

Stolen Asset Recovery

MANAGEMENT OF RETURNED ASSETS:
POLICY CONSIDERATIONS



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Stolen Asset Recovery (StAR) Initiative

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Management of Returned Assets:
Policy Considerations



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StAR



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Foreword

Grand corruption comes at a staggering cost to the developing world, and this burden disproportionately falls on the poor. An estimated \$20 billion to \$40 billion is stolen each year from developing countries. However, the cost of corruption far exceeds its monetary value. Corruption causes the degradation of public institutions, including the public financial management system, the judiciary, and financial sector oversight institutions. It contributes to a poor investment climate and macroeconomic uncertainty, and—as we have recently experienced during this global financial crisis—undermines the stability of financial systems. The collateral damage in terms of truncated opportunities and poverty is incalculable.

A successful asset recovery process resulting in the forfeiture and return of stolen public funds is a powerful victory in this fight against corruption. First, it sends a strong signal that corruption does not pay and that consequences will follow those who steal from the poor. Second, it allows the stolen funds to be used to the benefit of the people. If just 1 percent of the lower bound of the above figure, some \$200 million, were recovered, then it is estimated that funds would be enough to provide full immunization for eight million infants; or connect half a million households to running water each year; or finance first-line treatment for 1.2 million HIV-positive individuals.

This second point is the main subject of this policy note. Policy makers should not give in to the temptation of thinking that the end of the legal battle, marked by the repatriation of the funds, is the arrival destination of their asset recovery efforts. It is the transparent, efficient, and effective management of returned assets that constitutes the final step in this process and consequently merits appropriate consideration by national authorities.

This policy note seeks to provide national authorities with a nontechnical guide to the policy options available for the management of returned assets, their advantages and disadvantages. The use of returned assets is the sovereign decision of the country that recovers its stolen property, as embodied in the UN Convention against Corruption. This principle is at the heart of the work the StAR Initiative presents to the community of practitioners and policy makers. Our goal is to contribute to the understanding of this important issue and highlight the need for a constructive, transparent policy dialogue within each country.

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Three country case studies on Nigeria, Peru, and the Philippines are included in this policy note. These case studies received comments from colleagues working in World Bank country offices, including Rosmary Cornejo and Emmy Yokoyama (LCC6C); Lisa Bhansali (AFTPR); Bert Hofman and Maryse Gautier (EACPF); and Adetunji A. Oredipe (AFCW2).

Executive Summary

Every successful recovery of stolen assets represents a victory in the battle against corruption; sending a signal that there is no safe haven for the corrupt; demonstrating that there is no impunity for those that steal from the poor; delivering much-needed resources for national development and poverty reduction.

The return of stolen assets is the final step, the culmination of the process of asset recovery. Planning for the return of stolen assets raises a series of policy questions that the authorities recovering stolen assets will need to consider carefully. How to use the funds most effectively to support the country's development goals? How to keep the public informed about the decisions taken? How to reassure citizens that the returned assets will be used for development and poverty reduction purposes? These are important questions that will likely receive considerable media attention and public scrutiny.

The objective of this note is to provide an analytical framework that can help policy makers approach these questions systematically. Two considerations guide the document: first, the use of the returned assets is the sovereign decision of the country that recovers its stolen property; second, countries that have embraced a policy of openness and transparency in the design of arrangements for the management of returned assets have benefitted from this approach.

Forward planning is critical, particularly where the amount recovered is sizeable relative to the budget. The authorities will need to arrange for the disposal and repatriation of property held abroad, ensure that macro-economic and budget management issues are addressed, and start planning how to allocate the funds and put in place appropriate management arrangements.

Returned assets will generally be channeled through the public financial management systems, particularly so where these systems are robust and enjoy the public's confidence. However, national authorities may decide that alternative arrangements are to be preferred because they provide for greater visibility, offer additional safeguards and controls, or address other policy considerations. The decision regarding the appropriate arrangements rests with the receiving country's national authorities.

Three alternative arrangements are identified. First, "enhanced" country systems build on the existing country system with adjustments to improve control systems that are considered weak. For example, enhanced procurement, reporting and audit-

ing arrangements may be added to the existing country system. Second, autonomous funds are public entities established through legislation with discrete governance and management arrangements, which ensure clear lines of accountability for the delivery of specific outputs or services. Last, nongovernmental organizations can be awarded grants to manage returned assets where they can offer benefits that could not be realized through the alternatives, such as the ability to mobilize grass-roots participation, reach out to marginalized groups, and use innovative, community-based service delivery models.

Considerations that are likely to influence national authorities' decision regarding the appropriate choice of management arrangements include the strengths and weaknesses of the financial management system, the amount and timing of asset returns, and the overall governance context. Arrangements that enhance access to information and offer opportunities for engagement in decision making are generally welcome, particularly where there are high-profile returns. The case for investing in strengthened management arrangements is much stronger where there are substantial returns.

The selection of the appropriate management arrangements for returned assets is likely to be the subject of much debate, the more so the larger the amount of money concerned. Perceptions, expectations and opinions may diverge markedly between key stakeholders in the administration, civil society and the broader public. The note argues that a structured decision-making process can help the national authorities navigate toward appropriate solutions.

Finally, the note highlights the role of monitoring as means of verifying information gathered through administrative channels, identifying strengths and weaknesses in the management arrangements, and strengthening the engagement of key stakeholders. Civil society can contribute to this monitoring function through social auditing and analytical work.

A. Introduction

From a financial management perspective, international asset recovery presents policy makers with the challenge of maximizing the benefit that can be gained from the use of the funds that are returned. This policy note hopes to inform policy-makers in making these decisions. The objective is to provide guidance and analytical elements so national authorities are aware of the alternative institutional arrangements for the management of returned assets; understand their technical strengths and weaknesses; and are able to assess the suitability of each option given specific situations in their country and the characteristics of the asset recovery case. Before diving into technical issues, it is important to highlight two fundamental considerations that will permeate the ensuing discussion.

The first consideration underlying this note is that the use of returned assets should be the sovereign decision of the national authorities in the country that recovers its stolen property. This note applies the framework for the return and disposal of assets as established in the UN Convention against Corruption (UNCAC) which recognizes the return of assets as a fundamental principle of the Convention. UNCAC Article 57 paragraph 3 requires that the requested State Party shall:

- a. *In the case of embezzlement of public funds or of laundering of embezzled public funds ... return the confiscated property to the requesting State Party;*
- b. *In the case of proceeds of any other offence covered by this Convention ... return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property ...;*
- c. *In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.”*

Paragraph 5 of Article 57 further states that:

“Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.”

The second consideration relates to the importance of ensuring access to information, particularly access to information for the general public. The high-profile nature of asset recovery cases and public attention that usually surrounds asset return will

tend to generate expectations regarding the standards of transparency and accountability that should be followed in the application of these funds. Countries that have embraced a policy of openness and transparency have benefitted from this approach. When assets are returned, national authorities can take advantage of the heightened level of public awareness regarding the funds that are recovered. These efforts will help demonstrate that the fight against corruption can be successful and that corruption does not pay. More ambitiously, a country may use the return of stolen assets as an opportunity to raise the profile of the fight against corruption, encouraging broad participation in discussions about the use of the funds that are recovered.

Countries to which assets are returned may choose to make special arrangements for the management of returned assets. They also may enter into voluntary agreements laying out these arrangements so that they are open to scrutiny. Such arrangements may serve to make a point that the returned funds are different by virtue of the fact that they are the proceeds of corruption. They merit special treatment and that this special treatment serves as a message to those engaged in corruption that they can no longer conduct “business as usual”. The use of special arrangements may help build confidence that the returned assets will be used in ways that benefit the population and the risk that funds may be diverted will be minimized. In this way, the use of special approaches may generate benefits in terms of enhanced credibility and confidence in the country’s broader governance and anti-corruption strategy.

