**Maat for Peace’ Submission**

**Negative Impact of** **Non-repatriation of Funds of Illicit Origin on the Enjoyment of Human Rights, and Importance of Improving International Cooperation**

Submitted to: Office of the High Commissioner for Human Rights

Submitted by: Maat for Peace, Development and Human Rights (holds consultative status with the UN Economic and Social Council)

Submitted in: November 2023

**Introduction:**

Illicit financial flows have far-reaching impacts on the economic, social, and political development of countries. Illicit movement of financial wealth associated with corruption, human and drug trafficking, and tax evasion between different countries has detrimental consequences for government revenues. These revenues are crucial for financing government expenditures and implementing economic and social reforms aimed at improving the well-being and capabilities of citizens, especially those living in extreme poverty.

For instance, estimates from Maat reveal that African countries have lost over a trillion dollars in the past fifty years due to illicit financial flows. This amount is nearly equivalent to all the official development aid received by the continent during the same period. Such substantial losses have severely hindered the realization of human rights in Africa, including the right to development.[[1]](#footnote-1) It is evident that the outflow of illicit funds directly affects the full enjoyment of human rights, particularly economic, social, and cultural rights, which require increased financial resources for their implementation. In other words, the illicitly obtained money should have been allocated to public services that facilitate the population's realization of their basic human rights, such as healthcare, education, and an adequate standard of living.

While the flight of funds from illicit sources abroad significantly impacts the enjoyment of human rights, the failure to repatriate these funds to their countries of origin has an even broader effect. Apart from depriving governments of revenues that could fund essential public services like healthcare, education, and infrastructure, this stolen money diminishes citizens' quality of life and hampers their ability to meet basic needs. Additionally, failure to recover these funds undermines political stability, the rule of law, and promotes corruption and impunity. It exacerbates poverty, inequality, criminal activities, terrorism, and hinders overall economic, social, and political development. Therefore, combating illicit financial flows and facilitating their return to their countries of origin is crucial for the protection and promotion of human rights.

In light of these concerns, **Maat for Peace, Development, and Human Rights** presents this intervention to the High Commissioner for Human Rights, highlighting the negative impact of non-repatriation funds derived from illicit sources on the enjoyment of human rights. Maat focuses on several key questions outlined in the invitation, which are of particular interest and will be addressed in detail as follows:

**Key Questions:**

* **What are the main obstacles identified at different stages of the process of** **repatriation of funds of illicit origin to their countries of origin? Please refer to the legal, practical, and institutional obstacles identified (Question 1).**

Maat recognizes that repatriation of funds derived from illicit sources to their countries of origin is a multifaceted process fraught with legal, practical, and institutional challenges. These challenges can vary depending on the countries involved, the applicable legal frameworks, and the specific circumstances of each case. The following are the primary obstacles and challenges identified by Maat impede the process of repatriating funds derived from illicit sources to their countries of origin:

1. **Legal Challenges:**

Maat acknowledges that legal obstacles pose a significant challenge to the return of funds derived from illicit sources. The legal procedures involved in returning illicit funds between countries can be intricate and time-consuming. Often, such procedures necessitate coordination among multiple jurisdictions and the involvement of various law enforcement agencies and judicial bodies. These complexities make the recovery of illicit funds arduous and costly. Furthermore, discrepancies in legislation between requesting and requested countries can impede the recovery process, as some countries may lack harmonized laws governing the recovery of funds from illicit sources. The absence of appropriate legal frameworks, including laws pertaining to asset confiscation and recovery, further complicates the repatriation of illicit funds.

1. **Practical Challenges:**

Maat highlights the significant practical challenges that hinder the repatriation of funds derived from illicit sources to their countries of origin. One such challenge is the difficulty in gathering sufficient evidence to substantiate the illicit origin of the funds, particularly in cases involving money laundering or complex financial transactions aimed at concealing their source. Without clear evidence of corruption or illegal activities, initiating actions to repatriate illicit funds becomes challenging. Moreover, limited capacity and resources for effectively investigating cases of illicit financial flows and prosecuting those responsible pose additional obstacles to the recovery of such funds.

1. **Institutional Challenges:**

Institutional challenges also represent a major impediment to the repatriation of funds derived from illicit sources to their countries of origin, particularly in cases involving corruption and a lack of political will. In instances where government officials themselves are involved in corrupt practices and are unwilling to recover assets, efforts to return stolen funds are hindered. Additionally, lack of political will in requested countries to repatriate funds derived from illicit sources can present a significant challenge, especially when these countries seek to benefit from the gains obtained through such illicit financial flows.

