crime*, to which Australia is a states party, states that jurisdictions "may consider the possibility of requiring an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings."

Contrary to the views of the Law Council of Australia, the World Bank and the UNODC point out that properly constructed legislation for the restraint and confiscation of unexplained wealth is consistent with human rights standards. The jurisprudence of the European Court of Human Rights clearly delineates that the presumption of innocence does not prevent legislatures from creating criminal offenses containing a presumption by law as long as the principles of rationality and proportionality are duly respected. Of particular relevance is whether institutions involved in the investigation, prosecution, and adjudication of illicit enrichment are properly monitored, accountable, resourced, and trained so that they are in a position to implement the obligations taken under the International Covenant on Civil and

[5] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 1.
[6] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 3.
[7] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 5.
[8] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 8.
[9] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 9.

Political Rights and to pursue corrupt money effectively and fairly.[10] In the precedent set by *Salabiaku v. France* the European Court of Human Rights outlined its approach to the permissibility of burden-shifting provisions, as approach that has been referred to as the *Salabiaku* test.[11] The UN Human Rights Council has stated "effective anticorruption measures and the protection of human rights are mutually reinforcing and that the promotion and protection of human rights is essential to the fulfilment of all aspects of an anticorruption strategy."[12]

The World Bank and UNODC point out that freezing or seizure of assets infringes on the property rights of the asset holder, but such action is warranted when balanced against the rights of victims to recover stolen funds and the need to secure funds before the asset holder is tipped off. In addition, safeguards can be introduced to ensure that the asset holder has the opportunity to contest the freezing order.[13]

As noted in the previous Parliamentary inquiry into unexplained wealth legislation, such legislation already exists in Ireland, the US, the UK and Italy.[14]

In addition in Germany, Criminal Code, Section 73d, is enabling legislation that shifts the burden of proof to the accused if the prosecution establishes a significant increase in the assets of a public official that have not been accounted for. The legislation requires forfeiture of assets "where there are grounds to believe that the objects were used for or obtained through unlawful acts." The Federal Supreme Court has argued that this does not reduce the burden of proof but absolves the prosecution from establishing "the specific details" of the offence.[15]

Similarly, Article 36 of the Dutch Criminal Code allows for the confiscation of the proceeds of the crime for which the offender has been convicted as well as the confiscation of assets "which are probably derived from other criminal activities". The Supreme Court has argued that this is consistent with the presumption of innocence because:[16]

> *Once a presumption of criminal origin of proceeds has been established by the prosecution, the defense can always reverse the presumption. Once the criminal origin of the proceeds has been made probable, the burden to rebut – not simply to deny – this presumption lies with the defense.*

In Switzerland if it is established that an individual supports or is part of a criminal organisation, the court is obligated to order the confiscation of all the assets owned by that individual. Criminal Code, Article 59(3), creates a presumption that a criminal organisation controls the assets of all of its members. It is then up to the individual to rebut the presumption by demonstrating the legal origin of the assets. The Supreme Court upheld the position that this respects the presumption of innocence because the accused can rebut it by

[10] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. xiv.
[11] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 31.
[12] UN Human Rights Council Resolution 7/11 of 27 March 2008, on the role of good governance in promoting and protecting human rights.
[13] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 55.
[14] Parliamentary Joint Committee on Law Enforcement, 'Inquiry into Commonwealth unexplained wealth legislation and arrangements', March 2012, p. v.
[15] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 35.
[16] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 35.

demonstrating that they are not under the organisation's control or the assets have legal origin.[17]

In 2010 the Swiss Parliament also introduced the *Return of Illicit Assets Act*, which seeks to facilitate the recovery of the proceeds of corruption in situations where the state of origin of the assets is unable to conduct a criminal procedure that meets the requirements of Swiss law on international mutual assistance. This provides for the freezing, forfeiture and restitution of assets held by foreign politically exposed persons (PEPs, a term defined within international anti-money laundering standards) and their associates in Switzerland on the basis of decisions by the Federal Administrative Court. The court may presume the unlawful origin of these assets where:

