



ماعت للسلام والتنمية وحقوق الإنسان
Maat For Peace, Development, and Human Rights

The negative impact of the non repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights

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Introduction

The phenomenon of corruption is a harmful epidemic that undermines the rule of law and impedes the ability of governments to provide basic services to their people, hampering development projects, violating human rights, and allowing crime and terrorism to thrive, which leads to a sharp deterioration in the standard of human life and brings instability, insecurity and the spread of injustice. The countries of the world have realized the grave dangers resulting from corruption as a serious crime that undermines the rule of law, impedes development, spreads poverty and ignorance, and prevents rights from reaching their owners. The researchers agree that corruption has spread over time throughout all countries of the world, but the most important development is the unprecedented growth of aspects of corruption and its repercussions on the enjoyment of human rights and the ability of states and governments to fully implement these rights, which has become a matter of interest to many international, regional and national organizations that took it upon herself to monitor the phenomenon in all countries of the world.

Corruption is closely linked to money smuggling and the ensuing undermining of governments' efforts to achieve development, especially in light of the difficulties to recover them. Failure to recover stolen assets obtained from illegal sources deprives states of the resources necessary to implement human rights, including economic and social rights, especially the right to development, which threatens stability and sustainable development of countries and undermines the values of democracy and the rule of law. These assets are urgently needed now more than ever for the development and realization of all human rights, especially in countries in transition.

Therefore, **Maat for Peace, Development and Human Rights** presents its intervention in the report submitted to the Human Rights Council on the negative impact of non-returning funds from an illegal source to their countries of origin on the enjoyment of human rights in accordance with Council resolution 46/11 to clarify its vision on the international framework for asset recovery and challenges facing countries as well as some of the efforts and initiatives that have been adopted to the recovery of stolen assets.



Asset Recovery International Framework

Stolen assets recovery is usually a complex and lengthy process, involving multiple jurisdictions and often complicated by technical, legal or political barriers. Thus, this definition applies exclusively to assets abroad not the remaining ones within the countries.¹

The United Nations Convention against Corruption (UNCAC) is the most important international framework addressing the issue of asset recovery, as it provides for many articles that combat the phenomenon of international financial fraud and money laundering, among others. The Convention includes a number of corruption crimes, topped by measures to prevent money laundering, bribery of public officials, misappropriation or waste of property, trading in influence, abuse of functions, illicit enrichment, and various acts of corruption in the private sector.

Article (31) of the Convention stipulates provisions about forfeiture and confiscation of criminal proceeds relating to predicate offenses, and Article (51) stipulates that asset recovery is a basic principle in this Convention. According to Article (57), assets return is based on a final judgment. Article (46) stipulates the necessity of state parties to provide each other with the largest possible amount of mutual legal assistance in investigations, prosecutions and judicial procedures related to the crimes covered by this Convention.

In addition, according to the Convention, the countries in which the assets are stashed may be required to provide the originals of relevant documents and records, including governmental, banking or financial records and records of companies or commercial establishments, or certified copies thereof. The Convention obligated member states to strengthen the necessary measures to prevent and combat corruption and to internationally cooperate in order to prevent and combat the crime of corruption. Thus, according to the agreement, states have the right to request freezing the assets smuggled abroad and to request their confiscation for the interest of the stolen state.²

¹ أرصدة الفساد: تحديات استعادة الأموال العربية المنهوبة بالخارج، مركز المستقبل للابحاث والدراسات المتقدمة، 27 مايو 2021، الرابط، <https://bit.ly/3AOSwa2>

² يمكن الرجوع إلى نص اتفاقية الامم المتحدة لمكافحة الفساد على الرابط - https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50024_A.pdf



Stolen Asset Recovery Initiative (StAR)

Stolen Asset Recovery Initiative (StAR) helps through partnerships and policy-related actions to shape the international asset recovery agenda. The initiative is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that supports international efforts to end safe havens for corrupt funds. The work of the StAR Initiative is based on Chapter V of the United Nations Convention against Corruption, which sets out the objective, measures and arrangements for the recovery of stolen funds. For the first time, this Convention, which has been ratified by more than 160 countries, establishes the basic principle of recovering stolen assets. The StAR Initiative works with developing countries as well as financial centers to enhance refund efforts by improving the legal framework for refunds and providing training, guidance and practical assistance.