The remainder of the document is structured as follows: Section B discusses the importance of forward planning and the issues to consider in advance of the return of assets. Section C outlines some of the challenges when deciding how to allocate returned assets to specific sectors and programs. Section D contrasts four alternative management arrangements, the use of: country systems; “enhanced” country systems; autonomous funds; and the financing of non-governmental organizations. Section E elaborates on some of the factors that may influence the selection of a preferred alternative and advocates for the use of a structured decision making process. Section F underlines the essential role played by external monitoring in any of the four management arrangements. Section G drills down to examine some of the financial management dimensions that will need to be taken into account during the selection of modalities and their specific financial arrangements. Finally, Section H concludes with a brief overview of the experience of countries that have used some of these arrangements to manage the return of assets. The country case studies presented are Nigeria, Peru and the Philippines.

B. Planning Asset Return

The management of asset return is complex and requires forward planning. Particular consideration should be given to the timing of returns, the disposal of assets, budgetary and economic impacts, the institutions and stakeholders to be involved in decision-making and the appropriate structuring of decisions regarding the allocation of funds and management arrangements.

The key actors undertaking the asset recovery process are generally public prosecutors in the case of criminal proceedings, the agency responsible representing the state in civil litigation, and the central authority responsible for legal cooperation with other states. These agencies will generally accompany the legal process through the domestic and foreign courts. However, they will generally not be the agencies responsible for making decisions regarding the management of returned assets. Ultimate responsibility for these decisions will generally lie with the ministry of finance, as the body responsible for the management of the state's patrimony, and, if the returns are substantial or relate to a high-profile case, may involve the head of government together with other members of the executive.

In order for preparations to get under way, it is important for those responsible for accompanying legal proceedings to inform the ministry of finance, and other key decision makers designated by the national authorities, regarding progress in the case, and the likely amount and timing of any return. Ideally, key decisions regarding the management of the returned assets will already have been taken by the time the funds are returned.

Planning for the asset return should begin while legal proceedings are still ongoing. Assets are transferred to the ownership of state as soon as the period set for the submission of appeals expires or, if appeals are filed, upon final judgment. The timing of judgments is dependent on the progress of legal proceedings and will be determined by the court. Consequently, it is rarely possible to set dates with any precision. Some asset recovery cases have taken years to reach final judgment; others have reached final judgments suddenly and unexpectedly.

One of the first decisions to be made is regarding the disposal of the assets. The assets returned may include funds in bank accounts and liquid financial instruments, but also property, vehicles, jewelry, companies, and even livestock. It is important to ensure that the assets are properly inventoried, valued and the arrangements are made

for their disposal in a transparent manner following established procedures so as to maximize the returns. The authorities in the foreign jurisdiction where the property is located may be able provide assistance in managing and disposal of assets in order to facilitate the repatriation of funds. Alternatively these matters can be managed by agents designated by the state.

The Ministry of Finance should be informed of all prospective and actual asset returns. Asset returns are state patrimony and have to be booked in state accounts and the application of funds reflected on budget, regardless of whether funds will managed through special arrangements or not (see Box 1). Early engagement with the Ministry of Finance is particularly important where the asset return is substantial relative to the overall size of the budget. The macro-economic implications of substantial returns will need to be taken into account when determining the application of funds and management arrangements. .

The national authorities will need to determine the process by which decisions regarding the allocation and management of the returned assets are made. The national authorities may determine that the returned funds will be managed through the budget process. Alternatively, a policy decision may be taken to apply special arrangements, reflecting the substantial amount of the returns, the high-profile nature of the asset return or other policy considerations. Where special arrangements are to be put in place, it is important to consider which institutions and stakeholders will be involved in the design of these arrangements. These may include government agencies, the leg-

BOX 1 Accounting for Asset Returns

According to the IMF *Government Finance Statistics Manual* (GFSM 2001), forfeitures and fines should be treated as government revenue. Therefore, to the extent that returned assets are regarded as the product of a forfeiture action, they should be recognized as revenue. The only exception to this treatment would arise where the original loss had been recorded in government accounts, in which case the GFSM would recommend that these “refunds” be treated as “Other Economic Flows”. This circumstance is likely to be exceptional.

Following the standard accounting principles, particularly *IPSAS 23: Revenue from Non-exchange Transactions*, it is recommended that returned assets be regarded as fines and, therefore, as revenue.

The appropriate budgetary treatment of these funds is discussed neither in statistical manuals nor in accounting standards. However, in the interest of transparency and accountability, good practice would advise that such funds be recorded on the budget as revenue. This practice is recommended even in cases where assets are to be “ring-fenced” or channeled through another government entity or nongovernmental organization. In these cases, funds should first be brought into the budget as revenue, and then included under the appropriate expenditure account, as grants or subsidies, and subject to the normal appropriation process.

islature—since funds will have to be appropriated and the special arrangements may require specific legislation—and civil society. A transparent design process will generate confidence in the process among key stakeholders and the general public.

The national authorities will need to determine whether, how, and at what point to engage external partners in the decision making process and the management of the asset return. External partners may be able to provide technical advice on the management of the returned funds and contribute financing to support management and monitoring arrangements. In some circumstances, the involvement of external partners may serve to endorse the approach adopted by national authorities and generate confidence in the arrangements among stakeholders. Should the national authorities determine that it would be helpful to collaborate with external partners, they may decide to formalize these arrangements in an agreement with the partners involved.

Finally, decisions will need to be taken regarding the design of the special arrangements for the management of returned assets. These decisions are divided into two parts. The first part relates to the intended use of the returned assets, in terms of the sectors, programs, activities, and /or intended beneficiaries of these funds. This decision is addressed in the next section. The second part of the decision relates to the appropriate governance arrangements. The design of these arrangements will need to take into account the allocation objectives and the national authority's objectives in terms of meeting public expectations for the treatment of the returned assets and ensuring appropriate standards of transparency and accountability. These design considerations are the subject of the remainder of the policy note.

C. The Allocation of Returned Assets

The decision to allocate the returned assets to a specific purpose helps manage expectations and facilitates the tracking of the funds. The process of decision making around the application of funds can also provide an opportunity for constructive national debate around development priorities and appropriate use of funds that the returned proceeds of corruption.

When considering the appropriate application of funds, it is important to bear in mind the likely amount of money available and the expected flow of funds over time. Investment projects can be selected to take account of available funding and can be effective use of both small and large asset returns. Countries should be particularly cautious when financing recurrent spending with lump sum returns: it would be prudent to commit additional resources to ensure that on-going expenditures are covered after returned assets have been exhausted.

Box 2 provides examples of the uses that countries have chosen for returned assets. These have included financing for anti-corruption and law enforcement activities; social development activities such as education and health; specific programs tied to specific policy outcomes or goals such as those included in the poverty reduction strategies tied to the Millennium Development Goals; and specific beneficiaries or groups of persons, such as those that have been the victim of corruption or human rights abuses.

When determining the appropriate allocation of returned assets, it is important to bear in mind not just the amounts of money to be shared between sectors, programs, activities, and beneficiaries but also the results that the resources are expected to achieve. Results should be clearly identified in terms of measurable and, ideally, visible outputs (for instance, school materials, schools, roads) and the outcomes that they are expected to deliver in terms of improvements in the quality of life. The definition of expected results can be used to verify whether the funding is sufficient or not. The definition of expected results also provides a basis for verifying whether the funds have been spent as intended. This is particularly important when responding to public expectations, since the public will not be able to verify how funds are spent, but it will be able to see if the outputs that were originally promised were delivered or not.