> *The wealth of the person who holds powers of disposal over the assets has been subject to an extraordinary increase that is connected with the exercise of a public office by the politically exposed person and the level of corruption in the country of origin or surrounding the politically exposed person in question during their time in office is or was acknowledged as high.*

The court may reject the presumption "if it can be demonstrated that in all probability the assets were acquired by lawful means." Decisions of the Federal Administrative Court are subject to appeal to the Federal Supreme Court.[18]

3. The Need for Speed, Trust, Transparency and Flexibility

The World Bank and UNODC have pointed out that because assets can be moved within minutes and at the click of a button, investigations need to act in a time-sensitive manner. Any delay in executing a freezing request after the suspect has been arrested or tipped off can be fatal to the recovery of assets. They expressed concerns that the current mutual legal assistance processes are not sufficiently agile to address this reality, particularly for tracing, freezing or seizing of assets. Although many jurisdictions permit mutual legal assistance applications during the investigation stages or once there is reason to believe that a proceeding is about to be instituted against the alleged offender, a few jurisdictions require that criminal charges be initiated before the restraint or seizing assistance can be provided. Practitioners stated to the World Bank and UNODC that this approach impairs efforts to preserve assets by providing notice to the asset holder before the necessary provisional measures have taken place. By the time a response is received to a request to restrain assets, they will have been moved.[19]

They also point out a lack of trust of foreign jurisdictions often has resulted in delays that have allowed criminal assets to move before they can be seized.[20] The Unit notes with concern that there often are groups within Australia who will oppose effective legislation to co-operate with foreign law enforcement agencies on the basis that foreign law enforcement agencies cannot be trusted. The Unit believes instead that effective and timely co-operation should be provided, but with adequate safeguards for human rights and against misuse of the assistance provided.

The World Bank and the UNODC recommend that jurisdictions should have in place mechanisms that allow for prompt tracing and temporary freezing of assets before a formal mutual legal assistance request is filed. A formal mutual legal assistance request would be

[17] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 36.
[18] Lindy Muzila, Michelle Morales, Marianne Mathias and Tammar Berger, 'On the Take. Criminalizing Illicit Enrichment to Fight Corruption', The World Bank and UNODC, Washington, 2012, p. 37.
[19] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 54.
[20] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, pp. 19-20.

required to retain the freeze. They make the point that a request for a temporary freeze before charges are laid should be distinguished from a request to forfeit assets, which is permanent and requires notice to the asset holder in most jurisdictions.[21]

They recommend that a requested jurisdiction should not refuse a request for mutual legal assistance around the recovery of stolen assets for due process reasons unless it has precise and strong evidence that the originating jurisdiction has not guaranteed due process to the defendants. Further, they also recommend that developed countries should consider absorbing the costs of communication with developing-country jurisdictions on requests for assistance with recovery of stolen assets.[22]

The World Bank and UNODC recommend that requested jurisdictions implement policies and procedures that guarantee transparency when dealing with originating authorities and should require that the reasons for rejecting a mutual legal assistance request relating to recovery of stolen assets be divulged to the originating jurisdiction; they should also give the originating jurisdiction an opportunity to demonstrate that the defendant received due process.[23]

The World Bank and UNODC has recommended that governments effectively address legal barriers by adopting a more flexible and proactive approach to dual criminality (criminalisation of the offence in both jurisdictions) and reciprocity and to take steps to limit the grounds for mutual legal assistance refusal, including by extending statutes of limitation.[24] They also noted that "many judges and prosecutors in some developed jurisdictions continue to consider asset recovery a novelty to be treated with caution. This cautious approach often contributes to time-consuming and ineffective management of processes for repatriating stolen assets, which frequently includes international cooperation."[25]

The World Bank and the UNODC also stress the importance of informal assistance in cases of recovery of stolen assets from foreign jurisdictions involving direct communication between Financial Intelligence Units (FIUs), police and prosecutors of the two jurisdictions to discuss intelligence gathered with the anticipation of a formal mutual legal assistance request to follow. With fewer restrictions, practitioners can gather information more quickly than they can under a formal mutual legal assistance request process, build the necessary substantive foundation for an eventual formal request, and develop a strategy that best accords with the advantages and limitations of both jurisdictions' systems. The importance of these informal channels of assistance and cooperation among counterpart agencies outside the realm of mutual legal assistance has been emphasised in the UN Convention Against Corruption and by the Financial Action Task Force.[26]

[21] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 55.
[22] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 23.
[23] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 23.
[24] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 3.
[25] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 24.
[26] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 41.