* **What are the main obstacles that requesting and receiving countries face at the different stages of the process of** **repatriation of funds of illicit origin? (****Question 2)**

Maat recognizes that both requesting and receiving countries encounter various obstacles at each stage of the process of repatriation of funds of illicit origin to their countries of origin. These obstacles can be of a legal, practical, or institutional nature. The following are the primary obstacles that countries may face during the different stages of the refund process:

1. **Stage of identifying and tracking funds:**

Maat believed that there is a set of major obstacles during the stage of identifying and tracking stolen funds, when determining and tracking looted funds, these obstacles are the following:

* **Complex financial transactions**: Illicit funds are often funneled through intricate networks of financial transactions and offshore accounts, making it challenging to trace their origins.
* **Fictitious companies of unknown origin**: Some companies registered abroad serve as vehicles for concealing substantial illicit financial activities on behalf of wealthy individuals and even heads of state. These entities, often established in tax havens, are employed to mask the identities of those engaged in illegal activities, such as tax evasion, corruption, money laundering, and terrorist financing. The use of anonymous shell companies makes it difficult to determine the actual owners of the assets, impeding efforts to identify the beneficiaries of illicit funds.
* **Secrecy jurisdictions**: Certain jurisdictions offer robust financial secrecy, creating hurdles in tracking and identifying hidden assets. For example, jurisdictions like the British Virgin Islands act as secrecy havens, enabling the establishment of companies that hold assets acquired through illicit means without disclosing the identities of their beneficial owners. This has allowed some affluent politicians and businessmen to conceal their ill-gotten gains or evade taxes, making it challenging for law enforcement agencies to trace the assets of criminals and corrupt officials.[[2]](#footnote-2)
1. **Stage of seizing or freezing funds:**

During the stage of seizing or freezing stolen funds, requesting and receiving countries encounter significant obstacles, which include:

* **Legal and procedural obstacles**: Differences in legal systems and procedures between requesting and receiving countries can lead to delays and complications in the process of seizing and freezing looted funds.
* **Political considerations**: Political factors can influence the willingness of requested countries to freeze or seize assets, particularly when diplomatic relations between requesting and requested countries are strained.
* **Burden of proof**: Requesting countries may encounter substantial difficulties in providing evidence that assets and funds smuggled abroad resulted from illegal activities, particularly when dealing with assets held through complex financial structures.
* **Asset flight**: To evade asset freezes, individuals involved may attempt to transfer funds to other jurisdictions to avoid confiscation.
* **Please describe the negative impact of non-repatriation of funds of illicit origin to their countries of origin on the enjoyment of human rights, with a greater focus on economic, social, and cultural rights. (Question 3)**

Maat emphasizes that the failure to return illicit funds to their countries of origin has far-reaching negative consequences on the full enjoyment of human rights, particularly economic, social, and cultural rights. Illicit financial flows, in this regard, drain a country's economic resources and hamper its economic, social, and political development. The illicit outflow of financial wealth associated with corruption, human and drug trafficking, and unpaid tax revenues between different countries has severe and adverse repercussions on government income. These funds are crucial for financing public expenditure and implementing economic and social reforms aimed at improving the well-being and capabilities of citizens, particularly those living in extreme poverty.

For instance, according to estimates by Maat, African countries have lost over a trillion dollars in the last fifty years due to illicit financial flows. This amount is nearly equivalent to the total official development aid received by the continent during the same period. Such losses have had a widespread negative impact on the realization of human rights in Africa, including the right to development. The looted funds could have been utilized to finance essential public services and infrastructure projects, benefiting millions of people across the continent.[[3]](#footnote-3)

Consequently, the failure to return illicit financial flows to their countries of origin directly undermines the full enjoyment of all human rights, particularly economic, social, and cultural rights. These rights, including the right to health, education, work, and an adequate standard of living, require greater financial resources and government revenues. When these funds are not repatriated, countries are deprived of resources that could have been invested in economic development, job creation, poverty reduction, improved education and healthcare systems, cultural preservation, affordable housing, infrastructure development, sanitation, and enhanced social welfare programs. The non-recovery of these funds can also erode political stability, the rule of law, and perpetuate corruption, impunity, poverty, inequality, criminal activities, and terrorism. It hampers progress in all economic, social, and political dimensions of development. Therefore, efforts to combat illicit financial flows and facilitate their return to their countries of origin are crucial and imperative to safeguard and promote human rights.

