

Input on:

“The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation”

Submitted by:

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1. What are the negative impacts of non-repatriation of funds of illicit origin on the enjoyment of human rights? What were the positive impacts in cases in which such funds were returned to the country of origin?

In an ideal accountable and corruption-free environment, funds of illicit origin, instead of being stolen, should have been spent on public services that help populations realize their fundamental human rights, such as the rights to health, education, adequate standard of living, etc. Typically, when the funds are lost, the enjoyment of such rights are compromised or at least are not realized to their full potential. Oxfam estimated that money lost to tax evasion is double the amount needed to end global poverty once and for all. Although, the repatriation of illicit funds never match what was lost, it helps at least restore part of the lost enjoyment of right. Of course the benefits could be relatively maximized if the repatriated funds is spent on enhancing the rights of vulnerable groups, which is a trend an increasing number of countries are setting.

In addition to its restorative potential, asset recovery (AR) should also have a preventive potential. If a more effective international AR system is in place, it should discourage the funneling of illicit funds in the first place outside its country of origin in the first place.

2. What are the roles of national courts and procedures in establishing the illicit nature of funds required to be restituted?

Widescale corruption and the embezzlement of public funds normally happen after the capture of state institutions including the judiciary. They usually happen *because of* the co-optation or neutralization of the national courts, not *despite of* their existence. The current Mutual Legal Assistance (MLA) is the principal framework for AR, and it is conditioned to the existence of a cooperative, independent, functional and expert judiciary, in two or more countries. As we have seen from experience, and especially in the case of Egypt, this is seldom the case, because strong and independent institutions would have

prevented the emergence of acute and widescale corruption in the first place. Of course, building the capacity of national courts is key, but also developing an international mechanism for cases of full or partial failure of the judiciary is very important.

3. From your perspective, what is the applicable legal framework regarding funds of illicit origin and their repatriation, in terms of domestic law and international treaties?

There needs to be a massive reform in this area, especially on the international level. The current processes are unrealistic, daunting, lengthy, and require a lot of resources.

4. Can you provide examples of best practices or recommendations for the successful return of funds of illicit origin?

An international anti-corruption court or commission established by a treaty, or the International Criminal Court and the Rome Statute could expand their definition of international crimes to include cases of acute and widescale corruption. The court will look into cases of widescale and acute corruption perpetrated by political regimes, especially when linked to grave human rights abuses (acute corruption and grave human rights abuses more often than not come hand in hand). Being accused by the court will automatically mean that the member states must freeze and repatriate all assets belonging to the regime in question. Of course, it will be very challenging to return the money while the regime is still in power, but this will have the potential of cutting the regime's lifelines, and encourage the emergence of a democratic alternative that is more transparent and respectful to human rights if the repatriation of funds is conditioned to the emergence of such alternative. However, this mechanism should be set to have more of preventive potential rather than restorative potential. Most regimes want to use the international financial system, and if they know their actions could risk their international investments, they might think twice before carrying out a grave violation of human rights.

5. How can States, the United Nations, non-governmental organizations, national human rights institutions, and financial institutions contribute to the successful return of funds of illicit origin to their countries of origin?

As discussed above, widescale and acute corruption usually comes hand in hand with the co-optation of national institutions. Therefore, in the most grave of situations, they will most likely not be possible to rely on. Therefore, a more effective international mechanism that doesn't condition itself to the cooperation of national courts must emerge. The UN should be at its heart. Also, national NGOs and human rights organizations should step in in the areas where governments fail to cooperate such as in providing

evidence, and also monitoring the repatriation process, and then the spending of the repatriated funds to make sure it is spent with a human rights focus in mind.

6. Would you be in favour or against the following points related to off-shore companies?

1. A publicly available international register of offshore companies. **(in favour)**
2. Prohibition of anonymous shares in limited liability companies (LLCs). **(in favour)**
3. Making the ultimate beneficiary nominee of shares publicly known to avoid tax evasion. **(in favour)**