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BEST PRACTICES FOR INDEPENDENT RETURN FUNDS

Lessons learned for Venezuela

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Summary

On November 26, 2022, the Venezuelan opposition and government agreed to the establishment of a United Nations-managed trust fund that would channel Venezuelan assets frozen abroad into humanitarian projects. The agreement was a response to longstanding demands of civil society for resources aimed at alleviating the humanitarian crisis. This brief identifies comparable international experiences, highlighting key lessons in terms of the following:

- ◆ Transparency;
- ◆ Accountability;
- ◆ Stakeholder inclusion; and
- ◆ Clarity of purpose

Introduction

Independent return funds, also known as indirect return mechanisms or third-party returns, refer to practices whereby sums of money outside of the country from where it originated are returned to that country via a process outside of normal state structures. This means that rather than being sent directly to government accounts, funds are transferred to an external intermediary mechanism. While this can take many forms, an independent return fund has two key elements:

1. It can disburse funds only for specific purposes; and
2. It is run under governance structures that differ from those existing nationally.¹

Independent return funds are typically established to address concerns over the use of funds in the country receiving the return. This can be related to governance, where avenues for public oversight and institutional control over finances are weak, where there are human rights concerns that may be furthered or exacerbated by the use of the returned funds or where there is otherwise a need to ensure that funds are returned as closely as possible to those who have suffered from the misappropriation of the funds and managed transparently. They are also typically used for misappropriated funds where these relate to individuals who still hold power or considerable influence in the jurisdiction to which the funds are being returned.²

The Fund for the Social Protection of the People of Venezuela (*Fondo para la Protección Social del Pueblo de Venezuela*, hereinafter referred to as the *Social Protection Fund* or simply the *Fund*) is expected to transfer up to USD 3 billion to the people of Venezuela in the coming years.³ It is the result of negotiations between the Maduro government and Venezuelan opposition to advance a political and humanitarian solution to the ongoing crisis and would see the return of assets currently frozen outside of Venezuela.⁴

Venezuelan civil society, through the Anti-Corruption Coalition (*Coalición Anticorrupción*), has called for the Social Protection Fund from its inception

- ◆ to be governed by international best practices on transparency, ensuring access to information and accountability;

- ◆ to practice active transparency and dissemination of its activities, including through a dedicated web space accessible to all Venezuelans and including all documents on contracting processes, contracts, allocations, donations and delivery in any type or format of agreement, as well as quarterly updated information on budget execution, physical execution, responsible officers, sectors benefited, objectives foreseen and fulfillment of goals, places of execution, achievement of goals and results of evaluation reports; and
- ◆ to include a system for receiving and processing complaints, as well as for responding to requests for information that complies with global or regional standards, such as the Inter-American Human Rights system.⁵

It should be noted that, while the Social Protection Fund will rely on funds frozen abroad, the lessons learned can also apply to any additional Venezuelan return mechanisms established in the future as part of the recovery of the proceeds of corruption.

Examples of Independent Return Funds and Mechanisms

Recently, several international returns have seen the use of independent return funds, while others are in the process of being established. This section briefly outlines several of these funds to contextualize the lessons learned from them for the Social Protection Fund.

Examples of Independent Return Funds and Mechanisms

| Country Case | Amount returned | Third parties involved | Use of returned assets | Features |
|--------------------------------------------|------------------------------------------------|--------------------------------------|-------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Uzbekistan Vision 2030 Fund (2022-ongoing) | USD 131 million (not yet transferred) | United Nations | Achieving UN Sustainable Development Goals | <ul style="list-style-type: none"> ◆ Commitment to transparency in asset restitution ◆ Structured governance, including a Civil Society Advisory Council ◆ Dedicated website |
| Kazakhstan/ BOTA Foundation (2009 – 2014) | USD 115 million | CSOs, World Bank | Education, poverty eradication | <ul style="list-style-type: none"> ◆ Creation of a new independent structure ◆ Strong anti-corruption measures ◆ Involvement of government of asset origin |
| Kenya / Jersey (2022 –ongoing) | Ongoing (USD 3.7 million in process of return) | CSOs | Medical equipment | <ul style="list-style-type: none"> ◆ Bilateral agreement framework (FRACCK) ◆ Includes commitments on transparency ◆ Direct involvement of CSOs in reuse of assets |
| Equatorial Guinea (2023 – ongoing) | Ongoing (USD 200 million announced) | UN Office on Drugs and Crime (UNODC) | Education, culture, social justice (proposed by CSOs) | <ul style="list-style-type: none"> ◆ Trust fund between US, France and Switzerland to be established ◆ Recommendations from CSOs on transparency mechanisms and repurposing the funds |

