

## Recovering the proceeds of corruption under the United Nations Convention against Corruption

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### **Abstract :**

*Corruption has witnessed rapid developments, especially due to globalization, technological progress and the development of communication technologies, which helped the phenomenon of corruption to cross national borders and fluidize its forms, which has become a great challenge for state institutions and the various options entrusted to them, especially in the field of detection*

*The Anti-Corruption and Prevention Law did not limit itself to repressive measures, but rather included other measures to confront the crimes stipulated in this law.*

*These measures can be classified into measures included in the framework of international cooperation, and others that come at a later stage and are known as property recovery measures. The recovery of assets or property is considered a fundamental principle of supporting the strengthening of international efforts in the field of preventing and combating crimes stipulated in the Anti-Corruption Law.*

**Keywords:** *Corruption, Asset Recovery, United Nations Convention against Corruption.*

## **Recouvrement des produits de la corruption dans le cadre de la Convention des Nations Unies contre la corruption**

### **Résumé :**

*La corruption a connu une évolution rapide, notamment en raison de la mondialisation, du progrès technologique et du développement des technologies de la communication, ce qui a permis au phénomène de la corruption de franchir les frontières nationales et de fluidifier ses formes, ce qui est devenu un grand défi pour les institutions étatiques et les différentes options qui leur sont confiées, en particulier dans le domaine de la détection*

*La loi sur la prévention et la lutte contre la corruption ne s'est pas limitée à des mesures répressives, mais a inclus d'autres mesures pour lutter contre les crimes stipulés dans cette loi.*

*Ces mesures peuvent être classées en mesures incluses dans le cadre de la coopération internationale, et d'autres qui interviennent à un stade ultérieur et sont connues sous le nom de mesures de récupération des biens. Le recouvrement d'actifs ou de biens est considéré comme un principe fondamental pour soutenir le renforcement des efforts internationaux dans le domaine de la prévention et de la lutte contre les crimes stipulés dans la loi anti-corruption.*

**Mots-clés :** *Corruption, recouvrement d'actifs, Convention des Nations Unies contre la corruption.*

## Introduction

The scourge of corruption has worsened in its seriousness and its negative effects on the social, economic, economic and security public life of the societies of the country and the world in an increasing manner, so this scourge has evolved from a mere manifestation of bureaucracy to a legal crime to then turn due to the complexity of its causes, manifestations, effects, seriousness and globalization into a phenomenon that is extremely dangerous to public, economic, social, political and security interests in all countries of the world, which has become a common denominator between countries that requires international and regional cooperation and collaboration to prevent and combat it by all methods, means and means. public, economic, social, political and security interests in all countries of the world, which made this phenomenon a common denominator between countries that requires international and regional cooperation and solidarity to prevent and combat it by all methods, means and preventive, therapeutic, legal, political and judicial measures in an integrated, harmonious and continuous manner.

Among the most important steps after criminalization or punishment is the attempt to recover and confiscate stolen funds, as it is a non-harmful step that the United Nations Convention against Corruption seeks to achieve, whether the damage is to its treasury or to individuals, it is necessary to try to discover, confiscate and recover stolen funds.

Thus, the issue of confiscation and recovery of the proceeds of corruption is of great importance, as the process of smuggling funds is dangerous for the state in the economy of funds and the difficulty of recovering them to enter the borders of other jurisdictions that enjoy sovereignty and privacy that pre-

vent an attempt without their consent, which opens new horizons in the fight against corruption and new horizons in international cooperation between countries, which made the United Nations Convention against Corruption (UNCAC

Hence, we pose the following question: What are the procedures for asset recovery according to the UNCAC ?

We will try to answer this question according to the following plan:

- First axis : Asset recovery procedures according to the United Nations Convention against Corruption.
- Second axis : Forms of international cooperation for asset recovery. The following is a breakdown of this.

