

Trends in Asset Returns

*International Expert Meeting
on the Return of Stolen Assets*

May 2019

Richard E Messick, UNODC Consultant

messickrick@gmail.com//Global Anticorruption Blog

Avenues of Return

1. Article 53 – Self-Help

- 53(a): civil action
- 53(b): independent proceeding

2. Article 57(3) – Obligatory

3. Article 57(5) – Mutual Agreement

Article 53 – Self-Help

53(a) Civil Action

Examples: Zambia in U.K.; Macao SAR in HK SAR

Reasons (?): Expense; sovereign immunity

53(b) Independent proceeding

Examples: U.S. Victim comp; Swiss *partie plaignante*

Reasons (?): Settlements; lack of procedures

Article 57(3) – Obligatory

Applies where --

1. the confiscated assets are the result of the embezzlement of public funds or the laundering of such funds (article 57(3)(a)); or
2. the requesting State “reasonably establishes its prior ownership” of the confiscated assets (article 57(3)(b)); or
3. the law of the State party where the assets are located “recognizes damage” to the requesting State “as a basis for returning the confiscated property” (article 57(3)(b)).

Article 57(3) – Obligatory

Prerequisites --

1. a final order confiscating the assets has been issued in the requesting State's courts; and
2. that order has been accorded legal effect by the holding State's courts; and
3. the requesting State's claim to the assets is clear.

Article 57(3) – Obstacles (?)

1. Settlements
2. Challenge of securing final order in both states' courts
 - Death, unavailability
 - Expensive, time-consuming
 - settlement
3. Legal effect by Requesting state's court
 - ICCPR Article 14
 - Domestic law