Global financial estimates indicate that about 20-40 billion dollars are stolen from developing countries every year. The true cost of corruption far exceeds the value of assets stolen. Corruption undermines trust in government institutions, companies, and financial institutions. It also impedes the provision of basic services and harms competition, thus impairing economic growth and poverty alleviation efforts. The StAR Initiative also helps countries to establish the legal framework and acquire institutional expertise and skills to recover stolen assets. It works with partners in countries all over the world to develop the most effective and appropriate tools to counter and prevent stolen assets vital to development.³

The impact of the recovery of stolen assets on human rights

The true cost of corruption far exceeds the value of assets stolen by countries leaders. This cost includes the deterioration of the performance of governmental institutions, especially those concerned with managing public funds and the government of the financial sector, the weakening and perhaps the destroying of private investment climate, in addition to spoiling the mechanisms for providing social services related to education and health care programs, which has a severe and stifling effect on the poor in particular. It is noted that this cost, which is considered as collateral losses, increases directly with the term of office of the corrupt ruler or leader.

³ مبادرة استرداد الاموال الممسروقة ستار، البنك الدولي، الرابط، https://star.worldbank.org/sites/default/files/2021-01/star_brochure_arabic.pdf

Failure to address economic crimes and the failure to combat widespread corruption that promotes gross violations of human rights, contributes to undermining the building of the rule of law and the appropriation of the state and its institutions, provides a breeding environment for the outbreak of conflicts and the perpetuation of poverty and inequality, hinders the fledgling democracies in transitional stages, and significantly undermining the transitional justice process, thus economic crimes remain unaddressed and often exacerbated.⁴

The return of stolen assets contributes to solving the crises faced by some Arab countries, such as containing the escalating movement calling for settling development crises. In **Iraq**, for example, this permissible assets were enough to help improving the conditions of the country, and it cannot be dealt with in the local context. The transitional government in **Sudan** also needs the money stolen by the leaders of Al-Bashir's rule who ruled the country for three decades, which can be collected through the efforts of the committee to remove empowerment, fight corruption and recover the stolen assets during the rule of the ousted president, Omar Al-Bashir, given the deteriorating economic conditions facing the country, while taking into account that stolen money, real estate and companies have been recovered. Accordingly, the political will of the Sudanese government, which wanted to get out of the US State Department's list of state sponsors of terrorism, and take steps in the direction of combating money laundering, would help it recover the stolen assets.⁵

Corruption crimes and the appropriation of public funds also undermines the economy of countries due to the loss of the stolen assets by corruption. Therefore, the recovery of these assets constitutes reparation for this damage, and the recovery of the stolen proceeds eliminates the motives tempting people to commit these acts, as it will restore the economic development of countries by reusing these assets to achieve the desired development. Moreover, recovering the stolen assets alleviates the damage incurred by democratic institutions and the institutions of society, and re-strengthens and consolidates them. Besides, it helps in eliminating corruption and counter its spread, as it strengthens the chances of achieving development in all fields, enhances job opportunities, improves the quality of health and education services, and achieves social justice.⁶

⁴ لى قنوت، الفساد والجرائم الاقتصادية في المراحل الانتقالية ودرس قاس في المفاوضات، مركز حرمون للدراسات المعاصرة، 10 نوفمبر 2020، الرابط، <https://bit.ly/32LJjTo>
⁵ أرصدة الفساد: تحديات استعادة الأموال العربية المنهوبة بالخارج، مركز المستقبل للابحاث والدراسات المتقدمة، 27 مايو 2021، الرابط، <https://bit.ly/3AOSwa2>
⁶ الية استرداد الموجودات والعائدات المتحصلة من جرائم الفساد، الرابط، <https://bit.ly/3HuvQi3>

All in all, the task of handling stolen assets is a very big challenge. Different countries such as Nigeria, Peru and the Philippines have achieved some progress in this regard and could recover some of the its stolen assets, which was only possible after prolonged procedures that took much time and costs. Based on the experiences that these countries have gone through, it can be said that developing countries are likely to face real and dangerous obstacles in order to recover their stolen and stolen money, and even with the presence of the political will ready to pursue the stolen money, it is possible that this process will be obstructed due to the limited Legal, investigative and judicial capabilities and due to lack of financial resources. As for the countries in which the stolen assets are stashed, which are often developed countries, they may not show the required response to requests for legal support in this regard.⁷

Challenges facing asset recovery

Developing countries seeking to recover their stolen assets face several challenges, especially with regard to the need to promote and strengthen public governmental institutions and to develop financial and accounting systems that contribute to rising levels of transparency and accountability. The community of donor countries must support those countries and help them develop systems of governance characterized by openness and accountability. In addition, judicial systems must ensure the application of the requirements related to the principles of due diligence, and those systems must comply with all international agreements and recommendations related to combating money laundering and financial terrorism.⁸

Also, the absence of a near-complete informational map on the assets and properties of former senior state officials abroad is one of the most important challenges facing the official authorities concerned with recovering those assets. For example, some Arab countries do not have an information card that lists the money and properties of former officials, as they rely on fraud and fictitious companies that are established under pseudonyms, in addition to not knowing the identity of the countries to which the money was smuggled. Also, many international banks refuse to disclose their customers' accounts to preserve the principle of confidentiality and privacy.