As a general rule, the narrower the range of sectors, programs, and projects that will be financed from the asset return, the easier it will be to monitor the application of the specific funds. That said, the absorptive capacity of any particular program will be lim-

BOX 2 How Have Countries Used returned Assets?

Experience suggests that different countries have sought to apply the proceeds from corruption to quite different purposes.

In the Philippines, the administration of President Corazon Aquino decided that all the proceeds recovered by the Presidential Commission on Good Governance, including US \$624 million recovered from the Marcos Swiss deposits and other proceeds were to go to the Agrarian Reform Fund set up to finance the Comprehensive Agrarian Reform Program.

In Nigeria, the Federal Ministry of Finance decided that assets returned from Switzerland would be utilized to finance its comprehensive economic reform program (NEEDS), and would particularly target specific sectors that could move the country towards achieving the Millennium Development Goals (MDGs), including health, education, water, electricity, and roads.

In Peru, a special fund was set up, *the Fondo Especial de Administración del Dinero Obtenido Ilícitamente en Perjuicio del Estado* (FEDADOI, Special Fund for the Administration of Money Illicitly Obtained in Prejudice to the State), which listed 16 different uses for returned assets. These ranged from very specific uses such as financing the completion of a new maximum security prison, to more loosely defined items such as “Pay[ing] attention to the needs linked to the wellbeing of personnel in the National Police and Armed Forces.” More generally, the uses established were grouped as (i) supporting victims of human rights abuses during the Fujimori regime; (ii) supporting law enforcement institutions, including the National Police, the Judiciary, the Attorney General’s Office and the prison system; (iii) supporting anti-corruption initiatives; and (iv) supporting national universities.

ited. Consequently, where the asset return is large, there will be trade-offs between absorptive capacity and monitoring capacity: concerns regarding absorptive capacity will encourage decision makers to disperse funds among many programs; conversely, concerns about monitoring capacity will encourage decision makers to restrict the number of programs. There are also trade-offs between the breadth and depth of impact. Where funds are dispersed among programs and projects, many groups of stakeholders may benefit from the asset return but it may prove difficult to discern the specific impact of these funds. Where funds are narrowly targeted so that the impacts are clear, some stakeholders may complain that their interests have been ignored.

Any attempt to allocate funds from a particular source to specific programs faces the question as to whether the funding is additional and is not undercut by the withdrawal of funds from other sources. If the returned funds are allocated to education, for instance, but appropriations from the budget are cut by the same amount, there will be no actual increase in spending on education. For the returned funds to provide additional resources for the intended purpose, financing from other sources would have to remain constant or increase.

Verifying the “additionality” of funding is a challenge under any management arrangement. Solutions lie in establishing a baseline level for funds appropriated and spent prior to the allocation of financing from the returned assets, and monitoring funding

from all sources and the actual expenditure levels to verify that these do not drop when financing is provided from the returned assets. However, this approach is only credible over the short term, since the total resources available to government tend to increase over time and the baseline quickly becomes an invalid point of comparison.

One possible application of substantial amounts of returned assets would be the paying down or amortization of government debt. This use of funds has the advantage of being both simple—in accounting terms at least—and transparent: a one-time increase in government revenue is used to reduce the existing stock of government liabilities and future debt servicing obligations, thereby releasing funds for other expenditures.

D. Alternative Management Arrangements

Principles of sound public financial management require that public funds be used transparently, so that public is kept informed regarding the money entrusted to the state; efficiently and effectively, with due regard to value for money in achieving the intended objectives; and with clear lines of accountability, to ensure that public funds are used only for the purposes intended. These principles can be applied through a variety of arrangements for the management of returned assets. Some of the considerations in determining the appropriate choice of management arrangements are outlined in the following section. This section provides a broad outline of four alternatives. These are use of country systems, enhanced country systems, autonomous funds, and nongovernmental organizations. Project management structures are considered in the context of enhanced county systems. Box 7 presents a summary table comparing the alternative arrangements' treatment of key public expenditure management functions. It should be stressed that the alternative management arrangements are not exclusive; where there are substantial returns, national authorities may want to consider using a variety of arrangements to meet their development and governance arrangements.

Country Systems

Use of country systems entails channeling funds from the central treasury account to spending agencies through the budget process, with expenditures incurred using the country's budget formulation and reporting, as well as execution and procurement procedures. Lines of accountability are drawn through government institutions subject to monitoring and review by the national oversight institutions.

There are strong grounds for selecting country systems for the management of returned assets (see Box 3). However, where there are high-profile asset returns, the national authorities will want to consider the strengths and weaknesses of these systems and whether they are likely to satisfy public expectations regarding the application of returned assets.

Of particular relevance, in this context, are expectations that it will be possible to track returned assets, dollar for dollar, through the system to identify the final application of funds: the school, the textbook, the clinic, the medicine financed by the re-

BOX 3

Paris Declaration on Aid Effectiveness and Use of Country Systems

Policy decisions taken by developing countries and their development partners provide a useful guide to some of the issues to consider in managing returned assets. Through the 2005 Paris Declaration on Aid Effectiveness, the international community committed to—

- Use country systems and procedures to the maximum extent possible. Where use of country systems is not feasible, establish additional safeguards and measures in ways that strengthen rather than undermine country systems and procedures;
- Avoid, to the maximum extent possible, creating dedicated structures for day-to-day management and implementation of aid-financed projects and programs; and
- Rely to the maximum extent possible on transparent partner government budget and accounting mechanisms.

These commitments reflect concerns regarding the negative consequences of external assistance modalities that bypass country systems. These include lack of country ownership where projects are partly outside the national authorities' control; rigidities that limit the extent to which the government can set and implement priorities; difficulties in understanding the full extent of government fiscal efforts and priorities caused by the existence of different and incompatible budgeting and accounting systems; and a tendency for special implementation units to create friction within the public administration, particularly where there are wide salary differentials.

turned assets. This expectation is frequently expressed by stakeholders and therefore merits serious consideration.

Public expenditure management systems use the budget to assign funds to particular programs, activities, and the outputs that they expect to generate. However, not all country systems are robust throughout the expenditure management chain. Tracking expenditures can be challenging in systems where resources are allocated at various levels of territorial administration and have to filter down to the level of service delivery provider. This is particularly so where intervening levels of administration have discretion over the application of funds during budget execution. The funds allocated to specific activities and outputs through the budget process may not actually be made available to the spending unit or may be used for another purpose. Under these circumstances, it may prove difficult to demonstrate a clear link between the returned assets that entered the treasury and the outputs that they were supposed to finance.

Public expenditure tracking surveys may be used to verify the extent to which actual expenditures match the budgets originally allocated. These surveys track expenditures through the entire transfer chain, from the Ministry of Finance through each of the intervening levels of administration down to the intended spending unit. In the education sector, this may entail verifying the amounts transferred from the Ministry of Finance to a provincial finance department, to a district education department and then on to the school. The actual amount spent is then compared with the original budget.

This exercise was carried out as part of the monitoring of Abacha funds returned to Nigeria (See Section H). However, public expenditure tracking surveys are prepared after the fact: they can identify where funds have been diverted from the intended purpose, and this can inform measures to strengthen the systems, but they cannot ensure that funds are used for the purposes intended.