4. Importance of Non-Conviction Based Restraint and Confiscation

The World Bank and UNODC also point out the importance of having a non-conviction based confiscation and restraint mechanism, arguing that in many instances it is the only way to recover the proceeds of corruption and to exact some measure of justice.[27] In their research they found practitioners highlighted the usefulness of non-conviction based confiscation because it can be quicker and more efficient and may be the only recourse when the offender if dead, has fled the jurisdiction, or is immune from prosecution.[28] The World Bank and the UNODC further argue that it is best not to limit the scope of non-conviction based confiscation and restraint, but at a minimum it should apply to circumstances where the perpetrator is dead, a fugitive, absent or unknown as well as in "other appropriate cases".[29] In addition to having domestic legislation allowing for non-conviction based restraint and confiscation of assets, they recommend that jurisdictions should allow for enforcement of foreign non-conviction based restraint orders.[30]

5. Allowing access to restrained property for legal fees

On the issue of allowing the accused access to restrained property for legal fees associated with the proceedings, the World Bank and the UNODC point out the practitioners have identified this practice as a barrier to the recovery of stolen assets that can significantly dissipate the seized assets. There is also the potential of abuse by improper access and spending of the restrained funds. For cases involving assets stolen from a foreign jurisdiction, an originating jurisdiction that recovers significantly less than expected in one case may hesitate before attempting asset recovery in the future, particularly where the monetary accounts are less significant. The failure to recover all the assets in question may also deplete political will to combat corruption in the future.[31]

They point out, to combat abuse, jurisdictions have placed limits on the amount of assets that can be used for legal fees or require the owner to show that no other assets are available to satisfy the fees. One jurisdiction had, in 2011, been in the process of passing legislation to bar the payment of legal fees out of the seized proceeds of corruption altogether. The World Bank and UNODC point out these measures should balance the rights of the accused to access funds to mount a legal defence against the rights of the victims to recover the stolen assets.[32] For a resource strapped developing country, allowing a perpetrator who has stolen assets to fund their defence from the stolen assets in effect results in the perverse outcome that the developing country must fund both the recovery and the defence against the recovery, which is likely to greatly deplete the net value of the assets recovered.

[27] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 66.
[28] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 67.
[29] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 67.
[30] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 69.
[31] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 94.
[32] Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, pp. 94-95.

6. Examples of Politically Exposed Persons from PNG to whom unexplained wealth provisions may have been appropriate

The following are examples of cases where transfers of assets from PNG to Australia might have been subject to unexplained wealth provisions, if the assets being transferred could not be identified as having a legitimate origin.

6.1 Paul Paraka

Paul Paraka, the principle lawyer of Paul Paraka Lawyers, was charged in October 2013 in PNG with 18 counts of allegedly receiving fraudulent payments of $28.7 million.[33] It is alleged that the law firm Paul Paraka Lawyers received these unapproved funds from PNG's Department of Finance.[34] Mr Paraka is facing 18 charges, which include:[35]

- Five counts of conspiracy to defraud the state;
- Nine counts of stealing by false pretence;
- Two counts of money laundering; and
- Two counts of dishonest application of the monies.

