

Inputs for OHCHR Resolution 52/21

Background information:

OHCHR [calls for inputs](#) pursuant Human Rights Council resolution [52/21](#) 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 which requests the Office of the United Nations High Commissioner for Human Rights to organize, before the fifty-fifth session of the Human Rights Council, a one-day intersessional expert meeting, on the obstacles to the repatriation of funds of illicit origin to the countries of origin and their impact on the enjoyment of human rights, to discuss challenges and best practices in this regard and to make recommendations, with the participation of States, the Advisory Committee and other stakeholders, and to present a report on the meeting, to the Council at its fifty-sixth session. Inputs may be sent by e-mail to maria.veramendivilla@un.org and must be received by **1 November 2023**.

Feedback from U4:

3. Please describe the negative impact of these obstacles and the non-repatriation of illicit funds to the countries of origin on the enjoyment of human rights, with an enhanced focus on economic, social and cultural rights.

The right to development is an inalienable human right.¹ IFFs constitute a direct threat to the realisation of such right by individuals. The repatriation of stolen assets to the country of origin constitutes the *endgame*, a way to restore – at least to a certain extent – the damage inflicted onto countries and populations when they were stripped of their much-needed resources.² The recovery of these assets has a twofold importance: i) when convicting corrupt officials and recovering those stolen assets, countries can generate funds for development, strengthen the rule of law, integrity and trust in government institutions; and ii) it has a deterrent effect on individuals by increasing the risk of engaging in associated illicit activities.³

Obstacles to the process of repatriation of stolen assets would compromise the rightful return of these funds to their country of origin, and the cycle of IFFs would remain open. From the angle of IFFs, these have detrimental impacts on a country. First, they directly reduce the funds available for consumption and investment in countries with already scarce resources, thus hindering domestic resource mobilisation. Also, they reduce the tax base of developing economies, thus furthering the dependence of these nations on official development assistance and commitment to foreign loans.⁴ Overall, they affect economic growth of

¹ See: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>

² See <https://baselgovernance.org/asset-recovery> & Mason, P (2020) *The end game: asset recovery and return – an unfinished agenda*.

³ See: <https://baselgovernance.org/asset-recovery>

⁴ World Bank (2017) Domestic Resource Mobilization (DRM) and Illicit Financial Flows (IFFs).

developing economies.⁵ All of these translate into vast social costs, such as less infrastructure and lower quality and coverage of public services for these countries, increasing inequality and compromising the path to sustainable development.

IFFs also have a detrimental impact on other structural conditions beyond economic growth. They benefit from weak governance – lower institutional capacity, higher levels of corruption and lower levels of political stability make a country more vulnerable to IFFs.⁶ The non-repatriation of these funds further exacerbates this vulnerability. Moreover, IFFs have a negative impact on women and vulnerable groups, who are already disproportionately affected by poverty, inequality, and violence. On the one hand, these groups are significantly more vulnerable to criminal activities that fuel IFFs, such as corruption and human trafficking,⁷ which are two of the main sources of illicit funds. On the other hand, while the impact is not necessarily direct, countries affected by IFFs have fewer public resources available for service provision and programmes that seek to tackle gender inequality (e.g., education and sexual and reproductive health, opportunities for formal employment), on which women are more dependent.^{8 9}

IFFs also have a detrimental impact on environmental sustainability. Estimates show that environmental crimes – in the form of illegal logging, wildlife crime and illegal mining, among others – constitute the third most lucrative illicit activity, after drug trafficking and smuggling.¹⁰ IFFs fuel these activities, as they are perceived as highly profitable and with lower risks, and feed into others, creating an ecosystem of criminality that combines corruption, fraud, tax evasion and money laundering.¹¹ Not returning illicit funds to their countries of origin would perpetuate these conditions.

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

Currently, there is an ongoing initiative by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Office on Drugs and Crime (UNODC) to measure and curb IFFs. Both agencies are the custodians of the SDG indicator 16.4.1. “Total value of inward and outward IFFs” in the effort to significantly reduce IFFs by 2030.¹² For this, they developed a Conceptual Framework for the Statistical Measurement of Illicit Financial

⁵ Nkemkiafu, A. G., & Tanyisoh, A. E. (2016). Illicit Financial Flows and Growth of Developing Countries. *American Journal of Business, Economics and Management*, 4(3), 16–22.

<http://www.openscienceonline.com/journal/ajbem>

⁶ Aziani, A; Ferwerda, J; Riccardi, M (2022) “Who are our owners? Exploring the ownership links of businesses to identify illicit financial flows” in *European Journal of Criminology*, 1542-1573, 19(6).

Kurebwa, J (2018) “Implications of illicit financial flows on Africa’s democratic governance” in *International Journal of Politics and Good Governance*, IX (9).

⁷ Merkle, O (2019) *The gendered dimensions of illicit financial flows*. U4 Helpdesk Answer 2019:5.