Enhanced Country Systems

A review of the strengths and weaknesses of existing national systems may identify areas that require “enhanced” arrangements if they are to serve the purpose of—and meet public expectations regarding—the management of returned assets. Enhanced arrangements can be envisaged for any particular function within the public expenditure management system. For example, country authorities may decide that the existing procurement legislation and rules will apply but that the mechanisms by which such legislation is implemented will be strengthened in some way, such as by having an external firm manage the bidding process. Other examples include contracting with private firms to conduct joint audits with national audit agencies; channeling funds through designated accounts as part of a government treasury single account structure; and adopting special reporting or evaluation requirements. Some of these options are considered in Section G and Box 7.

“Enhanced” arrangements are designed to complement country systems rather than substitute for procedures prescribed by legislation. Consequently, these arrangements can usually be implemented fairly quickly, through administrative instructions or by instructions included in budget documents. If legislation is required to amend specific procedures for exceptional purposes, this can often be addressed in provisions attached to the budget law.

There are trade-offs that need to be considered when adopting these enhanced arrangements. The enhanced measures will usually imply additional costs, both financial costs related to the contracting of external agents to undertake—or verify—functions that would normally be undertaken by the public sector, and transactions costs in terms of additional processing steps and reporting requirements.

Furthermore, the enhanced arrangements require some form of “ring-fencing” of a particular institution, program or project. The arrangements cannot be applied across the whole public sector; they are used for a particular purpose. Institutions may have to run parallel procedures, one set of programs or projects operating under core country systems and another under enhanced arrangements. Nonetheless, ring-fencing and enhanced arrangements can assist national authorities to highlight the special characteristics of the programs and projects financed with returned assets (see Box 4).

BOX 4 **Projects**

The project offers a number of advantages as a tool for managing returned assets. The budget classification structure in most countries provides for the project as a discrete budget entity, with funds linked specific outputs and objectives. Projects have a start and end date. They also have a specific management structure, usually with a project manager accountable for delivering results. Projects are ring-fenced from the other activities undertaken by the implementing agency. They may follow country systems. Alternatively, enhanced arrangements may be put in place to address specific weaknesses in the country systems.

Projects can be used as the framework for any amount of returned assets. They are particularly suited to one-off asset returns and to small amounts of returned funds. Policy-makers can allocate returned funds to a small number of visible projects that are able to achieve both a high development impact and a strong demonstrative effect.

Autonomous Funds

Autonomous funds are established by law with a specific purpose and separate governance arrangements and will generally enjoy administrative, legal, and financial autonomy. Lines of accountability are to the body established to oversee the management and application of the resources channeled through the fund. This body may be drawn primarily from the public sector, though boards often include a wider range of stakeholders, including representatives of the sectors that are the intended beneficiaries of the resources and civil society organizations that can contribute to oversight and transparency.

The autonomous fund's source of financing and financial management arrangements will generally be specified in the enabling legislation. Autonomous funds will usually be financed from an "earmarked" source of revenue, which will be paid directly to the fund and cannot be used for other purposes. Earmarked revenues may be supplemented by transfers from the government budget. Ideally, financial management arrangements will build on the country system. The fund may establish a special treasury account in the central bank where revenues are deposited, and from which designated expenditures are paid. These expenditures should be regulated by guidelines and should be subject to reporting and auditing as required for all public expenditures. In addition to these financial arrangements, the autonomous fund should ensure transparency and accountability through the publication of periodic—at least annual—performance and statistical reports and their presentation to the legislature for public review.

Autonomous funds have been established specifically for the purpose managing assets returned following high-profile corruption cases, notably the FEDADOI set up in Peru to receive funds recovered in the context of the Montesinos/Fujimori cases (see Section H).

More often, countries have established autonomous funds financed from the forfeiture of the proceeds of all criminal activity. These forfeiture funds are viable where there is a relatively predictable and stable stream of funds from the forfeiture activity. Forfeiture funds are generally used to provide additional financing for law enforcement agencies. In some countries, forfeiture funds also allocate resources to social sectors. Where a forfeiture fund is in place, the enabling legislation may require that returned assets be paid into the fund. Following these arrangements, there may be an opportunity to direct a part of the returned assets to specific anti-corruption efforts. However, forfeiture funds do present a number of specific challenges that will need to be addressed (see Box 5).

Nongovernmental Organizations

National authorities may choose to channel returned assets through a nongovernmental organization or organizations where these arrangements offer benefits that could not be realized by using country systems, enhanced country systems, or special funds.

BOX 5

Potential Risks and Solutions in Forfeiture Fund Management

Risks	Possible Solutions
Improper targeting of individuals for purposes of seizing assets for personal gain or institutional purposes.	<ul style="list-style-type: none"> • Senior-level supervision over case initiation and seizure approvals. • No direct payment of salaries of investigators and prosecutors involved in seizure process. Salaries of property managers, analysts, and support staff are appropriately paid from fund receipts.
Fund misuse in jurisdictions with weak financial management, especially in jurisdictions with endemic corruption.	External auditing, transparent reporting, practice guidelines, and periodic statistical reports, all of which would be publicly available
Reduction of appropriate funds in anticipation of forfeiture revenue.	The enabling legislation for a forfeiture fund should state that forfeited assets are used to supplement appropriated funds, not supplant (replace) them.
Operation of a forfeiture fund imposes additional costs on government	An adequately funded forfeiture program will offset the cost to government. Additional benefits of a segregated fund include better oversight and greater opportunity to protect against misuse

Source: *A Good Practices Guide for Non-Conviction Based Asset Forfeiture*, <http://siteresources.worldbank.org/EXTSARI/Resources/NCBGuideFinalEBook.pdf>

These benefits may include an ability to channel resources to particular target groups that would otherwise be difficult to reach; capacity to mobilize and engage broad participation in activities at the grass roots level; capacity to deliver quality public services efficiently and effectively, such as through performance-based contracting or community-managed approaches, that would otherwise be difficult to implement in the public sector; and credibility and perceived independence of the organizations with key stakeholders.

It is important that the procedures for allocating public funds to non-governmental organizations be transparent and ensure accountability for performance. The national authorities may wish to establish a selection process that enables competition between different organizations for the funds, with selection based on transparent criteria and the participation of key stakeholders in the review process. These criteria would ideally include evidence that the non-governmental organization is properly constituted and can fulfill basic financial and performance reporting requirements.

The returned assets should be channeled through the treasury and appropriated through the budget to nongovernmental organizations as grants. The grant agreements may include specific requirements in terms of management of funds, procurement, and reporting.

In exceptional circumstances, the national authorities may consider assisting in the establishment of a nongovernmental organization or foundation to manage specific returned assets. This approach may be appropriate where the national authorities wish to demonstrate that the asset returns will be managed by independent stakeholders. In these circumstances, the constitution of an independent body, with effective internal management and external oversight and a clearly defined mandate, will be critical.

Use of nongovernmental organizations entails additional costs. These costs will have to be weighed against the potential benefits of using nongovernmental organizations. The question of the size of the restituted funds should also enter into the equation. If too small, the overhead absorbs too high a proportion of the funds, while if too large, its relative advantages in the area of service delivery vis-à-vis public institutions may decline.

E. Selecting the Appropriate Management Arrangements

The selection of the appropriate management arrangements will depend on the specific conditions in each country. Some of the considerations that may guide these decisions are outlined below. For national authorities, the starting point for decision making is whether or not special arrangements are needed to deal with a particular asset return, or whether funds should simply be channeled through the budget. If the national authorities determine that enhanced arrangements would help achieve specific policy objectives, then a series of subsidiary questions arise that would help determine which arrangements would be most appropriate.

Strengths and Weaknesses of Country Systems

Perhaps the most fundamental question for the national authorities to ask themselves is whether existing public financial management systems are robust enough to satisfy public expectations regarding the application of returned assets. There are two sides to this issue: first a technical question related to the strengths and weaknesses of the public expenditure management system and second a question related to public perceptions regarding the effectiveness of the system.