The case is being investigated by Fraud and Anti-Corruption Directorate detectives attached to Taskforce Sweep.[36]

Paul Paraka was a customer of NAB, and he had been transferring large sums of money to contacts in Australia (in the Gold Coast and NSW).[37] Investigations by journalists found bank accounts linked to Mr Paraka have transferred nearly $3 million into Australia, including a three-part $80,000 transaction to his Australian-based wives and girlfriends, including one that was living in the Star City Casino complex.[38] It has been alleged that PNG investigators believe that most of the funds were corruptly obtained.[39]

There were serious findings against Mr Paraka by the PNG Government Commission of Inquiry generally into the Department of Finance in their report completed at the end of October 2009. It was alleged by Finance Minister James Marape that senior officers within the department continued to authorise payments to Paul Paraka Lawyers despite being instructed not to do so.[40]

6.2 Eremas Wartoto

Eremas Wartoto is a politically connected Papua New Guinean businessman. He was committed to stand trial in absentia.[41]

In 2011, Taskforce Sweep charged Mr Wartoto with the misappropriation of $5 million.[42] Mr Wartoto has been charged over the "payment of K7.9m [$3.2 million] of RESI [Rehabilitation

[33] ABC Australia, 'Papua New Guinea Lawyer Paul Paraka charged over $30 million in fraudulent payments', 24 October, 2013; and Rowan Callick, 'Top PNG lawyer arrested over $28m', *The Australian*, 25 October 2013.
[34] ABC Australia, 'PNG's PM threatens Finance Department', 22 May, 2013.
[35] ABC Australia, 'Papua New Guinea Lawyer Paul Paraka charged over $30 million in fraudulent payments', 24 October, 2013.
[36] 'Cops get boot', *Post Courier,* 13 January 2014.
[37] Nick McKenzie and Richard Baker, 'PNG dirty money trail leads to Australia', *The Age*, July 19, 2013.
[38] Ibid.
[39] Ibid.
[40] ABC Australia, 'Heads roll as major scandal embroils PNG Finance Dept', 23 May, 2013.
[41] Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[42] Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian,* 15 May 2013.

Education School Infrastructure] funds allocated for Kerevat NHS [National High School]".[43] On the 30 August 2011, Mr Wartoto was charged; but then obtained an Australian foreign skilled workers visa and fled to Queensland on the 3 September 2011.[44] He was charged with two counts of misappropriation of property of Papua New Guinea in contravention of section 383(1) (a) of the *Criminal Code Act 1974* (PNG). Mr Wartoto claimed that he was 'too ill' to travel back to Port Moresby, despite the fact that he frequently travelled internationally within the two year period that he was in Australia.[45]

On 30 August 2012, PNG authorities issued a restraining order to cover property owned by Eremas Wartoto in PNG.[46]

On 24 April 2013, Papua New Guinea made a 'Mutual Assistance Request' to the Australian Federal Police, asking for assistance in registering a 'Foreign Restraining Order' that was made in 2012 against Mr Wartoto under the *Proceeds of Crime Act 2005* (Papua New Guinea).[47] On the 26 May, 2013, the District Court of Queensland registered the Foreign Restraining Order over Mr Wartoto's five Australian properties and four bank accounts believed to be associated with Mr Wartoto.

The PNG authorities had stated they believed Mr Wartoto engaged in "asset protection measures" in relation to his Australian assets to prevent these being seized under the PNG *Proceeds of Crime Act 2005.* These asset protection measures included the registration of second mortgages over Australian properties in favour of Litia Ilam and Louisah Wartoto as Trustees of the Wartoto PNG trust, which the PNG authorities believed was under the effective control of Mr Wartoto.[48]

The Australian Federal Police (AFP) lodged a successful application to have Mr Wartoto's property seized.[49] The AFP's application to the court was under section 35 of the *Mutual Assistance in in Criminal Matters 1987* (Cth) requesting that the Official Trustee in Bankruptcy take custody and control of property.[50]

The five properties in Queensland owned by Mr Wartoto in Queensland are in:

- Bentley Park, bought for $247,000 in February 2004. It was jointly owned by Eremas Wartoto and Louisah Wartoto and the Westpac Bank provided the mortgage. The mortgage was cancelled on 9 July 2010. The property was gifted to Eremas Wartoto Pty Ltd on 22 June 2010.
- Edmonton, bought for $540,000 in September 2007. The ANZ bank provided a mortgage. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Cairns, bought for $575,000 in April 2010. Jointly owned with Louisah Wartoto. The ANZ bank provided the mortgage.