⁷ هل تعيد مبادرة STAR ما نهبه سراق المال العام، الرأي ، الرابط، STAR هل تعيد مبادرة <https://bit.ly/3GpdfCy>

⁸ هل تعيد مبادرة STAR ما نهبه سراق المال العام، الرأي ، الرابط <https://bit.ly/3GpdfCy>

The multiplicity of levels of dealing with the authorities concerned with the recovery of assets is also another challenge complicating the process, as the process of tracing, freezing, confiscating and returning the stolen assets to their country of origin is usually a complex and lengthy one, involving multiple jurisdictions and often complicated by technical, legal or political barriers, which may cause conflict due to the lack of coordination between the authorities concerned with recovering stolen assets abroad. Therefore, some people are calling for supporting local coordination between the competent authorities in the process of recovering stolen assets, which results in the establishment of local work groups representing the partner parties, including regulatory, judicial, legal, diplomatic, intelligence, advisory, and financial bodies, central banks, among others.

The Covid-19 pandemic has also exacerbated the recovery of stolen assets abroad. Algeria, for example, confirmed that all European countries expressed their desire to cooperate with it to recover its stolen assets, but the Coronavirus pandemic disturbed these attempts. As the Algerian government refused to risk its economic experts to send them to Europe, where the infection rate in its countries is still very high.⁹

It can also be said that one of the problematic issues that affect the recovery process is the mechanism of disposing of the returned assets, although many international and regional agreements have established some controls that can be used to address the disputes that may arise between both countries over the disposition of those assets. In this context, some people call for promoting frameworks of managing recovered assets (such as creating a central bank account or a local central fund to receive confiscated assets at home and abroad, specifying the aspects of their disposal while ensuring complete transparency in the management of this account or fund.

Efforts by some Arab countries to recover stolen assets

The issue of stolen assets from Arab countries receives much attention from these countries. Collective action to reach a common vision and pressure on the countries of the world to respond to the demands of Arab countries became a priority in some Arab countries. However, despite the existence of parallel trends and movements led by many Arab countries to recover stolen assets and property abroad, there is a weakness in the international response to the recovery mechanisms used by Arab countries, despite the signing and

⁹ أرسدة الفساد: تحديات استعادة الأموال العربية المنهوبة بالخارج، مركز المستقبل للابحاث والدراسات المتقدمة، 27 مايو 2021، الرابط، <https://bit.ly/3AOSwa2>

ratification of international and regional agreements on combating corruption and strengthening cooperation with international organizations specialized to help countries recover their stolen assets, and to reduce the crimes of laundering corruption proceeds, as official agencies' movements have increased in Egypt, Sudan, Tunisia, Algeria, Mauritania, and Iraq to restore stolen assets abroad to achieve goals, including strengthening the legitimacy of the new governments, especially since corruption was one of the main drivers of the collapse of national states and the collapse of the rule of Arab leaders in the region such as Sudan and Algeria¹⁰.

The **Tunisian** efforts are the only Arab efforts that had a fruitful result, as they could return part of the stolen assets during the previous rule, and freeze some assets at some European countries in preparation for their confiscation and recovery. Some people attribute the success of the Tunisian state in this endeavor to the real political will to recover these assets, in addition to the great efforts made by the Tunisian Funds Recovery Committee to prepare documents and legal evidence that prove the ownership of these assets. On the contrary, **Egypt** has made a lot of efforts to recover stolen assets abroad, but these efforts were fruitless, due to the poor legal expertise¹¹.