To answer the technical question, a number of analytical instruments have been developed that would assist national authorities in assessing the strengths and weaknesses of their public financial management system, allowing them to test their performance against international standards. These include the fiscal transparency module in the Reports on Standards and Codes; the World Bank's Country Procurement Assessment Reports; and the Public Expenditure and Financial Accountability (PEFA) framework, which is used to assess the performance of public financial management systems. These assessments are particularly useful in diagnosing functions that could be strengthened through "enhanced" arrangements. Box 6 highlights some of the key indicators for this purpose in the PEFA performance measurement framework.

Stakeholder and public perceptions of the effectiveness of public expenditure management systems are strongly influenced by the quality of information that is publicly available. Lack of information tends to lead to lack of confidence. Timely publication of basic budget documents, budget outturns, audit reports, and disaggregated infor-

BOX 6

Public Expenditure and Financial Accountability

The Public Expenditure and Financial Accountability (PEFA) Performance Measurement Framework is a diagnostic tool that is intended to help authorities develop country-led strategies aimed at strengthening their financial management systems. To date, PEFA-exercises have been carried out in more than 100 countries and in some of these more than once. The PEFA methodology consists of a total of 28 indicators grouped into four subsets: PFM system out-turns; crosscutting features of the PFM system; budget cycle; and external assistance.

PFM system out-turns. This part of the PEFA assessment seeks to determine the extent to which actual public spending corresponds with what was originally approved in the budget law passed by the legislature.

Crosscutting features. Within the set of crosscutting indicators, *PEFA Indicator 5: Classification of the budget* can help assess the extent to which it will be possible to target funds using the budget structure.

Budget cycle. Indicators related to budget preparation, budget execution, accounting, recording and reporting, external scrutiny, and audit are useful to assess the extent to which country system is able to allocate and manage funds in an efficient, transparent, and accountable way.

See: PEFA link: <http://www.pefa.org/>

mation that support analysis will help provoke constructive debate on priorities and a healthy understanding of the practical challenges facing decision-makers.

Access to quality information is particularly important in the context of high-profile asset returns. This will entail the timely publication of the information about allocation decisions, the application of funds, and the results of audit and performance reports. This information will be particularly useful to civil society organizations monitoring the use of returned assets. Where the returned assets are intended to benefit specific groups of beneficiaries, information will need to be targeted so that they are aware of what is to be delivered, when and how, and periodic progress reports on performance. For the general public, the reporting of success stories explaining the benefits arising from asset return will help build confidence that the returned assets have been used for the purpose intended and more generally in the national authorities' efforts to strengthen governance.

Characteristics of the Asset Return

The value, frequency, regularity, and structure of the flow of funds from asset returns are key considerations in determining whether it is worth investing in special arrangements and the nature of these arrangements. Creating a separate management structure when the volume of funds to be handled is small, and the flow erratic, may not make sense unless there is a very strong symbolic value in doing so. There may be a minimum overhead in putting in place procedures to manage funds. Thus, the smaller the size of the funds, the higher the proportion that will be used up by administrative expenses.

Light administrative structures, using existing organizational systems as far as possible, are to be preferred when the asset return is small and irregular.

While the recovery of the proceeds of corruption may be a rare event in a particular country, the forfeiture of the proceeds of crime, including drug trafficking, counterfeiting, and racketeering, may be much more frequent. If a country has established a forfeiture fund, then it might be appropriate to use the same vehicle to manage the return of the proceeds of corruption.

If the amount of the returned assets constitutes a significant share of the public sector budget, consideration needs to be given to structuring spending from the returned assets over an extended period of time. Sudden injections of large amounts of money into the budget are not conducive to sound decision making or effective control, and the short-term effects on the macro economy may be negative. A boost in expenditure in one year resulting from the injection of the restituted assets may not be sustainable in the medium and longer terms: if used for infrastructure investment, the investment will need to be maintained; if used to finance recurrent costs arrangements, provisions will need to be made to cover these costs in future. Although cases with such large sums of assets may be extremely rare, it is recommended that when they do occur, countries consider how to manage the funds effectively over time. Solutions may arise in the use of endowment or buffer funds from which only interest or other financial returns on the invested funds are used, or even used for the amortization of debt (see page 5).

Governance Context

Asset returns that are the result of high-profile corruption cases, particularly cases involving senior officials, are likely to generate considerable media and public attention. The manner in which these returns are managed may be interpreted as a signal regarding the priority accorded to return of the proceeds of corruption and to anti-corruption efforts more generally. The broader governance context, including public perception of the prevailing corruption risk and the effectiveness of anti-corruption measures, will also influence the expectations of key stakeholders regarding the appropriate management arrangements. The weaker the perceived governance environment, the more likely stakeholders are to expect to see third parties involved in the design, oversight, and implementation of the arrangements

The context in which the proceeds of corruption were generated may give rise to allocational considerations, which in turn will influence the design of the management arrangements. Where particular groups were directly affected by corruption or governance failures, the mechanisms may be designed to offer some measure of restitution, ensuring that they benefit from part of the funds and possibly are involved in the management of some of these programs.