[43] Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[44] Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of $30m', *The Age,* 10 May 2013; and Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May, 2013 (number BD 1440/2013).
[45], Nick McKenzie & Richard Baker, 'Alleged PNG crime boss on 457 visa wanted over theft of $30m', *The Age,* 10 May 2013.
[46] Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.
[47] Affidavit filed in Brisbane by the Commissioner of the Australian Federal Police, District Court of Queensland, 7 May, 2013.
[48] Affidavit filed in Brisbane by the Benjamin Ross Moses for the Commissioner of the Australian Federal Police, District Court of Queensland, 6 May, 2013.
[49] Sarah Elks and Rowan Callick, 'Property of PNG fugitive seized', *The Australian*, 15 May 2013.
[50] Application filed in Brisbane by Commissioner of the Australian Federal Police, District Court of Queensland, April 26 2013 (number BD1440/2013).

- Cairns, bought for $415,000 in November 2010. The ANZ Bank provided the mortgage on the property. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.
- Mount Sheradan, bought for $515,000 in January 2011. The ANZ Bank was the mortgagee. A second mortgage was provided by Litia Ilam and Louisah Wartoto as Trustees of Wartoto PNG Trust on 23 November 2012.

A caveat was placed on each of these titles by the Australian Federal Police (AFP) on 2 May 2013 due to the proceeds of crime legal action being taken by the AFP.

The Wartoto PNG Trust was created on 7 November 2005 for the children and grandchildren of Eremas Wartoto and Louisah Wartoto.

A restraining order was issued by the PNG National Court of Justice on 2 May 2013 for four separate bank accounts, three Westpac accounts in the name of Louisah Wartoto and one in the name of Travel-Car Australia with the Bendigo Bank. Eremas Wartoto also held motor vehicles registered in the names of Travel Car Pty Ltd.

Improvements to Australia's ability to restrain unexplained wealth may have assisted in restraining Mr Wartoto's assets in Australia more quickly and reduced the risk the assets would have been shifted to another jurisdiction.

6.3 Jeffery Yakopya

Jeffery Yakopya the former assistant secretary in the PNG National Planning and Monitoring Department was arrested by Taskforce Sweep after allegedly approving a K1,975,006 ($0.89 million) variation claim lodged on behalf of Sarakolok West Transport Ltd (SWT).[51] These funds were on top of an alleged K7.9 million ($3.6 million) paid to SWT, a company owned by Eremas Wartoto.[52] Taskforce Sweep has alleged that Mr Yakopya has misappropriated a total of K16.575 million ($7.5 million).[53] He has been committed to stand trial.[54] Jeffery Yakopya owns one property in Queensland, in Bentley Park, bought for $420,000 in November 2009. A mortgage on the property was provided by the ANZ Bank. It is impossible to know from the outside if the ANZ Bank fulfilled its due diligence requirements under anti-money laundering legislation thoroughly in 2009 in dealing with Mr Yakopya and the funds that were used to repay the mortgage had a legitimate source.

6.4 Paul Tiensten

Paul Tiensten was the former Minister for National Planning and Monitoring for PNG and the Member of Parliament for Pomio. In September 2011 he fled to Brisbane after being summonsed by Taskforce Sweep to answer questions over misappropriation of funds at the Department of Planning, and upon returning to PNG was subsequently arrested.[55] Paul Tiensten was charged and committed for trial over the alleged misappropriation of funds from this department, after allegedly diverting funds of approximately K3.4 million ($1.5 million) from Mesu Investment Limited intended for the Karalai Plantation Rehabilitation to his family company Tolpot Services Limited.[56]

Paul Tiensten was also charged in relation to dishonestly approving a government grant of

[51] Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[52] 'Sweep team arrest two more', *The National*, 3 January 2012; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[53] 'Investigation Taskforce Sweep 2013 Report', *Post Courier,* 2 August 2013.
[54] Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[55] Liam Fox, 'Ex-minister arrested on return to PNG', ABC News, 17 November, 2011.
[56] 'Tiensten in custody on second charge', *Post Courier*, 18 November, 2011; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.