* **Please share what mechanisms, if any, are in place in your country to measure illicit financial flows related not only to corruption but also to human and drug trafficking. (Question 5)**

The Arab Republic of Egypt has established several mechanisms to measure illicit financial flows associated with corruption, human and drug trafficking, as well as other illicit activities. The most significant of these mechanisms include:

**Egyptian Financial Investigation Unit:** The Arab Republic of Egypt houses a financial intelligence unit called the Egyptian Anti-Money Laundering and Terrorist Financing Unit. This unit is responsible for collecting, analyzing, and disseminating financial information pertaining to money laundering, terrorist financing, human and drug trafficking, and other illicit financial activities.[[4]](#footnote-4)

**The National Coordinating Committee in the field of combating money laundering and terrorist financing**: Egypt established the National Coordinating Committee to combat money laundering and terrorist financing in accordance with Prime Minister’s Resolution No. 63 of 2005. This committee's primary responsibility is to coordinate the efforts of all government agencies involved in combating money laundering and terrorist financing. Additionally, the committee is responsible for developing and approving Egypt's strategy to combat money laundering and terrorist financing, overseeing its implementation, and identifying and measuring indirect financial flows.[[5]](#footnote-5)

**Central Bank of Egypt**: The Central Bank of Egypt is tasked with supervising the financial system and enforcing regulations related to anti-money laundering and counter-terrorism financing. The Central Bank also collects data on cross-border financial transactions, which can aid in identifying and measuring indirect financial flows.

**Law Enforcement Agencies**: Egyptian law enforcement agencies, including the police and specialized units, play a role in investigating and prosecuting cases related to human trafficking and drug trafficking. As part of their work, they track and confiscate illicit assets.

* **What measures should be taken to ensure that repatriated assets are allocated to the realization of human rights? Please provide information on good practices in this regard, including the establishment of management and oversight mechanisms to ensure the appropriate use of repatriated funds. (Question 6)**

Maat emphasizes the importance of taking measures to ensure that repatriated assets are allocated towards the realization of human rights and benefit the affected population. Establishing effective management and oversight mechanisms is crucial for achieving this objective. Here are some measures that can be implemented:

* + Establish a clear and transparent framework for managing and overseeing repatriated assets. This framework should be developed through consultation with relevant stakeholders, including government agencies, civil society organizations, and affected communities. It should explicitly state that the funds are to be used exclusively for human rights-related purposes.
	+ Create a dedicated fund to manage the repatriated assets. This fund should operate independently and be separate from the government's general budget. It should be accountable to the public, ensuring transparency and accountability in the use of funds.
	+ Prioritize human rights projects by conducting a comprehensive needs assessment. Identify specific human rights projects or programs that will benefit from the repatriated assets. Prioritize initiatives that address the needs of vulnerable and marginalized populations, while also focusing on poverty reduction, healthcare, education, and social services.
	+ Implement monitoring and oversight mechanisms to ensure the effective and efficient use of repatriated assets in achieving tangible human rights outcomes. Regular financial audits should be conducted to ensure transparency and accountability in asset management.

Maat has identified some good practices in countries where effective management and oversight mechanisms have been established to ensure that repatriated assets are allocated towards the promotion of human rights. For instance, in Beirut, the country has established a National Committee on Assets Recovered from Corruption, which operates a trust fund for managing recovered assets and illicit financial flows. The trust fund is overseen by a committee comprising representatives from government agencies, civil society organizations, and academia. Its purpose is to allocate funds to human rights-based programs and projects.[[6]](#footnote-6)

1. UNCTAD, UNECA help African countries measure illicit financial flows, UNCTAD, 16 February 2021, link: <https://bit.ly/3Q9N3UQ> [↑](#footnote-ref-1)
2. Increased scrutiny threatens British Virgin Islands and wealthy clients, The Financial Times, MARCH 18 2022, link: <https://on.ft.com/48HwOFs> [↑](#footnote-ref-2)
3. UNCTAD, UNECA help African countries measure illicit financial flows, UNCTAD, 16 February 2021, link: <https://bit.ly/3Q9N3UQ> [↑](#footnote-ref-3)
4. Egyptian Anti-Money Laundering and Terrorist Financing Unit, <https://bit.ly/45OKX6B> [↑](#footnote-ref-4)
5. National Committee, <https://bit.ly/3qaajxe> [↑](#footnote-ref-5)
6. Managing Proceeds of Asset Recovery:The Case of Nigeria, Peru, the Philippines and Kazakhstan, <https://bit.ly/3RQCSFD> [↑](#footnote-ref-6)