## **1. Asset recovery procedures according to the United Nations Convention against Corruption**

The process of detecting and preventing the transfer of criminal proceeds in cooperation between different countries between different countries of the world and permanent coordination between them through detection and follow-up mechanisms, whether legislative through anti-corruption conventions or institutional, to identify the careful movement routes of criminal proceeds from corruption crimes, detect their values and prevent their transfer, whether in their state or by changing their legal or physical nature, and then accounting for these proceeds and freezing or seizing them as appropriate in preparation for their confiscation, and therefore the recovery of these proceeds It is no less important as it has very important effects in terms of deterring the corrupt by stripping them of their financial assets, whatever their nature and in any hand, taking into account the rights of bona fide third parties, which has a deterrent effect, especially depriving them of their influence over others who often bribe public officials and state statutory bodies to facilitate the transfer of their financial assets obtained

from corruption crimes because of the economic effects on the state concerned with those crimes, which lost those and burdened its public treasury.

Therefore, asset recovery is considered a fundamental principle of supporting the strengthening of international efforts in the field of combating corruption, as it is an important principle in the United Nations Convention against Corruption as required by Article 51 thereof, and is one of its purposes, as stated in Article 1 of the aforementioned Convention 1 Article 51 of the United Nations Convention against Corruption dated October 31, 2003 Algeria ratified it by Presidential Decree 06-137 dated 10/01/2006 so it was necessary to take adequate measures within the framework of international cooperation for asset recovery.

## **2. Forms of international cooperation for asset recovery. The following is a breakdown of this**

### **2.1. Preventing and detecting the transfer of criminal proceeds**

The efforts made in the field of detecting and preventing the transfer of criminal proceeds, whether those recognized by various international conventions in their legal measures or those that States urged to take within their legislative measures in their internal texts, as well as the institutions and bodies subject to the authorities of the state, which also urged them to the need to cooperate among themselves, especially by exchanging information, documents and results obtained in the field of detecting criminal proceeds derived from corruption offenses. We note that the United Nations Convention against Corruption obliges States Parties to take the necessary measures in accordance with their domestic laws, and to oblige financial institutions within their jurisdiction to verify the identity of the

beneficial owners of funds deposited in high-value accounts, with careful examination of the accounts, in addition to establishing banks that do not have a physical presence and are not affiliated with controlled financial groups, while obliging financial institutions not to enter into a relationship with banks affiliated with suspicious institutions As for public officials, the state shall establish effective financial disclosure systems (Mohammadi Bouzina Amna, 2021, p. 23) and penalties for non-compliance.<sup>1</sup> (Massoud Seriak, 2023, p. 337)

## **2.2. Direct recovery of property**

The United Nations Convention against Corruption (UNCAC) has urged States Parties to provide assistance in the field of asset recovery, and Article 51 of the Convention states in Chapter V on asset recovery that: « Asset recovery under this Chapter is a fundamental principle of this Convention, and States Parties shall provide each other with the greatest possible assistance in this field ».

The direct recovery of property is through the filing of a civil suit by UNCAC member states before the judicial authorities by recognizing their right to ownership of property obtained from corruption offenses.

Member states seek through their domestic legislation to make amendments to ensure that there are no legal obstacles in front of the claimant states that prevent the initiation of civil proceedings, while requiring the affected states to pay compen-

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<sup>1</sup> See Article 02 of the United Nations Convention against Corruption, corresponding to Article 02 of Law 06-01 on Preventing and Combating Corruption, dated 20-02-2006, as amended and supplemented- -See Article 02 of the United Nations Convention against Corruption, corresponding to Article 02 of Law 06-01 on preventing and combating corruption, dated 20-02-2006, amended and supplemented.

sation by the person who committed the criminal acts for the losses and damages committed by the state party.

