

Out-of-the-Box Experiences in Returning Proceeds from Asset Recovery

Summary of strategies:

1. Trilateral agreements (ex. Kazakhstan, US, Switzerland)
2. Accompaniment and supervision of multilateral agencies (ex. World Bank)
3. Execution by NGOs (BOTA Foundation)
4. Supervision of holding country (Sherpa)
5. Creation of special funds for specific purposes (Human rights victims, Infrastructure, Disadvantaged children)

Kazakhstan.

In 2006, a trilateral agreement was established between Kazakhstan, Switzerland and the United States. The agreement established the repatriation of 84 million dollars through the BOTA Foundation. BOTA ('young camel' in Kazak) is an independent not-for-profit foundation established in May 2008 following the 2007 trilateral agreement to channel the funds into projects that benefit disadvantaged children in Kazakhstan. This arrangement would allow BOTA to draw initially on the USD 84 million in recovered funds and to work towards mobilizing additional funds from individuals, corporations and governments.

The board of trustees of BOTA Foundation has seven members: five local Kazakh Citizens and one representative each from the governments of the US and Switzerland.

The process enjoyed the accompaniment and supervision of the World Bank and of non-governmental organizations based in the United States such as International Research & Exchanges Board (IREX), and Save the Children. The BOTA Foundation invested \$ 116 million to improve the health and education of young people through conditional cash transfers and tuition assistance, as well as grants to increase the capacity of the social services sector.¹

Angola:²

In two distinct proceedings, a total of \$64 million (\$43 million in 2006 and \$21 million in 2013) was restituted from accounts in Switzerland and returned to Angola on condition that the money would be held in a Swiss bank account (with Angola as the beneficiary), and that the funds would be used on development projects.

¹ "Repatriating Stolen Assets: Potential Funding for Sustainable Development" : <https://www.justiceinitiative.org/uploads/59e79b54-69fa-46fd-a9d7-7699729ed8c4/repatriating-stolen-assets-background-20150727.pdf>

² Idem

Both returns established that the Swiss Agency for Development Cooperation would administer the funds.

Perú³

In the second term of the then president of Perú, Alberto Fujimori, there were a series of irregularities in the purchase of military weapons, which led to a loss that some have estimated in billions of dollars. The funds were traced in various jurisdictions, including the Cayman Islands, Luxembourg, Switzerland and the United States. Finally, more than 250 million dollars were recovered from Switzerland and the United States, as well as from local banks in Peru. The Andean country successfully recovered funds using the following strategies:

a. **Spontaneous cooperation.** According to this mechanism, which was new at that time, Switzerland was able to voluntarily and unilaterally share the financial information obtained in the money laundering investigation.

b. **Effective collaboration:** in force in Peru since 2000 and allows the Public Ministry to grant certain benefits to a person who has committed a crime when the latter provides pertinent information that contributes substantially to the advancement of the investigation.

c. **Negotiated justice:** Waivers are transfer orders issued by the account holders addressed to the financial entities that hold them. In them, the owner and / or economic beneficiary of the accounts renounces their economic rights in favor of the State.

d. **Early restitution:** Swiss law allows the early restitution of assets, that is, without a final and enforceable sentence of confiscation in the victim State - when the illicit nature of the assets deposited in Switzerland is manifest

Peru approved in 2006 the LAW OF THE SPECIAL FUND FOR THE ADMINISTRATION OF MONEY ILLICITLY OBTAINED AT THE DEFEAT OF THE FEDADOI STATE, which was used, among other things, for the "Payment of reparations to victims of human rights violations

Nigeria:⁴

The Department of Justice has transferred \$311,797,876.11 to the government of the Federal Republic of Nigeria in accordance with a trilateral agreement among the governments of the United States, Nigeria and the Bailiwick of Jersey (Jersey) to repatriate

³ La recuperación de activos en Perú. Oscar Solorzano <https://archivos.iuridicas.unam.mx/www/bjv/libros/11/5096/11.pdf>