Uzbekistan Vision 2030 Fund

The Uzbekistan 2030 Fund (Ishonch Fund) was established in 2022 to receive the proceeds of corruption relating to Uzbekistan and confiscated in Switzerland, primarily related to the Karimova case. The initial amount expected for the fund is USD 131 million.⁶ This number, however, may increase with further judgments. The Uzbekistan 2030 Fund is a UN inter-agency pooled fund with the specific purpose of providing funding for projects aimed at achieving Sustainable Development Goals and includes a commitment to principled, transparent and effective asset restitution.⁷ The fund has several levels of governance, including a high-level strategic committee, which is responsible for political dialogue, recommendations on the strategic direction and structure of the fund and oversight of its strategic direction, and a management committee, consisting of one representative of Uzbekistan, one representative of Switzerland and the UN resident coordinator in Tashkent. It also includes a Civil Society Advisory Council composed of representatives of national and international civil society organizations and academia. The council has a consultative role to ensure interaction between the Uzbekistan Vision 2030 Fund and civil society.⁸ A dedicated website has been established to include information on the governance and founding documents of the funds, as well as on ongoing projects and annual financial reports: <https://mptf.undp.org/fund/uzb00>

BOTA Foundation

Established in 2007 to return the proceeds of corruption to Kazakhstan, the BOTA Foundation was a first-of-its-kind, specially formed mechanism that saw USD 115 million in recovered funds administered and disbursed by civil society organizations in an agreement brokered by the World Bank between the governments of Kazakhstan, Switzerland and the United States. Operating from 2009 to 2014, BOTA had the specific purpose of improving the welfare of 200,000 impoverished children, youth and their mothers in Kazakhstan.⁹ Despite operating costs in the region of USD 25 million,¹⁰ BOTA has been lauded as having one of the most successful indirect returns, with success factors attributed to a) committed engagement of the government of Kazakhstan, b) strong anti-corruption controls, c) competent staff put in place, d) non-controversial purposes for the use of funds and e) having the ability to innovate and learn in disbursing funds.¹¹

FRACCK Agreement: Jersey-Kenya return

Concluded in 2018, the Framework for the Return of the Proceeds of Corruption and Crime in Kenya (FRACCK) agreement between the governments of Kenya, Jersey, Switzerland and the United Kingdom sets out the modalities for indirect return of confiscated illicit funds from any of the three jurisdictions to Kenya. Included are commitments to transparency and accountability principles outlined by the Global Forum for Asset Recovery (GFAR), the use of returned assets for development objectives and monitoring and evaluation of returns.¹² In 2022, Jersey began the return of GBP 3 million from Jersey to Kenya through the FRACCK. The money is being directly provided to two civil society organizations – Crown Agents and Amref – that are using the funds for specific health purposes. Information on what has been taking place under this return has, however, been limited.¹³

Equatorial Guinea

While not yet in place, discussions are currently underway around a possible establishment of a trust fund for the return of assets confiscated in France, Switzerland and the United States in relation to Theodorin Obiang, the son of the president and current vice-president of Equatorial Guinea. With funds amounting to approximately USD 200 million, civil society has advocated for their accountable and independent return to Equatorial Guinea, given that those individuals involved in the case remain in power. Recommendations from civil society have included establishing a transparent and accountable repatriation mechanism; avoiding disbursing the funds to any entity controlled or managed by

the government of Equatorial Guinea, its officials or affiliates; and being guided in decisions by independent organizations with in-country knowledge. Proposals have been made to disburse funds through a) scholarship programs for university education overseas; b) community-based arts, culture and social justice programs; and c) trainings for journalists.¹⁴

Best Practices for Independent Return Funds

Alongside the lessons learned from the preceding examples, several policy tools exist that provide best practice for independent return funds.

