HUMAN RIGHTS LAW AND VICTIM-CENTERED REMEDIES FOR KLEPTOCRACY

Richard Messick
Geneva, February 2018
Kleptocrats
Kleptocracy: How it Works

Kleptocrat

Victim State

Haven State
UNCAC Asset Recovery: Vision

New Ruler

Haven State

Confiscation Order

Victim State

Return Order

Article 54
UNCAC Asset Recovery: Real

New Ruler

Confiscation Order
Article 14 violation

Haven State

Victim State

Return Order
Gulnara Karimova
Some of Gulnara Karimova’s Properties
Other Assets of Kulnara’s
Should the Four Return the Assets?
ICCPR Article 14

In the determination of any criminal charge ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
Who Has a Claim on the Assets?
U.S. Confiscation Action

NATURE OF THE ACTION

1. This is an action in rem to forfeit approximately $300 million in assets, and any property traceable thereto, involved in an international conspiracy to launder corrupt payments made to GOVERNMENT OFFICIAL A, a relative of the President of Uzbekistan and a government official at all times relevant to the facts alleged. This action seeks forfeiture of property located in Belgium, Ireland, and Luxembourg that was derived from violations of U.S. law pursuant to 18 U.S.C. § 981(a)(1)(C), and property involved in a money laundering offense in violation of 18 U.S.C. §§ 1956 and 1957 pursuant to 18 U.S.C. § 981(a)(1)(A).
What is the Most Just Answer?
What Is Needed
CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)

Adopted at the Fifth Session of the Committee on Economic, Social and Cultural Rights, on 14 December 1990
(Contained in Document E/1991/23)
Learned Commentary on ESCR

“States must adequately implement measures to combat corruption.”

Twenty-fifth session
Agenda items 2 and 3
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Secretary-General on the question of the realization in all countries of economic, social and cultural rights
corruption in education can be a violation of the right to education if state does not attempt to prosecute corrupt officials and recover funds stolen
“The Committee recommends that the State party set up a comprehensive policy and mechanism to combat and prevent petty and systemic corruption, including by ...

- adoption of the draft anti-corruption law...
- codes of conduct for public institutions...
- investigation into corruption cases ...
- awareness-raising campaigns.”