Article 53 : stipulates that each state party, in accordance with its domestic law

1-Take such measures as may be necessary to allow another State Party to bring a civil action before its courts to establish a right to property acquired by the commission of a criminal act in accordance with this Convention or to establish ownership of such property. (Salami Nadia, 2017, p144)

.2-Take such measures as may be necessary to authorize its courts to order those who have committed offences established in accordance with this Convention to pay compensation to another State Party affected by such offences

.3-Take such measures as may be necessary to authorize its courts or competent authorities, when they have to decide on confiscation, to recognize as legitimate owners the claim of another State Party to property acquired through the commission of an offence established in accordance with this Convention (Ali Assama, Saleh Jazoul, 2021, p. 1110).

Extrapolating the above article, we find that Article 53 of the United Nations Convention against Corruption stipulates that States Parties are obligated to take measures that authorize their courts or competent authorities when they have to decide on the sources to recognize the claim of affected States to property acquired through criminal acts to consider them as the legitimate owner of it (Massoud Sariak, *op. cit.*, p. 337).

The Arab Convention against Corruption also recognized in Article 27 that property recovery is a fundamental principle in this convention, and that States Parties shall provide each other with the greatest possible assistance in this field, but it did not decide on measures for direct recovery of property within the text of the convention.

This is stipulated in Article 62 of Law 06/01, for example, where the Algerian judicial authorities considering the case filed can oblige persons convicted of these crimes to pay civil compensation to the claimant states for the damage they have suffered, and the court issues a decision on confiscation and orders what is necessary to preserve legitimate property rights that may be claimed by other states party to the Convention.<sup>1</sup>

The second axis is the forms of international cooperation for asset recovery

The existence of international cooperation to recover funds obtained from corruption offenses requires the establishment of a legal regime for the freezing, seizure and confiscation of financial assets, which is a necessary and certain precondition for international cooperation and asset recovery, as the domestic infrastructure paves the way for cooperation in matters related to confiscation.

Article 54 stipulates the necessary mechanisms for the implementation of international cooperation, namely the establishment of legal measures for the enforcement of a foreign freezing and confiscation order and the establishment of legal measures for the issuance of an order. International cooperation for the recovery of funds derived from corruption offenses requires the establishment of a legal regime for the freezing, seizure and confiscation of financial assets, a necessary and certain prerequisite for international cooperation and asset recovery, as the domestic infrastructure paves the way for cooperation in matters related to confiscation. (Samia Belgrave, 2016, p. 419)

Article 54 stipulates the necessary mechanisms for the application of international cooperation, which consists of the establishment of legal measures to enforce a foreign freezing and

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<sup>1</sup> Article 62 of the amended and supplemented Law 06/01.

confiscation order and the establishment of legal measures to issue an order to freeze and seize property subject to confiscation at the request of the State of origin, thus, international cooperation takes two forms :

### **2.3. Procedures for receiving a request for confiscation :**

When a State party to a convention receives an order to freeze and seize funds with a view to confiscation, that State shall take all necessary measures to detect, trace, freeze or seize such proceeds of crime or property for the purpose of confiscation, and to give effect to the confiscation request, the following conditions must be met :

- Provide a copy of the final confiscation order.
- Indicate the facts and information related to the funds to be confiscated.
- Specify the measures to be taken by the requesting state for recovery.

States receiving a confiscation request can refuse requests if they do not receive sufficient evidence or if the property to be confiscated is of value.

The Arab Convention against Corruption also stipulates the need for international cooperation between states parties “for the purpose of confiscating assets derived from acts criminalized in accordance with the same convention.” This is mainly related to the conditions for submitting a request for confiscation and how it is submitted, as well as how the state or states receiving the request act, depending on the circumstances of the request, emphasizing that the rights of bona fide third parties shall not be prejudiced

## **2.4. Filing of the request for forfeiture by the receiving state**

As soon as the request for restitution is issued, the Receiving State shall take all measures and procedures to detect, freeze, seize and trace the proceeds of crime, taking into account the following conditions

Description of the property to be confiscated.