In **Iraq**, the Iraqi government has sent letters through its embassies around the world to all countries containing stolen Iraqi assets, whether those deposited in banks during the previous government or those relating to money laundering that occurred after 2003. The Iraqi government estimates the amount of stolen assets from Iraq after 2003 by more than 150 billion dollars. Iraq is working to recover stolen assets according to criteria that will be established to conclude a memorandum of understanding, exchange information on wanted persons and their money, and organize requests for legal assistance. To this end, the Iraqi Commission of Integrity has concluded several memoranda of understanding with Jordan, Lebanon, Kuwait, Turkey, and Poland. Endeavors continue to go to other countries to conclude such memoranda to strengthen cooperation with them. It is worth noting that the priority in selecting countries is based on belief and knowledge of the possibility of existence of stolen assets in those countries. It is known that Iraq has been suffering since 2003 from rampant corruption in most of its institutions and mismanagement, which has resulted in wasting huge fortunes on fake projects and money laundering operations that powerful parties are accused of. This caused a severe economic crisis in Iraq, where the value of the

¹⁰ محمود الحضري، أموال العرب المنهوبة وريية استعادتها، البوابة نيوز، 21 مايو 2021، الرابط، <https://www.albawabhnews.com/4355826>

¹¹ آلية استرداد الموجودات والعائدات المتحصلة من جرائم الفساد، الرابط، <https://bit.ly/3HuvQi3>

deficit in the 2021 budget, as approved by Parliament, amounted to \$19.8 billion, compared to \$23.1 billion in 2019, knowing that Iraq did not approve the 2020 budget due to political tension. Despite the efforts made by Iraq to recover its stolen assets abroad, it has achieved so little.¹²

Algeria has also taken several steps to absorb the anger of the popular movement, such as launching a fund for stolen assets and property confiscated in the context of anti-corruption cases. The government worked to include it within the provisions of the Supplementary Budget Law for 2021. On April 5, 2021, Algeria managed to recover at least 44 properties, including palaces and apartments in France, as part of the process of recovering stolen assets abroad, while confirming its commitment to recover these assets as soon as the final rulings are issued against those involved in corruption cases¹³. Also, the new government in **Mauritania** may work during the next stage to enhance its legitimacy by reviewing the file of stolen assets abroad. Political activists demonstrated on April 19, 2021, to demand the judicial authorities to recover the stolen assets during the rule of the former President Mohamed Ould Abdel Aziz, although the latter indicates that his pursuit is based on political issues, and his property is exaggeratedly inflated.¹⁴

Recommendations

Eventually, **Maat for Peace, Development and Human Rights** stresses the importance of recovering stolen assets for African and Arab countries in transitional stages, especially in light of the negative repercussions of the Covid-19 pandemic on the economies of developing countries. It also stresses that the absence of transparency and weak accountability facilitates the embezzlement of public funds. There is a lack of compliance with the principles of good and responsible governance, compounded with poor checks, balances system and key public institutions, limited freedom of civil society, and lack of respect and violation of the rules of law. In addition, without effective cooperation and strong will of states, little will be achieved. Maat, therefore, recommends the following:-

- The Human Rights Council must address the negative impact of stolen assets' flows on human rights, and review a number of indicators on the extent of the impact of illicit funds flows on the economies of the African continent and Arab countries in particular.

¹² 5 دول عربية في رحلة البحث عن اموال العراق المنهوبة، موقع العين الاخبارية، 2 نوفمبر 2021، الرابط، <https://al-ain.com/article/5-arab-countries-journev-find-iraq-looted-money>

<https://www.albawabhnews.com/4355826>

¹³ محمود الحضري، أموال العرب المنهوبة وريّة استعادتها، البوابة نيوز، 21 مايو 2021، الرابط، <https://bit.ly/3AOSwa2>

¹⁴ أرصدة الفساد: تحديات استعادة الأموال العربية المنهوبة بالخارج، مركز المستقبل للابحاث والدراسات المتقدمة، 27 مايو 2021، الرابط، <https://bit.ly/3AOSwa2>

- Countries must abide by the United Nations Convention against Corruption and ensure that cases of stolen assets are not subject to statute of limitations.
- Establishing an international court to recover stolen assets, as corruption, misappropriation of funds, and other corrupt practices are imprescriptible crimes.
- Finding controls and measures to involve civil society with its various components in recovering stolen assets and combating organized crime.
- Establishing an international department specialized in confronting organized crime and recovering stolen assets to assist countries in providing them with information, maintaining a database on organized gangs and their internationally known activity, and providing them with all advanced technological means.
- The state is obligated to recover all stolen assets at home and abroad due to misuse of power or due to abuse of influence, robbery, forgery and other illegal reasons in a way that guarantees the right of victims and society to hold the looters accountable administratively and judicially in accordance with national and international standards and in a manner that ensures the issuance of legislation that prevents illegal conduct of assets.