approximately K10 million ($4.5 million) to facilitate the set up an airline called 'Travel Air', owned by Eremas Wartoto, despite the money having been earmarked for rural air freight subsidies.[57] He was convicted on this charge and Judge Gibbs Salika said that Mr Tiensten had used his "political muscle" to force the grant through.[58] He was sentenced on 28 March 2014 nine years in prison with hard labour, but four years of the sentence will be suspended if he repays the money.[59]

In 2008, Wu Shih-tsa, a businessman from Singapore, testified in a Taiwan court that six PNG officials had received part of a $19 million bribe, including Paul Tienstein. Paul Tienstein denied knowledge of the bribe. Four years ago, Paul Tiensten was also accused of a $90 million fraud also involving executives of four landowner associations in Gulf province, in which funds were released by the National Planning Office to the groups for infrastructure projects that were never built. The case failed for procedural reasons.[60]

Paul Tiensten's wife Julie Tiensten owned one property in Queensland, in North Quay Brisbane City, bought for $570,000 bought in May 2009. The contact address for Julie Tiensten on purchase of the property was a property owned by Eremas Wartoto in Mt Peter Road, Edmonton. The North Quay Brisbane City property was sold on 14 November 2013 for $455,000. The mortgage on the property in 2009 was provided by the Commonwealth Bank.

7. Need for a Specialist Unit on Stolen Asset Recovery

The Australian Government should follow the examples of the UK and US Governments and set up a small unit within the Australian Federal Police to identify and return assets stolen from developing countries and shifted into Australia. This could be simply an expansion of the existing Criminal Assets Confiscation Taskforce to include a section that targets assets stolen from developing countries.

In 2006 a Proceeds of Crime Unit was set up within the Metropolitan Police to investigate such cases. By 2010, the Proceeds of Crime Unit had taken actions resulting in the freezing of £160 million ($296 million) of assets.

In 2010, US Attorney General Eric Holder announced the creation of a new Kleptocracy Asset Recovery Unit at the Justice Department. The unit is housed in the Asset Forfeiture and Money Laundering Section of the department's Criminal Division and is staffed by five lawyers. The Federal Bureau of Investigation's Asset Forfeiture and Money Laundering Unit, based in the bureau's Washington headquarters, has diverted two agents to assist. They supplement the work of established anti-corruption groups in US Immigration and Customs Enforcement and the FBI's Washington field office.[61]

As of early March 2014 the unit had uncovered more than US$1.1 billion in allegedly stolen funds, much of which is tied up in court.

In 2011 the anti-Kleptocracy Unit took action against Teodorin Nguema Obiang, the son of the dictator of Equatorial Guinea. The anti-corruption legal action aimed to seize a $30

[57] Liam Fox, 'PNG businessman up on yet more fraud charges', ABC News, 21 May 2013; and Sam Koim, 'Investigation Taskforce Sweep June 2013 Report', *Post Courier,* 2 August 2013, p. 46.
[58] Rowan Callick, 'PNG gets moving on scourge of corruption', *The Australian,* 2 December 2013, p. 9.
[59] 'Tiensten jailed', *Papua New Guinea Post Courier*, 31 March 2014; and Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian,* 1 April 2014, p.7.
[60] Rowan Callick, 'Ex-PNG minister gets nine years' jail', *The Australian,* 1 April 2014, p.7.
[61] Andrew Marshall, 'What's Yours is Mine: New Actors and New Approaches to Asset Recovery in Global Cases', Centre for Global Development Policy Paper 018, April 2013, p. 11.

million Malibu mansion, a $38 million Gulfstream Jet and over $3 million of Michael Jackson memorabilia.[62]

In March 2014 the unit seized more than $550 million of alleged proceeds of corruption related to the late Nigerian dictator Sani Abacha and his associates. Some of these funds had been channelled into major banks in New York from offshore shell companies located in the British Virgin Islands.

The work of the unit has been frustrated by the use of shell companies that are used to hide stolen money.

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[62] Andrew Marshall, 'What's Yours is Mine: New Actors and New Approaches to Asset Recovery in Global Cases', Centre for Global Development Policy Paper 018, April 2013, p. 29.