<https://www.u4.no/publications/the-gendered-dimensions-of-illicit-financial-flows>

⁸ OHCHR (n.d.) *Illicit Financial Flows threaten progress on gender equality*.

https://www.ohchr.org/sites/default/files/Documents/Issues/Development/Illicit-Financial-Flows_EN.pdf

⁹ Ngosa, C (2022) “The gendered impacts of illicit financial flows in developing countries” in *Journal of Academics Stand Against Poverty*. 56-70, 2(1)

¹⁰ Shaw, M; Nellemann, C; Stock, J (2018) *World Atlas of Illicit Flows*. <https://globalinitiative.net/wp-content/uploads/2018/09/Atlas-Illicit-Flows-FINAL-WEB-VERSION-copia-compressed.pdf>

¹¹ Igarapé Institute (2023) *Follow the money: Connecting anti-money laundering systems to disrupt environmental crime in the Amazon*. Strategic Paper 60. <https://igarape.org.br/en/follow-the-money/>

¹² See: <https://unctad.org/project/measuring-and-curbing-illicit-financial-flows>

Flows from its different sources: i) illicit tax and commercial practices; ii) illegal markets; iii) corruption; iv) exploitation-type and terrorism financing.¹³

As part of the project to measure and curb IFFs, UNODC developed methods to measure IFFs from criminal activities (i.e., migrant smuggling, drug trafficking, illegal mining, wildlife trafficking and corruption). Though they continue enhancing the methods to obtain more accurate estimates, in 2023, these agencies released the first official estimates of crime-related IFFs. This was the result of their pilot testing in nine countries across different continents: Mexico, Colombia, Ecuador, Peru, Bangladesh, Maldives, Nepal, Afghanistan, Myanmar.¹⁴ The official preliminary results are as follows:

Official estimates of crime-related IFFs reported on the Global SDG Indicators Database

Country	Source activity	IFFs estimations	Timeframe
Mexico	Drug trafficking	USD 12 084 million in inward IFFs from trafficking in drugs (heroin, cocaine, methamphetamine) on average per year	2015 - 2019
	Illegal markets - smuggling of migrants	USD 1 116 million in inward IFFs and USD 13.8 million in outward IFFs on average per year	2016 - 2018
Colombia	Drug trafficking	Between USD 1 152 and USD 8 619 million in inward IFFs annually. Between USD 197 and USD 267 million per year in outward IFFs from the import of inputs used in cocaine production	2015 - 2019
Ecuador	Illegal markets - smuggling of migrants	USD 13.6 million on average per year in outward IFFs	2017 - 2021
Peru	Drug trafficking	USD 1 482 million in inward IFFs from cocaine trafficking	2015 - 2017
Bangladesh	Drug trafficking	USD 481 million in outward IFFs on average per year from trafficking in methamphetamine tablets, heroin, and synthetic opioids.	2017 - 2021

¹³ UNODC & UNCTAD (2020) Conceptual framework for the statistical measurement of illicit financial flows.

<https://unctad.org/publication/conceptual-framework-statistical-measurement-illicit-financial-flows>

¹⁴ See: <https://unctad.org/news/first-ever-official-data-illicit-financial-flows-now-available>

Maldives	Drug trafficking	USD 16.4 million in outward IFFs on average per year from trafficking in cannabis, heroin, cocaine and ecstasy.	2020 - 2021
Nepal	Drug trafficking	USD 4.6 million in outward IFFs on average per year from heroin trafficking	2019 - 2021
	Exploitation-type	USD 3.3 million in inward IFFs from the recruitment of Nepali migrants exploited in forced labour abroad	2021
Afghanistan	Drug trafficking	Between USD 1 300 and USD 2 233 million in inward IFFs on average from the potential exports of opiates	2018, 2019 and 2021
Myanmar	Drug trafficking	Between USD 508 and USD 1 347 million in inward IFFs on average from the potential exports of opiates	2018 - 2022

Source: UNCTAD & UNODC

6. What measures should be undertaken to ensure that returned assets are devoted to the fulfilment of human rights? Please provide information on good practices in this regard, including in relation to the establishment of managing and oversight mechanisms to ensure the appropriate use of repatriated funds.

The Stolen Asset Recovery Initiative (STAR), has published guidance on this: *Stolen Asset Recovery Management of Returned Assets: Policy Considerations*, available at https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_ManagementReturnedAssets.pdf assets.^[1]

The guidance emphasizes that it is important to use returned assets for the benefit of society and to promote sustainable development. Thus, the management of recovered assets should take into account the social, economic, and environmental impact of their use, and should prioritize projects that promote social and economic development and contribute to poverty reduction.

In addition, the guidance discusses the importance of involving civil society organizations and local communities in the management of recovered assets, to ensure that the assets are used

in a way that meets the needs of the local population. It is necessary to establish clear and transparent procedures for the selection of organizations that will receive the assets and the monitoring of their use.

Several examples of using returned assets for the benefit of women and other marginalised and vulnerable groups in society are provided, in line with the view that using returned assets to support projects and programs that benefit these groups can help to address the inequalities and injustices resulting from corruption. It is often possible to make an explicit link between grand corruption and poverty,^[2] hence alleviating poverty and even reparations could be a justifiable way of using returned assets.^[3] For instance, in Nigeria, recovered assets from corruption have been used to fund a program that provides free healthcare services to pregnant women and children under the age of five. In Malaysia, recovered assets have been used to support a program that provides microcredit loans to women entrepreneurs. In Peru, recovered assets have been used to fund a program that provides legal aid and other support services to victims of gender-based violence.^[4]

^[1] Stolen Asset Recovery Initiative (STAR), (2009). *Stolen Asset Recovery Management of Returned Assets: Policy Considerations*, available at https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_ManagementReturnedAssets.pdf

^[2] Vlastic, M.V. and Cooper, G., 2011. Beyond the Duvalier Legacy: What New "Arab Spring" Governments Can Learn from Haiti and the Benefits of Stolen Asset Recovery. *Nw. UJ Int'l Hum. Rts.*, 10, p.19.

^[3] Manirabona, A.M. and Wemmers, J.A.M., 2014. It doesn't go away with time: Victims' need for reparation following crimes against humanity. In *Reparation for victims of crimes against humanity* (pp. 71-91). Routledge. There is a strong case for viewing corruption as a crime against humanity, justifying reparations. See Bantekas, I., 2006. Corruption as an international crime and crime against humanity: An outline of supplementary criminal justice policies. *Journal of International Criminal Justice*, 4(3), pp.466-484.

^[4] STAR, *ibid.*