They include the following:

- ◆ The *GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases*, a set of ten principles developed out of the 2017 Global Forum on Asset Recovery, held in Washington D.C.
- ◆ The *Office of the High Commissioner for Human Rights' Recommended Principles on Human Rights and Asset Recovery*. The 2022 Recommended Principles are designed to support international cooperation in the context of asset recovery by detailing a human rights-based approach to the recovery, and by providing best practices.
- ◆ The *Civil Society Principles for Accountable Asset Return*, ten principles developed by civil society to be minimum, framework standards for the accountable and transparent return of public assets stolen through corruption and hidden overseas.

Recommendations

- ◆ Transparency should be embedded into the Social Protection Fund.
- ◆ The Social Protection Fund should include strong accountability provisions.
- ◆ The Social Protection Fund should guarantee stakeholder inclusion.
- ◆ The Fund's purposes should be clear and based on consensus.

This final section draws on these tools to highlight key elements that should go into the establishment of the Social Protection Fund.

1. Transparency should be embedded into the Social Protection Fund

All international principles, as well as best practices from the preceding cases, highlight the fundamental role that transparency – both proactive disclosure and effective freedom of information rules – plays in a successful mechanism. This has also been highlighted as essential to the specific context of the Social Protection Fund.

Drawing on these principles¹⁵ and best practices from the cases, as well as the context of Venezuela, embedding transparency should include proactively:

- ◆ Establishment of a website/page for the Fund.
- ◆ Publication of the agreement establishing the Fund.
- ◆ Publishing material relating to the administration, structure and, at regular intervals, the operation of the Fund in a way that is accessible to the public. This includes publication of documents on contracting processes, contracts, allocations, donations and delivery in any type or format of agreement, as well as quarterly updated information on budget execution, physical execution, responsible officers, sectors benefited, objectives foreseen and fulfillment of goals, places of execution, the achievement of goals and the results of evaluation reports;

- ◆ Ensuring traceability of assets of the Fund from entry into the Fund through to disbursement. This should be done at a minimum of quarterly intervals and should be in an accessible format to allow for non-specialist monitoring; and
- ◆ Providing for civil society engagement with the Fund through establishing a process for sharing information about the work of the Fund with independent civil society organizations on a quarterly basis.

All information should be provided in Spanish to allow for citizen oversight in Venezuela. Appropriate measures should also be taken to ensure that essential information is provided in accessible formats, such as being machine readable for persons with visual impairments.

Procedures for remedial action in case of non-disclosure of information should also be included in the Fund's governing document, and a specific mechanism for freedom of information requests should be established and empowered to disclose information to requesting parties.

2. The Social Protection Fund should include strong accountability provisions

Accountability is essential to an independent return fund, both in ensuring that funds are not subject to corruption and in demonstrating to the Venezuelan people that the funds are being spent in a way that is non-partisan and based on national priorities relating to the Fund's purposes. Accountability is recognized as fundamental in the international principles previously highlighted, as well as in the functioning of existing mechanisms and the communication of the Anti-corruption Coalition.

Accountability provisions should include the following:

- ◆ A requirement for open calls for participation in structures of the Fund not reserved to official parties, involvement in any committees established under the Fund and the disbursement of all funds. Calls should include criteria for selection, composition of selection committees and time frames, and reasoned decisions for selection should be published within a reasonable time frame;
- ◆ Conflict of interest rules for persons involved in the Fund and the disbursement of funds and the publication of these rules on the website of the Fund;
- ◆ Rules excluding those involved in corruption cases related to the Fund and its originating assets from participation in decision-making and from benefiting directly or indirectly from the disbursement of the Funds;
- ◆ A process to monitor the disbursement of funds, which includes periodic public reporting, evaluation and the possibility to halt disbursement of funds;
- ◆ The establishment of an independent complaint mechanism. This should include a requirement that any suspicion of irregularities should lead to the opening of an investigation by independent authorities in both the origin and returning jurisdictions. Transfers should be suspended pending the outcome of the investigation. Individuals and civil society organizations should be able to raise complaints whether directly involved in or outside of the management or disbursement of the funds.

