

Submission to the Office of the United Nations High Commissioner for Human Rights
[Call for Input: 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](#)

By Lostisland

Q1: The repatriation of funds of illicit origin to their countries of origin is a crucial issue with profound human rights implications. Several significant obstacles hinder the successful execution of this process. On a legal front, one major challenge lies in establishing a solid legal framework that ensures cooperation between the host country where the illicit funds are held and the country of origin. Jurisdictional issues, differences in legal systems, and complex extradition treaties often create hurdles in the legal process. Practical challenges arise from the need to trace, freeze, and recover the illicit funds, which can be concealed in a web of offshore accounts and complex financial transactions. Additionally, the process of repatriation often requires extensive investigations and asset recovery procedures, which demand significant resources and expertise. Institutional obstacles manifest in the capacity and willingness of both countries' law enforcement agencies and judicial systems to effectively collaborate and navigate the intricate procedures involved in fund repatriation. Bureaucratic red tape, political considerations, and a lack of transparency can further impede the successful return of illicit funds.

These multifaceted obstacles not only affect the legal and procedural aspects of repatriation but also have direct implications for the enjoyment of human rights. The diversion of illicit funds away from their countries of origin perpetuates economic inequality, fosters corruption, and undermines the socio-economic development of these nations. This situation can deprive individuals of their right to an adequate standard of living, access to education, healthcare, and other fundamental rights. Therefore, addressing these challenges and enhancing international cooperation are vital to uphold human rights. Strengthening legal frameworks, promoting transparency, and fostering collaboration between countries are key steps in removing these obstacles, ensuring that illicit funds are repatriated to their countries of origin, and ultimately, contributing to the protection and promotion of human rights worldwide.

Q2: The main obstacles encountered by both requesting and requested States throughout the process of repatriation of illicit funds, encompass several critical stages. Firstly, during the identification and tracing of the funds, requesting States often face challenges related to inadequate financial intelligence, legal barriers, and the use of sophisticated financial structures that obscure the origins of illicit funds. These issues can hinder the initial tracking of the money. Secondly, when it comes to adopting measures to seize or freeze the funds, requested States may encounter resistance based on legal constraints, sovereignty concerns, and the need for concrete evidence, which can significantly delay the process. Thirdly, the confiscation of funds may be impeded by the lack of coordination between jurisdictions and the lengthy legal procedures involved, which can allow perpetrators to dissipate the assets. Finally, in the recovery and returning of the funds, bureaucratic inefficiencies, resource constraints, and political hurdles can hinder the timely repatriation. Addressing these obstacles requires enhanced international cooperation, harmonized legal frameworks, and improved information-sharing mechanisms to ensure that the negative impact of non-repatriation of illicit funds on the enjoyment of human rights is mitigated.

effectively.

Q3: The negative impact of obstacles and the non-repatriation of illicit funds to countries of origin on the enjoyment of human rights, particularly economic, social, and cultural rights, is profound. Illicit funds drain vital resources from these nations, leading to reduced investment in education, healthcare, and infrastructure, which in turn exacerbates poverty and inequality. The lack of funds for essential public services hinders access to quality education and healthcare, limiting opportunities for individuals to fulfill their potential and leading to increased mortality rates. Furthermore, the illicit financial flows often contribute to political corruption, eroding the rule of law and weakening institutions, further impeding economic development and human rights protection. In essence, the failure to repatriate these funds perpetuates a cycle of deprivation, reinforcing the dire need for enhanced international cooperation to combat this global issue and ensure that human rights, particularly economic, social, and cultural rights, are upheld for all.

Q4: The repatriation of funds of illicit origin to their countries of origin is a critical issue with significant implications for the enjoyment of human rights, as highlighted by Human Rights Council resolution 52/21. One of the main challenges faced by both requesting and requested States is the intricate nature of illicit financial flows and the legal and procedural hurdles that hinder their recovery and return. Requesting States often struggle to gather concrete evidence and build robust cases to substantiate their claims, as illicit financial activities are often concealed through complex networks of shell companies and offshore accounts. Additionally, requested States may resist repatriation efforts, citing legal barriers, sovereignty concerns, or lack of resources to investigate and recover such funds. For instance, if a corrupt politician embezzles public funds and hides them in a foreign bank, the legal procedures to establish ownership and repatriate the assets can be convoluted, requiring international legal cooperation.

