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Human Rights Council
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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Senegal (on behalf of the African Group): draft resolution

19/.. The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights

The Human Rights Council,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the United Nations Convention against Transnational Organized Crime and other relevant human rights instruments,

Recalling General Assembly resolutions 60/251 of 15 March 2006, on the establishment of the Human Rights Council, 62/219 of 22 December 2007, on the report of the Council, and 65/281 of 17 June 2011 on the review of the Council, and Council resolutions 5/1, on the institution-building of the Council, and 5/2, on the code of conduct for special procedures mandate holders, of 18 June 2007, 11/11 of 18 June 2009, on the system of special procedures, and 16/21 of 25 March 2011, on the review of the work and functioning of the Human Rights Council,

Recalling also General Assembly resolutions 54/205 of 22 December 1999, on the prevention of corrupt practices and illegal transfer of funds, 55/61 of 4 December 2000, on an effective international legal instrument against corruption, and 55/188 of 20 December 2000, on preventing and combating corrupt practices and illegal transfer of funds and repatriation of such funds to the countries of origin,

Recalling further Human Rights Council resolution 17/23 of 17 June 2011,

Reiterating the commitment to ensure the effective enjoyment of all civil, political, economic, social and cultural rights for everyone, including the right to development, and the obligation of all States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms,

Deeply concerned that the enjoyment of human rights, be they economic, social and cultural, or civil and political, in particular the right to development, is seriously

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undermined by the phenomenon of corruption and the transfer of funds of illicit origin, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Noting the continued efforts of the Conference of the States Parties to the United Nations Convention against Corruption, through its various intergovernmental working groups, to overview the review process of the implementation of the Convention, to advise on the provision of technical assistance to building institutional and human capacity in States parties for the prevention of corruption, and to enhance international cooperation, including in the repatriation of funds of illicit origin,

Noting with deep concern that, despite the progress made since the United Nations Convention against Corruption entered into force, only around 2 per cent of the estimated funds of illicit origin annually leaving the developing world are repatriated to their countries of origin,

Affirming the mutual but differentiated responsibility of requesting and requested States in the repatriation of funds of illicit origin, cognizant that countries of origin must seek repatriation as part of their duty to ensure the application of the maximum available resources to the full realization of all human rights for all, including the right to development, address human rights violations and combat impunity, and that recipient countries, on the other hand, have a duty to assist and facilitate repatriation as part of their obligation of international cooperation and assistance under chapters IV and V of the United Nations Convention against Corruption and in the field of human rights, and in line with the commitment made at the 2005 World Summit to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds,

Concerned about the difficulties, particularly the practical difficulties, that both requested and requesting States face in the repatriation of funds of illicit origin, and noting the difficulties of providing information establishing a link between proceeds of corruption in the requested State and the crime committed in the requesting State, which in many cases may be difficult to prove,

Recognizing that States continue to face challenges in recovering funds of illicit origin owing to differences between legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of familiarity with the mutual legal assistance procedures of other States and difficulties in identifying the flow of funds of illicit origin, and noting the particular challenges in cases involving individuals who have been entrusted with prominent public functions and their family members and close associates,

Recognizing also that legal barriers are often compounded by factual and institutional obstacles, the most salient being the lack of will to cooperate, especially on the part of financial institutions, which often maintain an unresponsive and inefficient mutual legal assistance regime that discourages States from submitting requests for assistance and prioritizes domestic cases over foreign requests,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

1. *Takes note with appreciation* of the comprehensive study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights, contained in the report of the United Nations High Commissioner for Human Rights;[1]

[1] A/HRC/19/42.

2. *Alarmed* at cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, the deprivation of which threatens the political stability and sustainable development of those States, generates perverse incentives against building a democratic society and has a negative impact on the ability to fulfil their duty to ensure the application of the maximum available resources to the full realization of all human rights for all;

3. *Asserts* the urgent need to repatriate such illicit funds to the countries of origin without any conditionalities, and urges States requested to repatriate such funds to step up their efforts to trace, freeze and recover those funds in order to enable requesting States to fulfil their duty to ensure the application of the maximum available resources to the full realization of all human rights for all and to combat impunity;

4. *Acknowledges* the importance of achieving human rights-based policy coherence in the deliberations and actions by States Members of the Human Rights Council and in the intergovernmental process of implementing the United Nations Convention against Corruption on the repatriation of funds of illicit origin;

5. *Invites* the Conference of the States Parties to the United Nations Convention against Corruption to adopt a human rights-based approach when dealing with the repatriation of funds of illicit origin, and appreciates the continued efforts by the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference to assist States parties in fulfilling their obligations under the Convention to prevent, detect and deter in a more effective manner the international transfer of funds of illicit origin and to strengthen international cooperation in asset recovery, bearing in mind that, regardless of the capacities, resources and willingness of the requesting State's institutions and authorities, there is a victim society, which is a rights-holder, suffering the consequences of the transfer of those funds;

6. *Welcomes* the decision made at the fourth session of the Conference of the States Parties to the United Nations Convention against Corruption to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist States with regard to extradition and mutual legal assistance, and notes with appreciation the Stolen Assets Recovery Initiative of the World Bank Group and the United Nations Office on Drugs and Crime;

7. *Calls upon* all recipient States to acknowledge that they have a mutual but differentiated responsibility towards societies affected by corruption, and to make every effort to achieve the repatriation of funds of illicit origin to the countries of origin in order to diminish the negative impact of non-repatriation on the enjoyment of human rights, in particular economic, social and cultural rights in the countries of origin by, inter alia, lowering the barriers imposed on requiring jurisdictions at the tracing stage, especially taking into account the risks of dissipation of those funds, and by delinking confiscation measures from a requirement of conviction in the country of origin;

8. *Calls upon* all States requesting the repatriation of funds of illicit origin to apply the principles of accountability, transparency and participation in the decision-making process regarding the allocation of repatriated funds to the realization of economic, social and cultural rights in order to improve prevention and detection procedures, correct identified weaknesses or mismanagement, prevent impunity, provide effective remedies directed at creating conditions for avoiding new human rights violations and improve the overall administration of justice;

9. *Reaffirms* that it is the obligation of the State to investigate and prosecute corruption and to strengthen criminal proceedings directed at freezing or restraining funds of illicit origin in both requesting and requested States;

10. *Underlines* that, while it is the duty of the State to protect against human rights abuses, there is a corporate responsibility to comply with and respect all applicable laws and human rights, and a need for greater access to effective remedies by victims in order to realize effective prevention of, and remedy for, business-related human rights harm, as set out in the guiding principles on business and human rights;[2]

11. *Urges* States to seek appropriate means in accordance with their international obligations to ensure the cooperation and responsiveness of financial institutions to foreign requests to freeze and recover funds of illicit origin and the provision of efficient mutual legal assistance regime to States requesting repatriation of those funds;

12. *Requests* the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights to present to the Human Rights Council, at its twenty-first session, an in-depth study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on their ability to ensure the application of the maximum available resources to the full realization of all human rights, in particular economic, social and cultural rights, with special attention paid to developing countries burdened by foreign debt;

13. *Requests* the High Commissioner to report to the Human Rights Council, at its twenty-second session, on the status of implementation of the present resolution;

14. *Decides* to continue its consideration of this matter under the same agenda item.

[2] A/HRC/17/31, annex.