3. The Social Protection Fund should guarantee stakeholder inclusion

All international principles and practices indicate the importance of including a wide range of stakeholders in the operation of independent return funds, as partners in the disbursement of funds and in monitoring the use of assets controlled by the Fund.

This should include the following:

- ◆ Involvement of independent civil society organizations – both anti-corruption organizations and those focused on work related to the Fund’s purposes – to provide strategic guidance into the operations, ideally as part of a decision-making governing body;
- ◆ Consultative processes with victims, victims’ rights groups and civil society organizations more broadly in decisions for fund disbursement;
- ◆ Proactive engagement of civil society organizations that represent women and other marginalized groups, as well as organizations located outside of Caracas and in rural areas: and
- ◆ Provision and support for independent monitoring of the use of funds. This could include a monitoring program run by civil society organizations specialized in corruption prevention.

4. The Fund’s purposes should be clear and based on consensus

International principles and practices from other mechanisms emphasize the importance of establishing purposes that are created together with all members of society and that are designed to support those most vulnerable.

This should include the following:

- ◆ Alignment of the purposes of the Fund with the Sustainable Development Goals and anti-corruption priorities of Venezuela;
- ◆ An open and wide consultation on activities to be supported by the Fund, to include participants from across the political and social spectrum and the publication of recommendations coming out of this consultation;
- ◆ A commitment to use funds to support those most vulnerable in society and to ensure that funds are distributed evenly across political, social and geographic lines;
- ◆ A requirement to reduce administrative costs to the minimum possible in order to maximize the use of funds; and
- ◆ Ongoing review of purposes of the Fund as time progresses and the possibility to review the purposes after further consultation.

Endnotes

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- 4 Cate Hansberry, “Getting Venezuela’s Historic Humanitarian Accord Up and Running,” Atlantic Council, August 11, 2023, accessed October 10, 2023, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/getting-venezuelas-historic-humanitarian-accord-up-and-running/>.
- 5 Coalición Anticorrupción, “Activación Del ‘Fondo Para La Protección Social Del Pueblo de Venezuela,” November 26, 2022, accessed October 10, 2023, <https://transparenciave.org/organizaciones-urgen-creacion-fondo-social/>.
- 6 Kun uz, “Gulnara Karimova’s Returned Assets to Be Used to Reduce Maternal and Newborn Mortality,” Kun.uz, September 18, 2023, accessed October 10, 2023, <https://kun.uz/en/news/2023/09/18/gulnara-karimovas-returned-assets-to-be-used-to-reduce-maternal-and-newborn-mortality>.
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- 9 Aaron Bornstein, “The BOTA Foundation Revisited – Part Two: BOTA – A Quick Recap,” The FCPA Blog (Blog), February 27, 2017, accessed October 10, 2023, <https://fcpablog.com/2017/02/27/the-bota-foundation-revisited-part-two-bota-a-quick-recap/>.
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- 12 Article 3, Framework for the Return of the Proceeds of Corruption and Crime in Kenya (2018). <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/FRACCK.pdf>
- 13 Rose Wanjiru, “The Jersey Return: Public Participation and Transparency Lessons,” CiFAR, August 3, 2023, October 10, 2023, <https://cifar.eu/the-jersey-return-questions-over-public-participation-and-transparency/>.
- 14 Redress, CiFAR, Human Rights Watch, Transparency International, EG Justice. “Equatorial Guinea’s Stolen Assets Framework for Repatriation: Proposal for the Repurposing of US\$200 Million in Stolen Equatorial Guinean Assets Seized around the World,” (Redress, February 2023), https://redress.org/wp-content/uploads/2023/04/REDRESS_EG-Briefing_EN-v.6-1.pdf
- 15 This is a key part of GFAR Principle 4, Principle 2 of the Office of the High Commissioner for Human Rights (OHCHR) Principles, and Principles 1 to 4 of the Civil Society Principles.