⁴ U.S. Repatriates over \$311.7 Million in Assets to the Nigerian People that were Stolen by Former Nigerian Dictator and His Associates <https://www.justice.gov/opa/pr/us-repatriates-over-3117-million-assets-nigerian-people-were-stolen-former-nigerian-dictator>

assets the United States forfeited that were traceable to the kleptocracy of former Nigerian dictator Sani Abacha and his co-conspirators.⁵

The agreement provides for the return to Nigeria of approximately \$ 308 million after court proceedings in the United States and Jersey.

The agreement also states that the recovered assets will be paid to the Nigerian Sovereign Investment Authority ('NSIA') and will be used by the NSIA as partial financing for infrastructure projects such as bridges, roads and highways.

Lessons from Unsuccessful cases

SHERPA, REP. CONGO, Equatorial Guinea and Gabon⁶

Sherpa, one of the first NGOs to deal with illicit financial flows and litigation against officials in their own countries, together with the French organization Survie and the Federation of the Congolese Diaspora, presented in 2007 a case before the Prosecutor in Paris against families rulers of Congo-Brazzaville, Equatorial Guinea and Gabon, claiming that their considerable fortune, whether in real estate assets or bank accounts, could not have accrued solely from their salaries and public fees. The main charge in the case is "concealment of misappropriation of public funds", which is a crime under French law if there are assets on French soil that have been illegally acquired.

In order to overcome the Public Ministry's reluctance to open an investigation, Transparency International (TI) France and a Gabonese citizen filed a civil lawsuit in 2008 as part of the criminal process, with the legal support of SHERPA. The French Court de Cassation finally ruled in 2010 that TI France's civil suit could continue, and a judicial investigation was launched.

In February 2020, the Paris Court of Appeals confirmed the 3-year conditional prison sentence against Teodoro Obiang J and the confiscation of all property on French territory, with an estimated value of 150 million euros. However, the sums resulting from the confiscations will go to the general budget of the French State, as France does not have a law to return assets to dispossessed populations

Venezuela/ Antonini Wilson

In 2008, Argentine authorities detained a Venezuelan-American citizen at an airport with \$ 800,000 in cash from Venezuela. The Argentine State managed to confiscate the assets,

⁵ <https://www.justice.gov/opa/pr/us-repatriates-over-3117-million-assets-nigerian-people-were-stolen-former-nigerian-dictator>

⁶ [Guide to the Role of Civil Society Organizations in Asset Recovery](#) (p13)
[Global Witness welcomes historic ruling against Teodorin Obiang](#)

but they were not returned to Venezuela or placed in a fund for their subsequent return, on the contrary, they were used by then-President Mauricio Macri for the inauguration of a kindergarten. "This work symbolizes the change that we Argentines have undertaken. It has to do with the money recovered from corruption," said Macri⁷

Venezuela/ Andrade⁸

Quoted in the Congressional report on the VERDAD Act, the case of Alejandro Andrade is another example in which the traditional channels do not work in favor of the victims of corruption and kleptocracy. Andrade, a former Venezuelan National Treasurer, agreed to forfeit over \$1 billion in cash and property in a plea agreement. The judge decided against returning the money to Venezuela because of the unlawful nature of the Venezuelan government.

We do not want this to happen to Venezuela

The VERDAD Act establishes the obligation of the United States to return money to a democratically elected government; for this to happen years may pass. That is why the protection of Venezuelan funds is necessary through the creation of a fund that can hold them for as long as necessary. Likewise, considering creative methods to return the money to the Venezuelan people is in order, even in the event of the continuation of the authoritarian regime.

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⁷ <https://www.lanacion.com.ar/politica/macri-inauguro-centro-infantil-hecho-plata-valija-nid2178293>

⁸ <https://www.miamiherald.com/news/nation-world/world/americas/venezuela/article242264116.html>