Nevertheless, there are some good practices that have been observed in addressing these challenges. One example is the Mutual Legal Assistance Treaties (MLATs) and international agreements that facilitate cooperation between countries. These mechanisms help streamline the process of evidence sharing, asset tracing, and the legal steps necessary for repatriation. Furthermore, international organizations like the Financial Action Task Force (FATF) have set standards and best practices for combating money laundering and illicit financial flows. Countries that adhere to these standards and work closely with international bodies are often better positioned to tackle the obstacles associated with repatriating illicit funds. In some cases, the establishment of specialized units or agencies within requesting States can enhance their capacity to effectively investigate and prosecute cases related to illicit financial flows. Ultimately, overcoming these challenges requires a multifaceted approach that combines legal, diplomatic, and technical cooperation between requesting and requested States, as well as a commitment to upholding human rights and the rule of law.

Q6: To ensure that returned assets of illicit origin are effectively devoted to the fulfillment of human rights, a multi-pronged approach involving both the country of origin and the international community is crucial. Firstly, countries of origin should establish transparent and accountable mechanisms for managing repatriated funds. These mechanisms should involve a combination of governmental and civil society oversight to prevent the misuse of

these assets. Effective financial tracking and auditing systems can help ensure that the funds are channeled toward specific human rights projects and programs. Additionally, countries must prioritize the establishment of legal frameworks that require repatriated funds to be exclusively earmarked for human rights initiatives, and penalties should be in place for any misappropriation.

International cooperation is equally pivotal in this endeavor. Collaborative efforts among countries, intergovernmental organizations, and financial institutions can help trace and repatriate these funds. Strengthening legal and financial instruments to facilitate asset recovery, such as extradition treaties, mutual legal assistance agreements, and international anti-money laundering mechanisms, is essential. International bodies like the UN and the World Bank should play a significant role in coordinating and monitoring these efforts, ensuring that repatriated funds are used for the betterment of human rights in the countries of origin. Moreover, capacity-building programs and technical assistance should be provided to countries that may lack the expertise to manage repatriated funds effectively. By taking these measures, we can ensure that returned assets genuinely contribute to the enjoyment of human rights, thereby addressing the negative impact of non-repatriation on human rights fulfillment and fostering international cooperation in this vital area.

Q7: It is imperative to highlight that successful repatriation of funds of illicit origin to their countries of origin relies on multifaceted strategies. Several good practices and recommendations can significantly enhance international cooperation in addressing the negative impact of non-repatriation on human rights. Firstly, establishing transparent and accountable legal frameworks to govern the return of these funds is essential, ensuring that repatriated resources are utilized for the benefit of the affected populations. Secondly, fostering international collaboration through mechanisms such as mutual legal assistance and extradition treaties can expedite the recovery process. Moreover, promoting the responsible repatriation of assets should include strong due diligence procedures to prevent re-laundering, and fostering the engagement of civil society and anti-corruption organizations in the repatriation process can further enhance its effectiveness. Lastly, offering technical assistance to countries lacking the capacity to track, freeze, and repatriate illicit funds is crucial for addressing this human rights concern comprehensively. In conclusion, the repatriation of illicit funds should be guided by principles of transparency, accountability, and international cooperation to mitigate the adverse human rights impact effectively.

Q8: Addressing and repatriating illicit financial flows related to human and drug trafficking is a complex but crucial endeavor with significant implications for the enjoyment of human rights. Several opportunities and mechanisms exist for tackling this issue. First and foremost, international cooperation is paramount. Countries must collaborate through treaties, conventions, and bilateral agreements to facilitate the tracing, freezing, and repatriation of these illicit funds. Organizations like INTERPOL, UNODC, and the Egmont Group of Financial Intelligence Units play pivotal roles in fostering such cooperation. Furthermore, strengthening the capacity of financial intelligence units, law enforcement agencies, and judicial bodies is essential. This involves investing in training, technology, and resources to better detect and combat financial crimes linked to human and drug trafficking. Public-private partnerships are another avenue for addressing these challenges, with banks and other

financial institutions working with governments to enhance transparency and share information to detect suspicious transactions.

Moreover, a vital mechanism for repatriation is asset recovery legislation and frameworks that allow for the confiscation and return of assets of illicit origin. The United Nations Convention against Corruption (UNCAC) and its Asset Recovery Review Mechanism serve as valuable tools in this regard. To address the specific issue of drug trafficking-related illicit financial flows, cooperation with organizations like the International Narcotics Control Board (INCB) is essential. Additionally, civil society organizations and the media can contribute to raising awareness and pressuring governments and financial institutions to take action. In sum, tackling the negative impact of non-repatriation of funds of illicit origin on human rights enjoyment necessitates a multifaceted approach, including international cooperation, legal frameworks, capacity building, and public-private partnerships, all of which can help combat human and drug trafficking-related illicit financial flows and ensure that these funds are returned to their countries of origin, contributing to the protection of human rights.