**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* ***Member******States,*** *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, seized or 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?

Information not readily available.

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

Libya.

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

Money laundering and having an illicit and criminal activity background.

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

Approximately two years; funds will be returned to rightful owners when freeze ends.

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

Information not readily available.

1. How much was not returned? Why?

Information not readily available.

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

Libya.

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?

Information not readily available.

1. What forms of repatriation of the illicit funds originating from your country would you prefer? For example, voluntary restitution?

Voluntary as well as statutory restitution.

1. What are the challenges that inhibit repatriation of illicit funds to countries of origin?

A general breakdown in the rule of law and order and democratic institutions.

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?

Repatriation as well as non-repatriation directly and indirectly affect the enjoyment of fundamental human rights, with the right to the enjoyment of property being the most affected.

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

Their role is fundamentally one of ensuring due independence and impartiality as well as an internationally recognised ‘due process of law’.

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 applicable legal framework should be one of enforcement subject to a regulatory basis.

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

**For countries of origin, ensure that decisions concerning the use of repatriated assets are taken in accordance with the principles underpinning a human rights-based approach and that the assets are used in a manner that reflects the will of the population and with particular sensitivity to the situation of marginalized groups.**

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?

Seek ways and means of facilitating bilateral negotiations, promoting multilateral and bilateral cooperation with a view to the restitution or return of cultural property as well as fostering a public information campaign on the issue, and promoting exchanges of cultural property.

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.
3. Prohibition of anonymous shares in limited liability companies (LLCs).
4. Making the ultimate beneficiary nominee of shares publicly known to avoid tax evasion.

I would be completely in favour of all the points mentioned above related to off-shore companies.

**Deadline for submission of responses to the questionnaire:**

In order to give the Drafting Group the opportunity to take into account the different contributions, all parties are encouraged to submit their responses as soon as possible and at the latest by **30 October 2016**.

Answers can be submitted via email to the following address:

hrcadvisorycommittee@ohchr.org

OR

Secretariat of the Human Rights Council Advisory Committee

c/o Ms. Dina Rossbacher

Office of the United Nations High Commissioner for Human Rights

Palais Wilson, Room 4-062, Fax: +41 22 917 9011

United Nations Office at Geneva,

CH-1211 Geneva 10, Switzerland

Thank you for your contribution.

For more information on the Advisory’s mandate: <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

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