The requesting state's estimate of the value of the funds to be confiscated

A statement of facts and sufficient information to justify the confiscation requests.

In addition to these two forms, the State Parties to the Convention may:

- In the event of the death or escape of the offender and the impossibility of judicial prosecution, allow the confiscation of funds and property of foreign origin by issuing a judicial ruling on the offence of money laundering or any other offence within its jurisdiction, or through any other procedures authorized by its domestic law without a criminal conviction.

Additional measures may also be taken to allow its competent authorities to preserve property for forfeiture pursuant to a foreign arrest warrant or criminal indictment with

## **2.5. Fate of criminal proceeds :**

Article 57 of UNCAC defines the fate of criminal proceeds confiscated by a state under Article 31-55 of the Convention in several ways

Return the property to its rightful owners :

With reference to the above-mentioned Articles 31-55, proceeds of crime are returned to their rightful owners in two ways<sup>1</sup> :

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<sup>1</sup> Article 53 of the United Nations Convention against Corruption.

**The first method:** Direct recovery through judicial proceedings.

**The second Method:** Restitution of proceeds in accordance with treaties and conventions after the issuance of a final confiscation order. (Faiza Hawam, 2019, p. 1539)

## 2.6. Restitution of proceeds to victims :

This is according to paragraph C of Article 57 of the United Nations Convention against Corruption, but it did not detail how to determine the rights of victims and how to identify and identify victims of corruption crimes, which constitutes a practical obstacle in this field, and judicial systems should ensure that victims have the right to file lawsuits against those responsible for the harm they have suffered<sup>1</sup>.

The United Nations Convention against Corruption requires States Parties to take measures to ensure that individuals and entities that have suffered harm are granted the right to bring such lawsuits, and furthermore, the Convention allows the State to bring a private action in the civil courts of foreign countries in which assets acquired through corruption are located. (Faiza Hawam, *op. cit.*, p. 1539).

### C. Sharing proceeds with cooperating countries :

In determining what to do with confiscated assets, countries should return the assets to the victims or legitimate owners with a deduction for the expenses incurred in investigations and prosecutions, taking into account the agreements and treaties concluded between the States Parties. In cases where the return of assets is not mandatory, the law of confiscation should authorize the government to share those confiscated

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<sup>1</sup> Article 57 of the United Nations Convention against Corruption.

assets with the states. (Mohamed Ben Mohamed, Boussaida Magda, 2010, p. 80)

## **Conclusion**

The recovery process is not impossible, but it requires strategy, cooperation and collaboration from all experts and jurists, and work to exploit the conventions and initiatives of countries, especially the United Nations Convention against Corruption UNCA.

Despite the efforts made in the field of recovering the proceeds of corruption, they remain inadequate and have not resolved the issue of renewed efforts, and the recovery process and procedures are very complex, and the issue of locating looted funds may be one of the biggest obstacles, and the issue of asset recovery collides with bank secrecy, which is considered the biggest obstacle to recovery.

We try to make the following suggestions :

- The need to conclude several multilateral, regional and bilateral anti-corruption agreements to fulfill the purposes and requirements for the disclosure of criminal proceeds.
- Facilitating procedures for the recovery of criminal proceeds, especially the mechanism of direct recovery of property and easing the conditions for confiscation while ensuring the implementation of the judgments issued by the requesting countries, especially the issue of bank secrecy and the idea of sovereignty imposed by the principle of reciprocity, and the principle of good faith in transactions and its positive effects in this field.

- The need for states to amend their domestic laws in accordance with the requirements of implementing confiscation and recovery.
- Implementing the principles of governance of financial institutions, which would close safe havens for hiding funds derived from corruption offenses.
- Strengthening international cooperation in the field of recovery, with the need to exchange expertise and experiences in the judicial and police field, in line with modern criminal methods and developments at the international level, especially with regard to information and communication technologies.

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