**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**

QUESTIONNAIRE

*As part of the consultations undertaken by the Human Rights Council Advisory Committee with* ***MemberStates,****with a view to preparing a report 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, pursuant to Council resolution 31/22.*

**Background**

At its thirty-first session in March 2016, the Human Rights Council adopted resolution 31/22 ([A/HRC/RES/31/22](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.24/Rev.1)), on funds of illicit origin and the non-repatriation thereof to the countries of origin, mandating the Advisory Committee to conduct a comprehensive research-based study on the impact of flow of funds of illicit origin and the non-repatriation thereof to the countries of origin on the enjoyment of human rights, including economic, social and cultural rights, with a special emphasis on the right to development, with a view to compiling relevant best practices and main challenges, and to make recommendations on tackling those challenges based on the best practices in question, and to present a progress report on the requested study to the Council at its thirty-sixth session (September 2017).

The Council also requested the Committee to seek, if necessary, further views and the input of Member States, relevant international and regional organizations, the United Nations High Commissioner for Human Rights and relevant special procedures, national human rights institutions and non-governmental organizations in order to finalize the above-mentioned study, taking into account, inter alia, the study conducted by the Independent Expert on foreign debt on [illicit financial flows](http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Consultation.aspx), human rights and the 2030 Agenda for Sustainable Development, which was presented to the Council at its thirty-first session in March 2016.

At its seventeenth session in August 2016, the Committee established a drafting group[[1]](#footnote-2) in charge of the preparation of the report mandated by Council resolution 31/22.The drafting group will present a draft progress report at the eighteenth session of the Committee in February 2017, before its submission to the thirty-six session of the Council.

It is therefore in this context that the drafting group elaborated the hereunder questionnaire in order to seek the views and inputs of Member States, relevant international and regional organizations, the United Nations High Commissioner for Human Rights and relevant special procedures, national human rights institutions and non-governmental organizations.

**QUESTIONNAIRE**

1. Has your country ever frozen, seizedor retained funds of illicit origin belonging to citizens of another country? If yes, please specify the following points:
2. What were the amounts of illicit funds which were frozen, seized or retained?

***Jamaica has seized sums based on fraud perpetrated against foreign citizens, particularly with respect to lottery scamming. These sums amount to approximately USD 1,034,998.***

1. When and from which country did the funds originate?

***The funds originated in the United States.***

1. Why were the funds frozen, seized or retained?

***The funds were seized as proceeds of crimes. Some funds may be forfeited under the Law Reform (Fraudulent Transactions) (Special Measures) Act.***

1. How long were the funds frozen in your country? What happens when the freeze ends?

***Funds are frozen until proceedings are completed. This depends on several factors, including whether there is a guilty plea or settlement, or whether the matter will go to trial. If the matter goes to trial, resolution of the case could take up to five years, or longer if there are appeals.***

***Once the matter is completed and third party rights are established, funds are returned to those owners.***

1. How much was returned to the country of origin? When? To which countries?

***The United States was the country of origin for all the funds. Funds have been returned to agencies and individual victims as follows:***

* ***Over JMD 107 million paid to the US Internal Revenue Services in March 2016***
* ***Approximately USD 45,000 and JMD 3.7 million paid over to US Marshals in April 2016***
* ***USD 27,078.10 repaid to US victim of fraud in May 2016***
* ***USD 106,644.21 repaid to US victim of fraud in December 2014***
* ***USD 45,509.73 repaid to US victim of fraud in February 2013***
1. How much was not returned? Why?

***All funds for which legitimate owners can be identified are handed over once the appropriate process is followed.***

1. If your country is retaining funds of illicit origin, could you indicate which countries the funds originated from?

***Jamaica does not retain funds of illicit origin once the owners can be identified.***

1. To countries of origin:
2. What requests have you made to other governments with regard to illicit funds originating from your country that were frozen, seized or retained by them?

**No requests have been made to foreign governments.**

1. What forms of repatriation of the illicit funds originating from your country would you prefer? For example, voluntary restitution?
2. What are the challenges that inhibit repatriation of illicit funds to countries of origin?

***(i) In many cases, the procedures for dealing with victims and parties with third party claims do not differentiate between residents and non-residents. Thus the domestic law may specify that a third party with a claim must file that claim in the domestic courts. This can prove challenging where the victim is abroad. (ii) In several cases there may be co-mingling of funds to which multiple victims may have a claim. There is no specific mechanism for resolving this issue and for ensuring an equitable distribution among victims.***

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?

***The non-repatriation of funds of illicit origin must affect those victims and by extension the economies of those victims. In some cases particularly those relating to scamming, the victims are elderly, and often sickly. In such cases, they are easily deprived of a substantial part of their wealth. This leads to economic hardship, depression and in some extreme cases, suicide.***

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

***In most cases, the domestic courts have to address the issue of restitution under specific statues, such as those dealing with lottery scamming or human trafficking. In cases involving proceeds of crime, the judge has to adjudicate on the rights of third parties to the funds adjudged to be proceeds of crime.***

1. 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?

***The framework includes specific statutes that govern restitution, proceeds of crimes legislation, as well as Mutual Legal Assistance (Criminal Matters) Legislation, where one country assists another to access assets or funds situated in the former that are the subject of confiscation orders issued in the second country. For the purposes of this Act the relevant treaties are:***

1. ***The Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.***
2. ***The International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17,1979.***
3. ***The International Convention for the Suppression of Terrorist Financing, adopted by the General Assembly of the United Nations on December 9, 1999.***
4. ***The Convention on the Physical Protection of Nuclear Material, adopted at Vienna on October 26,1979.***
5. ***The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on March 10,1988.***
6. ***The International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15,1997.***
7. ***The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970.***
8. ***The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971, and the Protocol to that Convention, done at Montreal on February 24,1988***

***Jamaica is also signatory to a number of bilateral asset-sharing agreements and protocols with the USA, Canada and the United Kingdom.***

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

***To best facilitate the return of assets the requesting country must provide compelling evidence that establishes a person’s or jurisdiction’s right to such property in order for the appropriate court orders to be made.***

1. 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?

***The successful return of funds depends on the ability of law enforcement authorities to successfully prosecute transnational crime. Without this foundation, the issue of return of funds will falter. Key to this is the arrangements for international cooperation particularly as regards the provision of evidence including the attendances of witnesses from abroad to properly prosecute the case Special measures such as the taking of evidence by video-conference should be instituted as international best practice to ensure that such facilities are available globally. The issue of returning the funds to victims is not difficult in simple cases once the court is aware of the claim of these parties. More difficult cases can arise when there are multiple victims and the funds that are recovered cannot meet the claims of all victims. In such cases there is the need for a universally accepted formulae or procedure that will achieve equity in such cases.***

1. Would you be in favour or against the following points related to off-shore companies?
2. A publicly available international register of offshore companies.

***This matter would require further study as the value of the registry would be dependent on the nature of the information to be captured in such a registry and the obligations for such information to be maintained in an up-to-date manner. For such a registry to be valuable in the case of retuning funds to other countries, such registers may have to record the assets of the relevant entity.***

1. Prohibition of anonymous shares in limited liability companies (LLCs).

***Jamaica supports this and notes that the International Standards for Anti Money Laundering and Countering the Financing of Terrorism already prohibit this.***

1. Making the ultimate beneficiary nominee of shares publicly known to avoid tax evasion***.***

 ***Jamaica is in support of this, in principle, but we note that this would be difficult to administer and to verify.***

***Government of Jamaica***

***December 2016***

1. A/HRC/AC/17/L.3, 12August 2016. [↑](#footnote-ref-2)