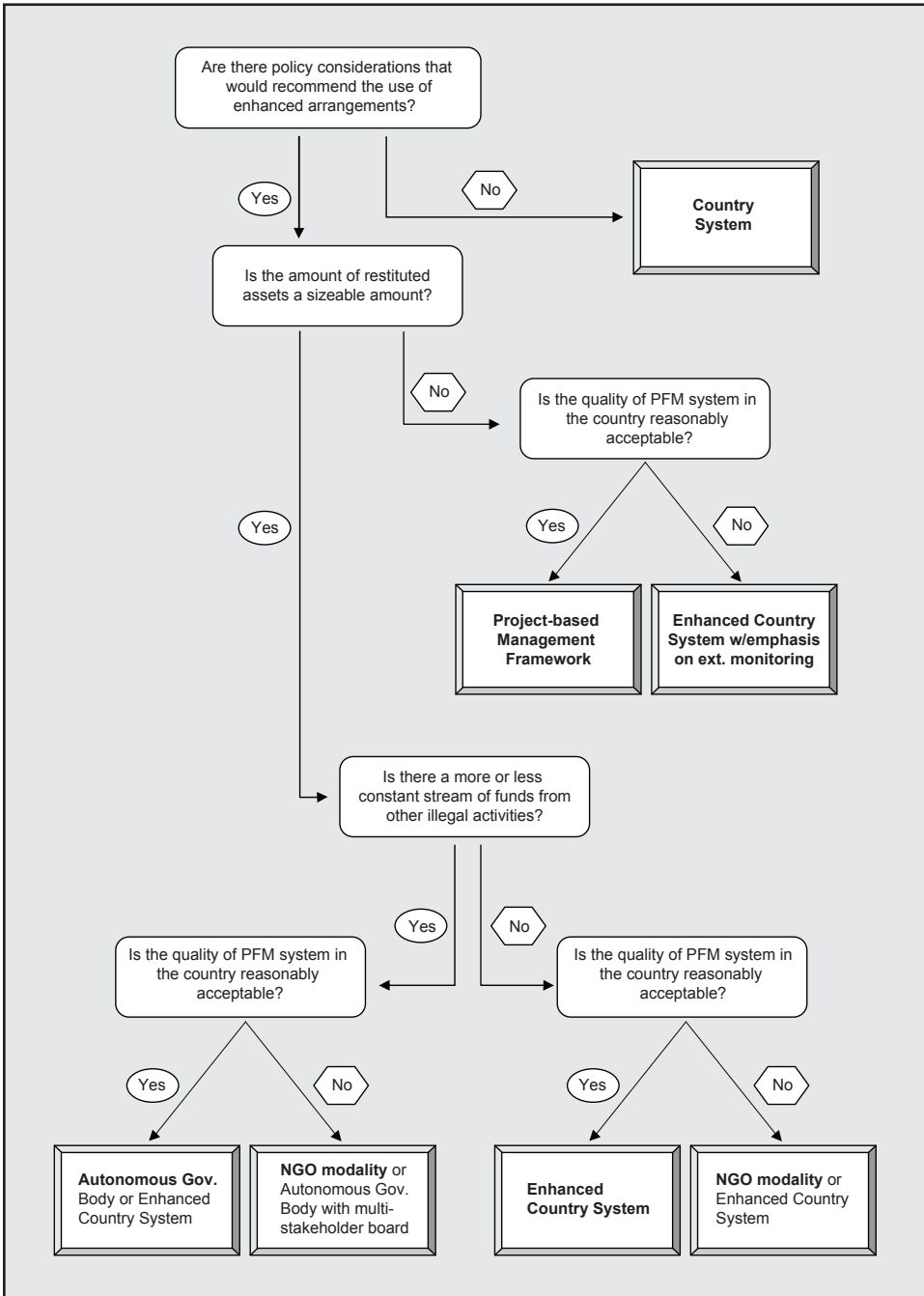
Structuring the Decision-Making Process

The selection of the appropriate management arrangements for returned assets is likely to be the subject of much debate, the more so the larger the amount of money concerned. Perceptions, expectations, and opinions may diverge markedly between key stakeholders in the administration, civil society, and the broader public. The national authorities will have to navigate carefully through the decision-making process if the asset return is to be seen as a success.

A transparent, structured decision-making process can be of considerable assistance in this context. Informed public debate can help highlight the strengths and weaknesses of alternative management arrangements and the trade-offs between differing objectives. The authorities will likely need to balance and compromise between opposing views. In these circumstances, the technical ideal may not be the most viable option.

Figure 1 illustrates how a structured series of decisions can be used to guide decision makers through the alternatives. The structured decision flow diagram, as well as its conclusions should be treated as illustrative only. Many factors, some discussed here and some not, are likely to enter into play. The key considerations and the nature of the decisions to be taken will vary depending on the country context and possibly the context of specific asset returns. The point is that breaking down the decision-making process into stages, addressing key dimensions of the asset return, will help stakeholders focus on the characteristics of management arrangements that will help address the specific challenges and national priorities.

Figure 1. Decision tree



F. Monitoring Performance

Effective performance monitoring is critical to the integrity of any management arrangement. Monitoring provides a means of verifying information gathered through administrative channels. It helps identify strengths and weaknesses in the management arrangements that are in place and point to possible improvements. It helps build confidence in the systems and can serve to strengthen the engagement of key stakeholders.

The design of the monitoring system will depend on the nature of the management arrangements put in place, the amount of the returned assets, and ongoing monitoring work in the country, since, ideally, these mechanisms should build on monitoring systems that are already in place. Three levels of monitoring should be considered—monitoring of outputs, monitoring of processes, and monitoring of impacts—though the extent to which these systems can and should be developed will very much depend on the level of resources available.

The most basic level of monitoring is to verify that the outputs are delivered as originally planned. This can be done fairly simply when the outputs are small investment projects by sharing information on the intended outputs with local civil society organizations and asking them to verify on site. This “social auditing” has proved successful in identifying flagrant abuse of public funds and can be used to complement technical monitoring when verifying the quality of construction or the quantity and quality of public services provided. Output monitoring of this kind is scalable and can be applied to anything from a single project to a large program.

More sophisticated methods are required to determine whether processes are effective. Public Expenditure Tracking Surveys (PETS) have been used extensively to assess whether funds allocated to specific service delivery programs are actually used delivery as intended. The surveys help identify points of leakage, which can then be closed by tightening up on procedures or introducing mechanisms for social control. PETS are best suited to broad programs, generally programs with a significant service delivery component.

Monitoring can also be undertaken at a broader, policy level focusing on the outcomes of public spending. This is most appropriate where there are large asset returns that finance a significant share of the budget or specific programs. Outcome monitoring may entail Public Expenditure Reviews, which look into the policy issues and their links to public spending, supported by PETS and service delivery surveys. Management of returned assets may be included in this analysis if the issue is identified as a priority by the national authorities.

G. Financial Management Dimensions

This section drills down to examine some of the financial management dimensions that will need to be taken into account during the design stage. The purpose is not to provide guidance or a definitive list options; rather it is to illustrate the range of management issues that will need to be considered. Decisions should take into account the strengths and weaknesses of the arrangements already in place. Diagnostic work can assess risks, determine whether or not the existing arrangements need strengthening, and flag the particular areas that need attention. All of this takes time, so it is generally prudent to begin design work fairly early on, before the assets are returned. It is also important to bear in mind potential trade-offs. A sound control framework that ensures that funds are used for the purposes intended is essential. But the control framework should not become an impediment to effective execution; the returned assets have to be spent if they are to have an impact. The control framework needs to be calibrated in line with risks.

Organizational Structure

Differences in the organizational structure lie at the heart of the distinctions between the four alternative management arrangements described in this note. Under country systems, public institutions constitute the organizational structure supporting the management of returned assets, with management functions undertaken by civil servants following lines of accountability through to the political leadership. Under “enhanced” country systems, the same organizational structure will apply. Technical staff may be contracted to work within this structure to reinforce the capacity or advise management, but decision-making and accountability will continue to be within the public sector chain. In the case of autonomous funds, staff and management will be accountable to a board or other governance structure established in enabling legislation; the board will generally set policy and render accounts. Where nongovernmental organizations are used to manage returned assets, staff and management will be accountable to the organization’s board as constituted by internal regulations. The organization will be accountable to the national authorities on a contractual basis, as reflected in any grant or subsidy agreement. Special care should be taken to ensure that there are no conflicts of interest on the part of staff assigned or hired from other institutions.

Budgeting and Resource Allocation

Returned assets are public funds and should be registered on the state budget as revenue and, as spent, in the appropriate expenditure account. All appropriations of public funds are subject to legislative approval. Where pre-existing country systems are used, returned assets will be part of and indistinguishable from the general pool of resources financing the overall budget, and resource allocation decisions will be taken in the context of the budget process. Where enhanced country systems are used, budget documentation may flag the programs and projects to be financed from returned assets so that they can be easily identified and tracked. The budget documentation may also provide additional information explaining the criteria used for allocating the resources and specific management arrangements that have been adopted. In the case of an autonomous fund, the returned asset would be presented on budget as a transfer from the treasury to the autonomous body governing the fund. Fund management would prepare a budget allocating the returned assets to specific activities and projects for board approval. Where funds are to be managed by nongovernmental organizations, the funds are recorded on budget as grants. The allocation of funds between organizations may be determined by a selection process outside of the budget process. The nongovernmental organizations may further distribute funds to subprojects following procedures that would be laid out in the grant agreements.

Banking and Payments

The reference point is the use of the central treasury account, with payments through the treasury system. For enhanced arrangements, separate “sub-accounts” can exist within the central treasury account, for the purpose of managing funds and monitoring while still providing the treasury with flexibility in cash management. Payments would be made through the treasury system following standard procedures. In some countries, funds are transferred from the central treasury account to accounts held by the entity responsible for managing the funds at a commercial bank. However, this would be the least preferred option from a public financial management perspective, since this prevents the treasury from being able to access these funds for the purposes of cash management. This may be unavoidable where returned assets are to be managed by an autonomous fund, which may hold accounts outside the treasury system. Where funds are transferred to nongovernmental organizations, they will be expected to make their own banking and payments arrangements with commercial banks.

