

Repatriation of proceeds of corruption Learning from past practice

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INTERNATIONAL CENTRE FOR
ASSET RECOVERY

Available guidance - Remaining challenges

UNCAC

- Stolen assets should go back to the “prior legitimate owner”
 - > Return to country of origin / where assets have been misappropriated
- Countries involved may conclude agreements on a case-by-case basis for the final disposal of confiscated property.

Challenges

- No further guidance on the way in which assets are to be returned and managed
- Only very few cases, mostly returns from Switzerland, the United Kingdom and the United States
- Heightened public expectations
- Risk of assets being stolen again

Emerging consensus

- Return of stolen assets to country of origin
- Requesting and requested states act as partners to facilitate the return of stolen assets
- Early and continuous dialogue between governments, within governments and with society at large
- Asset return should benefit those that have most suffered from the loss of state funds (“victims”); assets should have a perceivable developmental impact; and should serve as disincentive to corruption
- Critical that returned assets should not be stolen again
- Modalities for asset return to be determined on a case-by-case basis, depending on factors such as:
 - Nature of original misappropriation and concerned victims
 - Quality of governance and financial management capacity in country of origin
 - Relationship btw. perpetrator(s) of underlying crime and current government in country of origin
 - Country of origin’s development priorities
 - Final court order
 - Volume of funds
- Consideration should be given to sustainability
- Third parties (international organisations, aid agencies, civil society, specialist organisations) can support the process

Past practice / models

- Use of country systems / enhanced country systems (Nigeria)
- Autonomous fund (Peru)
- Return through bilateral or multilateral aid agencies (Angola I + II, Kazakhstan II)
- Return through nonstate / specialist organisations (Kazakhstan I / BOTA Foundation)

Past practice: country examples

Nigeria – (enhanced) country system

- Return to national budget, earmarked for special projects
- Comprehensive Public Expenditure Management and Financial Accountability Review (PEMFAR) (supervised by World Bank)
- Ex-post monitoring by NGO coalition
- Challenges:
 - Criticism of potential fungibility (expenditures occurred prior to repatriation)
 - Monitoring by NGOs only *ex-post*

Peru – autonomous fund

- Special national fund for the administration of forfeited corruption proceeds (FEDADOI)
- Special procedures for allocating funds and for monitoring their use
- Special purpose: anti-corruption related programmes
- Challenges:
 - Composition of Board of FEDADOI led to conflicts of interest (and suspected misuse) in the allocation of funds

Past practice: country examples

Angola, Kazakhstan – return through bilateral/multilateral aid agency programmes

- End use in line with national development priorities
- Programme implementation by bilateral and multilateral aid agencies
- Challenges:
 - Ownership

Kazakhstan I / BOTA – independent foundation

- Dedicated foundation / NGO
- End use in line with national development priorities
- Enhanced monitoring by international specialist organisations and World Bank
- Challenges:
 - Sustainability
 - Buy-in by government
 - Large overhead