

Intl. expert meeting on the management and disposal of recovered and returned assets: Decision making processes on asset return

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From Künsnacht ...

- Both/all parties have shared interest that **stolen assets are returned** to country of origin
- Asset recovery is a **partnership** from A-Z – constructive and early dialogue advisable
- All stakeholders have interest that assets are not stolen again (**transparency, accountability**)
- Manage expectations and ensure desired symbolic impact through **cross-government dialogue** and **engagement with concerned citizen groups**
- Factors to determine end use:
 - Nature of original crime and concerned victims
 - Expectations of requesting and requested (r/r) states and their citizens
 - Socio-economic context, quality of governance
 - Volume, sustainability and long-term impact
 - Provision in final court order (if applicable)
 - Relationship between requesting state's authorities and perpetrators
- No one size fits all – at least five basic models are available
- Consider role of **third parties** in planning, implementation and monitoring

... to Reggio Calabria ...

- Asset return should benefit the **development** of the country of origin for the purpose of the general public
- **Agreements** are not a condition but considered good practice
- Some areas may be more suitable to spend returned assets than others (public interest)
- Use existing systems for monitoring when possible and suitable (because expensive)
- Reggio Calabria recommendations:
 - Guidelines for countries to which assets are returned: General policy considerations on monitoring, use, identification of beneficiaries or victims in light of the type of crime
 - More discussion needed on how to define victims (individuals, broader public...)
 - Policy study/survey on experience with consultation processes → ICAR paper for Addis Ababa

... to Addis Ababa and beyond: Study results (1)

- Methodology:
 - Semi-structured interviews with decision-makers in r/r states
 - Case studies from Kazakhstan, Peru, Philippines (and Nigeria) involving Liechtenstein, Switzerland, UK and USA on requested states side
- Objective(s):
 - Understand motivations, considerations and processes in decision-making processes
and dialogue about end-use of returned assets between r/r states
 - Explore questions relating power balance/imbalance in dialogue between r/r states
- Underlying assumption (confirmed in interviews):
 - While asset recovery is technical/normative, political dimension cannot be underestimated
 - Different motivations may dominate in r/r states but common objective

... to Addis Ababa and beyond: study results (2)

- Dialogue on asset return – why, when and how?
 - Jointly facilitating an effective AR process is beneficial to both r/r states
 - Early engagement can expedite the AR process, which is in the interest of both parties and can send a strong symbolic message in both states
 - Dialogue helps build trust and understand each other's and shared interests
 - Through dialogue requesting states may be able to harness expertise in requested states if so required
- Safeguarding sovereignty and balancing interests
 - Power imbalances are likely to affect asset return discussions (and other bilateral discussions) – they can go both ways
 - Issues of sovereignty give more rise to concern in political discussions than at operational level where pragmatic arguments prevail
 - Dialogue helps frame respective interests and working towards a constructive solution that satisfies all parties

... to Addis Ababa and beyond: study results (3)

- Considerations informing end-use of returned assets
 - Agreement was typically found quickly when assets were to be utilised to redress victims, advance national development objectives or address corruption and other root causes
 - The objective of the end use should inform the modalities for managing the assets
 - Local context matters greatly and should influence the modality for end use implementation
- Asset return – lessons learnt from outcomes in past cases
 - Considerable impact was achieved through asset return
 - While decisions should be objectives driven, the feasibility of implementation must be assessed carefully
 - Local context is critical, including an analysis of potential change in local context
 - Monitoring mechanisms help mitigate risks for r/r states

More guidance needed?

- Agreement among interviewees about usefulness of guidance/guidelines
- Potential to depoliticise, structure and expedite the engagement between r/r states
- Helps safeguard sovereignty of requesting state while giving adequate consideration to requested states' considerations and finding common ground
- Should not be normative/prescriptive but outline options
- Points to be included may include:
 - Stakeholders to be involved in decision-making and implementation, and their respective expectations
 - What is the common ground of all concerned stakeholders
 - Local absorption capacity
 - Quality of local civil society
 - Existing vs. new accountability and monitoring mechanisms
 - Need to define detailed operationalization of implementation mechanism