Accounting, Record Keeping, and Financial Reporting

When using county systems, state accounts would not distinguish the funds originating from a specific asset, since these funds would be recorded under revenue and would constitute part of the overall pool of resources. Under enhanced country systems,

BOX 7 Public Expenditure and Financial Accountability

PFM Dimension	Country Systems	Enhanced Country Systems	Autonomous Fund	Non-Governmental Organization
Organizational Structure	Civil service reporting to political leadership	Civil service reporting to political leadership, with technical and managerial support	Management reporting to board which sets policy and approves fund's budget, as laid out in enabling legislation	Management reports to NGO's board, accountable to authorities on contractual basis for grants
Budgeting and Resource Allocation	Appropriated through budget from general pool, no specific budget code for returned assets	Appropriated through budget, returned assets flagged as source of funds or specific programs and projects	Returned assets may be earmarked to the fund or appropriated as transfer, allocation to activities determined by board	Appropriated as grant, allocation to activities determined by NGO management on basis of the grant agreement
Banking and Payments	Single central treasury account and payments through treasury system	Sub-account within central treasury account, payments through treasury system	Central treasury account or commercial bank, own payments system	Commercial bank and NGO payment system
Accounting and Reporting	No specific accounting code for returned assets	Returned assets flagged as source of funds or specific programs and projects	Fund accounts, no specific code for returned assets	NGO accounts, specific accounts and reports as determined by grant agreement
Procurement	National procurement regulations and civil servants	National procurement regulations and civil servants, use of procurement advisors and agents	National procedures or specific fund procedures, fund staff	NGO procedures and staff, unless otherwise specified in grant agreement
Audit	National audit authority	National audit authority, with technical support or twinned with commercial auditor	National audit authority	Commercial auditor, guidelines laid out in grant agreement
Reporting and Oversight	Internal reports and report to legislature	Internal reports and report to legislature, with specific reference to returned assets	Report by board to oversight body, as laid out in enabling legislation	Report by NGO board, reports to authorities as laid out in grant agreement

in contrast, returned assets can be flagged as a source of funds for a specific purpose. Modern computerized accounting systems will allow the returned assets to be tracked through the system and will generate reports on execution. However, this is more challenging where a modern accounting system has yet to be put in place and funds are channeled through various levels of administration. In these circumstances, it will generally be easier to flag specific programs and projects financed using the returned assets. Autonomous funds would be expected to follow their internal accounting requirements. They would generally not identify the returned assets as a specific category of revenue or expenditure. Nongovernmental organizations would be expected to provide accounts and reports for each and every grant that they receive.

Procurement

The objective of procurement is to ensure a transparent, competitive process which delivers value for money. The key choices that need to be made relate to the procedures to be followed and the management of the procurement process itself. The reference point is national procedures as used in country systems. While it may be possible to strengthen specific elements of the procedures, such as using elements of the procedures followed by international financial institutions, these should be treated with caution unless the requisite capacity is in place. There may be greater scope for the use of third party contractors to either manage the procurement process under enhanced country systems using the existing legal framework for bidding and awarding contracts or to conduct sample-based reviews of the quality of the procurement undertaken by public agencies as a means of identifying and correcting procedural failures. However, the engagement of third party contractors may have significant cost implications. Autonomous funds are required to follow public procurement procedures, unless otherwise specified in enabling legislation. Nongovernmental organizations would follow their own procedures—which may be less rigorous than those applied in the public sector—unless otherwise required by the grant agreements.

Audit

The state audit authority is responsible for the audit of all public funds. This is statutory responsibility. Given limited capacity, audits are not usually undertaken for every institution in every year. Additional measures may be considered for enhanced country systems, such as accelerating the frequency of audits for institutions using returned assets, using peer reviews and technical assistance to advise on improvements in the audit process, or contracting commercial audit firms to undertake audits of specific institutions, programs, and projects. The frequency of audits will depend on the risk assessment, ranging from concurrent auditing of selected transactions throughout the course of the year to auditing annual reports. Trade-offs will need to be considered between costs and benefits in terms of reduced risk. The audit arrangements for autonomous

bodies are laid out in enabling legislation. Similarly non-governmental organizations will have their own audit arrangements, which may be complemented by specific requirements under grant agreements.

Reporting and Oversight

The executive will be required to report to the legislature on the execution of the budget. This report would include reference to any “flagged” expenditures under enhanced arrangements, transfers to autonomous funds, and grants to nongovernmental organizations. In-year reporting is generally presented with more aggregate information, which would make it difficult to track returned assets unless special provision is made to highlight returned funds. Alongside the financial reports, agencies will be expected to generate reports that outline progress in the implementation of programs and projects. The implementation of programs and projects can be flagged in the institutional reports. Grant agreements with nongovernmental organizations will usually require them to report progress on a regular basis.

H. Country Case Studies

Nigeria

The Nigeria case is an example of enhanced government procedures. The intended use of the funds was broad and linked to the Millennium Development Goals. The table below summarizes choices made in the eight different management dimensions listed above. The setup was thus to use standard government modalities in all management dimensions save one, reporting and oversight.

Table 1. Management modalities used in the return of the Abacha loot

Management dimension	Modality chosen
Organizational Structure	Central government MDAs responsible for managing the funds
Budgeting and Allocation	Government officials
Procurement	Standard government procedures
Accounting and Reporting	Standard government budgeting and accounting
Banking and Payments	Standard government arrangements
Audit	Standard government audit procedures
Reporting and Oversight	Standard reporting and oversight supplemented by expenditure tracking carried out by Nigerian civil society organizations financed by the Swiss Government

General Sani Abacha, who governed Nigeria from 1993 to 1998, is believed to have looted between US \$3 and \$5 billion over the five years of his rule. The primary methods used were abuse of country financial systems and looting of the public treasury through the central bank; inflation of the value of public contracts; extortion of bribes from contractors; and other fraudulent transactions. The proceeds were laundered through a complex web of banks and front companies in several countries, principally Nigeria, the UK, Switzerland, Luxembourg, Liechtenstein, Jersey, and the Bahamas.

In December 1999, the Swiss authorities accepted a request for Mutual Legal Assistance, which led to the issuance of a general order to freeze the funds. In a 2004 ruling, Swiss authorities concluded that since there was adequate proof of the criminal origin of the Abacha funds, the formal forfeiture requirement—a verdict in Nigerian court—could be waived.

After a series of negotiations, which led to the selection of the World Bank as a bona fide third party for the monitoring of recovered assets, repatriation finally took place in 2005 and early 2006, for a total of \$505.5 million. The stated purpose for the money was for incremental funding of Millennium Development Goals (MDG)-related activities in the budget (such as health, education, and rural infrastructure programs) within the context of the government's new National Economic Empowerment and Development Strategy (NEEDS).

With a grant from the Swiss government, the World Bank mobilized Nigerian civil society organizations to participate in the review and analysis of the use of the looted funds. The review found that the funds had generally been used to increase budget spending in support of the MDG areas, as intended.

The funds were originally to be received in 2004 and were therefore included in the 2004 budget. Because of delays in the transfer of funds, the incremental budget spending was in the end financed through new debt, which was retired when the funds were received in 2005. This delay complicated the tracking of the spending which in and of itself was difficult because of weaknesses in the Nigerian public financial management system.

