

Mercosur's New Framework Agreement Is an Asset Recovery Landmark, But Significant Flaws Remain

Mat Tromme

This comment piece was first published in the Global Anti-Corruption Blog (GAB) - see [here](#) .

In asset recovery, international collaboration is key. In December 2018, four Mercosur countries—Argentina, Brazil, Paraguay, and Uruguay—[adopted](#) a new kind of landmark [framework agreement](#) to collaborate in investigations and sharing of forfeited assets resulting from transnational organized crime, corruption, and illicit drug trafficking. The agreement's provisions on law enforcement collaboration are important but not groundbreaking, as many countries collaborate in investigations, including through Mutual Legal Assistance (MLA) agreements. This framework agreement can be seen as a direct application of Article 57(5) of the [UN Convention Against Corruption](#) , which calls on state parties to "give consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property."

Where the new framework agreement is particularly novel and innovative is in its provisions on asset return. While there are a number of technical details, the big picture is that any of the four countries may lay claim to a portion of the assets, so long as that country played a role in its forfeiture, irrespective of where the assets are located. The framework agreement provides (in Articles 7 and 8 in particular), that the asset shares will be negotiated on a case-by-case basis, with each country's share to be based principally on that country's role in the investigation, prosecution, and forfeiture of the assets. Other factors that may be considered include the nature of the forfeited assets, the complexity and significance of international cooperation, and the extent to which cooperation led to the forfeiture.

To the best of my knowledge, this sort of framework agreement is rare, the only other recent example is the "Framework for Return of Assets from Corruption and Crime in Kenya (FRACCK)", a multilateral non-binding initiative for the return of assets between the Governments of Kenya, Jersey, Switzerland and the UK. There had been calls to establish a similar initiative in Latin America going back several years (see [here](#) and [here](#)). The framework agreement has the potential to set a precedent by institutionalizing the return of assets across borders, not only improving the asset recovery and return process in Latin America, but also serving as an example for other regional collaboration agreements in Africa, Latin America, or Asia. Indeed, the 3rd African Anti-Corruption Day (held last week, on July 11th) was organized on the theme of finding a "Common African Position on Asset Recovery." According to the African Union, the purpose of this is to advocate for Africa's unity in demanding the recovery and return of stolen assets, and making the return process transparent and accountable.

While the approach and ambition of the agreement is laudable, the framework agreement has three important shortcomings:

- First, despite the guiding language in the framework agreement, it is still unclear what parameters may inform the asset apportionment decisions. All we know right now is that if disagreements arise, the parties can invoke Mercosur's dispute resolution mechanism (established by the "[Olivos Protocol](#) ").
- Second, the framework agreement focuses only on states laying claim to forfeited assets, and misses an opportunity to bring

more clarity on how to provide justice and compensate the [victims of corruption](#) victims of corruption . True, Article 8.3 makes a fleeting reference to the importance of taking the interest of victims into consideration, as well as safeguarding the rights of bona fide third parties; the agreement also states that repatriated funds should go toward reinforcing the justice system and strengthening agencies tasked with fighting transnational organized crime. This is common wording, and the agreement should have gone further by earmarking a share of forfeited funds for victim reparations, in line with growing calls at the international level (e.g. [GFAR principles](#)) and from [civil society](#) to put greater emphasis on using recovered funds to help the victims of corruption and to repair social damage (especially in ways that help make progress toward [meeting Sustainable Development Goal 16](#)).

- Third, the framework agreement also misses an opportunity to formalize [a role for civil society](#) in determining how returned assets should be used, and in monitoring the return of assets. Instead, the agreement envisions an asset repatriation process that is exclusively state led, neglecting to consider the benefits of involving civil society, including the greater efficiency, accountability, and transparency in asset return.

Because this framework agreement is so recent and isn't even yet in force (as parliamentary approval is required in countries like Argentina), it remains to be seen whether or how the agreement improves the asset recovery process. On the whole, the agreement is an encouraging step forward, but these countries, and others, can and should go further in future multilateral agreements if international asset recovery is to reach its full potential as a mechanism to repair some of the harm done by grand corruption and other transnational crimes.

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