

acquire title in property that has been acquired illegally. Thus, the right to own property is not violated in such cases.⁴¹

4.3.3 Retroactivity of Civil Forfeiture Legislation

In order to cast the net as wide as possible, legislators should consider retroactive application of the new law. Uganda has suffered an insurmountable asset loss to corruption in recent years. Retroactive application of civil forfeiture would allow for the recovery of assets derived from offences committed before the statute came into existence, provided that the conduct was criminalised at the time.

Many jurisdictions have adjudicated on issues concerning the constitutionality of retrospective civil forfeiture legislation. Criminal law prohibits the enactment of legislation to try an act which was not defined as a crime at the time of commission. In the same way, it also prohibits meting out heavier penalties than were prescribed legally at the time of commission of the offence. However, civil forfeiture is not a criminal process, but rather a civil one, and is thus not subject to the principle prohibiting the enactment of *ex post facto* legislation. Various courts in both civil and common law jurisdictions have found also that civil forfeiture cannot be defined as a punishment because it is not criminal in nature.⁴² It is a civil consequence of an unlawful act from which an accused person has derived a certain benefit.⁴³

41 Greenberg (2009) 45.

42 Greenberg (2009) 45.

43 Greenberg (2009) 45.

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