Notwithstanding these difficulties, a World Bank Public Expenditure Review concluded that the funds had generally been used in accordance with agreed objectives. Nigeria has since adopted a virtual poverty fund approach to monitoring the use of debt relief in support of the MDGs. The approach is to use existing budget classification systems to identify the specific activities receiving additional funds, which enables total spending from all sources to be monitored jointly.

Peru

The Peruvian case is an example of the third option, setting up an autonomous fund to manage the restituted assets (the Fund for Special Administration of Money Obtained Illicitly to the Detriment of the State, or FEDADOI). The purpose of the FEDADOI was to ensure the transparent management of the funds. Funds were earmarked to sectors or institutions included in the regulatory framework that established the FEDADOI.

According to a report by the National Anticorruption Initiative (INA), it is estimated that the economic impact of systemic corruption during the Fujimori regime was US \$1.8 billion. The bulk of the ill-gotten funds, estimated at US \$800 million, came from alleged bribes paid during the awarding of procurement contracts for national defense. The payment of these bribes was facilitated by a legal provision that allowed the executive to treat the bidding process as confidential on the grounds of "national security." The money was laundered through shell companies based in tax havens.

Table 2. Management modalities used in the return of funds related to the Fujimori/Montesinos cases

Management dimension	Modality chosen
Organizational Structure	Autonomous fund created for the purpose with a five-member board comprising representatives from Ministry of Justice, Ministry of Interior, Ministry of Finance, Financial Intelligence Unit, and Presidency of the Ministerial Cabinet.
Budget and Allocation	The bulk of the returned funds allocated to the fund through the normal budget process, but the detailed use decided by the board of the fund
Procurement	Standard government procedures applicable to each agency
Accounting and Reporting	Standard government accounting practices applied
Banking and Payments	Funds held in a special bank account in the Banco de la Nación. The FEDADOI required a two-person signature before funds could be transferred to an executing agency. A technical secretariat and accountant were tasked with assisting the board to comply with procedures and mandate defined in the law.
Audit	The Auditor General was responsible for auditing the FEDADOI; however, these audits were not extended to activities for which implementing agencies were responsible. The Auditor General conducted separate audits for executing agencies.
Reporting and Oversight	Each executing agency followed standard reporting formats and guidelines.

After Fujimori's resignation, the transition government, led by interim President Valentin Paniagua, put in place a new anti-corruption framework, which included the creation of special prosecution agencies and anti-corruption courts.¹

In November 2000, Swiss authorities froze \$48 million linked to the chief of police intelligence, Vladimiro Montesinos, who was alleged to have colluded with President Fujimori. In March 2001, the Cayman Islands froze nearly \$33 million, which was repatriated to Peru in August 2001. In August 2002, the Swiss authorities returned \$77.5 million to the Peruvian government, and in January 2004, after the signature of a bilateral agreement, the United States repatriated to Peru \$20 million in funds forfeited from Montesinos and one of his associates.²

1. For further information about legislative and institutional reforms introduced in the aftermath of the fall of the Fujimori/Montesinos regime, see *Fighting Corruption: The Peruvian Experience*, by Nelly Calderon, published in the *Journal of International Criminal Justice* in 2006.

2. The agreement was ratified by Supreme Decree 55 of 2004 and implemented through Supreme Decree 39 of 2005.

In October 2001, the government of Peru set up the FEDADOI.³ The goal of the fund was to provide a framework that would allow the appropriate and transparent management of the proceeds of corruption recovered by the state.

The FEDADOI had its own organizational structure, comprised of a five-member board: one representative each from three line ministries, one from the financial intelligence unit, and one from the cabinet office. The funds were deposited in separate account and kept separate from other government revenue. Once the board of the FEDADOI agreed to appropriate funds to a particular program or agency, these appropriations were included in the budget law as earmarked funds. The appropriation item could not be modified by Congress. Once the budget law was approved, the funds would be directly disbursed from the separate bank account to each program or agency.

The Philippines

The Philippines case is another example of the third option, setting up an extra-budgetary fund to manage the returned assets. The funds were to be used to support agrarian reform.

Ferdinand Marcos governed the Philippines between 1965 and 1986, when the “People Power Revolution” ousted him. During his years in power, it is estimated that Marcos accumulated between \$5 and \$10 billion at the cost of the country.

His wealth was accumulated through the outright takeover of large private enterprises; the creation of state-owned monopolies in vital sectors of the economy; awarding government loans to private individuals acting as fronts for Marcos; the direct raiding of the public treasury and government financial institutions; and kickbacks and commissions from firms working in the Philippines. The proceeds were laundered through the use of shell corporations and invested in real estate in the United States or deposited in disguised accounts in various domestic and offshore banks.

After the fall of Marcos, a Presidential Commission of Good Governance was set up and made responsible for recovering his ill-gotten gains. The efforts to recover the assets extended over a period of 18 years. In 1997, \$624 of Marcos’ deposits in Switzerland were transferred to an escrow account in the Philippine National Bank, and in 2004, after a forfeiture decision by the Philippine Supreme Court, transferred to the Philippine Ministry of Finance.

The funds were then transferred to an off-budget “Agrarian Reform Fund” set up to finance agrarian reform programs.

3. The FEDADOI was established by Emergency Decree 122 of 2001, and was later repealed when decree was made into Law 28476 of 2005.

Table 3. Management modalities used in the return of the Marcos loot

Management dimension	Modality chosen
Organizational Structure	Autonomous fund created for the purpose.
Budgeting and Allocation	The Presidential Agrarian Reform Committee had authority over allocation of funds to all implementing agencies. Once resources were allocated authority remained with each executing agency.
Procurement	Standard government procedures followed by executing agencies
Accounting and Reporting	Standard government procedures followed by executing agencies
Banking and Payments	Initially funds were deposited in a custodian account held by Bureau of Treasury (BTr) at National Bank of the Philippines. Shortly after the deposit, BTr transferred the funds to bank accounts and time deposits held in different currency in three state-owned banks: the Land Bank of the Philippines, Central Bank of the Philippines, and Development Bank of the Philippines.
Audit	An in-depth audit, titled Utilization of the Forfeited Swiss Deposits for the Implementation of the Comprehensive Agrarian Reform Program, was carried out by the Commission of Audit.
Reporting and Oversight	Standard government procedures followed by executing agencies.

When the Philippine Commission on Audit audited the fund in 2006, it noted that a part of the recovered assets had been used to finance excessive, unnecessary expenses unlikely to benefit the intended agrarian reform beneficiaries. It also concluded that some of the procurement had been carried out at inflated prices and that a significant share of the spending had been on not approved or nonpriority projects.⁴

4. See *Utilization of the Forfeited Swiss Deposits for the Implementation of the Comprehensive Agrarian Reform Program (CARP)* published by the Commission on Audits in the Philippines and available at <http://www.coa.gov.ph/GWSPA/2006/CARP.asp>.

I. Concluding Remarks

The management of returned assets might seem to be the last thing that a country should focus upon in the asset recovery process. However, as this policy note emphasizes, the management of returned asset presents the national authorities with significant challenges. National authorities are encouraged to start planning early, while the asset recovery process is still ongoing. They are encouraged to share information with the public, so as to manage expectations. They are encouraged to put in place a well structured, decision making process which provides opportunities for dialogue with stakeholders within the administration, civil society and the general public. Structured dialogue will help decision-makers work their way through the alternative management arrangements and determine which arrangements are most likely to meet the country's development and governance objectives.

At the end of the day, the return of assets must be seen as an economic, political and communications process. If done well, governments can get due credit for “doing the right thing.” But, success also achieves a far more important goal: It gives citizens greater confidence in public institutions and reinforces the rule of law.

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