



# General Assembly

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## Human Rights Council

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Agenda item 3

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

**Cameroon,\* Ecuador,\*\* Libya\*\*\* and State of Palestine\*\*:** draft resolution

#### **46/... 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**

*The Human Rights Council,*

*Guided by the purposes and principles of the Charter of the United Nations,*

*Reaffirming* the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights, the Declaration on the Right to Development, the Vienna Declaration and Programme of Action, the United Nations Convention against Corruption and other relevant human rights instruments,

*Recalling* General Assembly resolutions 60/251 of 15 March 2006, 62/219 of 22 December 2007 and 65/281 of 17 June 2011, and Human Rights Council resolutions 5/1 and 5/2 of 18 June 2007, 11/11 of 18 June 2009 and 16/21 of 25 March 2011,

*Recalling also* General Assembly resolutions 73/190 of 17 December 2018, 74/276 of 1 June 2020 and 75/206 of 21 December 2020 on the importance of preventing and combating corrupt practices, and the promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development and the full realization of human rights,

*Recalling further* Human Rights Council resolutions 17/23 of 17 June 2011, 19/38 of 23 March 2012, 22/12 of 21 March 2013, 25/9 of 27 March 2014, 28/5 of 26 March 2015, 31/22 of 24 March 2016, 34/11 of 23 March 2017 and 40/4 of 21 March 2019,

*Recalling* that human rights, as recognized in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are universal, indivisible, interrelated and interdependent, and reiterating the commitment to ensure the effective enjoyment of all civil, political, economic, social and cultural rights for everyone, including the right to

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\* On behalf of the States Members of the United Nations that are members of the Group of African States.

\*\* State not a member of the Human Rights Council.

\*\*\* On behalf of the States Members of the United Nations that are members of the Group of Arab States.



development, and the primary responsibility of States to promote, protect and respect all human rights and fundamental freedoms,

*Reaffirming* that all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law, and that in no case may a people be deprived of its own means of subsistence,

*Concerned* that flows of funds of illicit origin deprive countries of resources required to progressively realize human rights, including economic, social and cultural rights, and in particular the right to development, in such a way that threatens the stability and sustainable development of States, undermines the values of democracy, the rule of law and morality and jeopardizes social, economic and political development,

*Recognizing* that good governance and the fight against corruption have a central role in the promotion and protection of human rights and in the elimination of obstacles to development, as well as in creating sustainable, effective, accountable and transparent institutions,

*Noting* the particular concern of developing countries and countries with economies in transition regarding the urgent need to return assets of illicit origin derived from corruption, in particular to countries from which they originated, consistent with the principles of the United Nations Convention against Corruption, in particular chapter V thereto, so as to enable countries to design and fund development projects in accordance with their national priorities in view of the importance that such assets can have to their sustainable development,

*Concerned* about the fact that funds of illicit origin, which are urgently needed for development and the realization of all human rights, are stalled in banks of requested States, which continue to accrue gains from them,

*Concerned also* that developing countries lose billions of dollars every year through illicit financial flows, and that, in Africa, it is estimated that, over the past 50 years, the continent has lost \$1 trillion in illicit financial flows, an amount equivalent to all the official development assistance received in the same time frame,

*Recognizing* the importance of studying the potential relationship between combating illicit financial flows and attaining debt sustainability, the availability of valuable resources for financing for development and the fulfilment of human rights obligations,

*Acknowledging* that the coronavirus disease (COVID-19) pandemic has put a spotlight on the limitations of Governments of developing countries to marshal their budgetary resources in times of crisis, reiterating the need to enhance and strengthen effective domestic resource mobilization, including accountable and transparent public expenditure systems, and that the harm done by illicit financial flows in overextending the limited resources of developing countries evidently affects their ability to address the Sustainable Development Goal financing gap and to mobilize domestic resources for longer-term development goals,

*Recognizing* that fighting corruption at all levels is a priority, that the prevention and eradication of corruption is a responsibility of all States, and that States should cooperate with one another, in accordance with the United Nations Convention against Corruption, with the support and full involvement of other stakeholders,

*Reaffirming* the commitment of States parties to the United Nations Convention against Corruption thereunder, and that the return of assets is one of the main purposes and a fundamental principle of the Convention, and underlining its central role in fostering international cooperation to combat corruption and to facilitate the return of the proceeds of corruption-related crimes, and stressing the need for universal adherence to the Convention and for its full implementation, and the full implementation of the resolutions and decisions of the Conference of the States Parties to the Convention, particularly the relevant decisions adopted at its fourth, fifth, sixth, seventh and eighth sessions,

*Recognizing* that strong and efficient domestic legal systems are essential in preventing and combating corrupt practices and the transfer of assets of illicit origin and in returning such assets, and recalling that the fight against all forms of corruption requires

strong institutions at all levels, including at the local level, able to take efficient preventive and law enforcement measures consistent with the United Nations Convention against Corruption, in particular chapters II and III thereof,

*Recalling* that the repatriation of funds of illicit origin requires the close and transparent coordination and cooperation of requesting and requested States, including between competent authorities, in particular the judicial authorities, within the shared responsibility to facilitate efficient international cooperation for the prompt recovery of assets of illicit origin,

*Affirming* the responsibilities of requesting and requested States in the return of the proceeds of crime, cognizant that requesting States must seek return 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 requested States, on the other hand, have a duty to assist and facilitate the return of the proceeds of crime, including through judicial assistance, 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,

*Concerned* at the challenges and difficulties that both requested and requesting States face in the return of the proceeds of crime owing to, inter alia, lack of political will in the requested States due to the benefits gained from the illicit financial flows, differences in 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, noting the particular challenges in recovering them in cases involving individuals who are or have been entrusted with prominent public functions and their family members and close associates, and recognizing that legal difficulties are often exacerbated by factual and institutional obstacles, and noting also the difficulties of providing information establishing a link between the proceeds of corruption in the requested State and the crime committed in the requesting State, which in many cases may be difficult to prove, and applying conditionalities by requested States,

*Recognizing* that numerous technical, legal and practical challenges are to be addressed in order to facilitate the repatriation of funds of illicit origin to countries from where they were originally stolen,

*Reaffirming* the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal targets 16.4, 16.5, 16.6 and 16.10, which underline the commitment of States to significantly reduce by 2030 illicit financial and arms flows, and the Addis Ababa Action Agenda, adopted at the Third International Conference on Financing for Development, held in Addis Ababa in July 2015, which underlined, in particular, that measures to curb illicit financial flows will be integral to achieving sustainable development,

*Welcoming* the work carried out by different United Nations bodies and mechanisms, including the United Nations Conference on Trade and Development, the United Nations Office on Drugs and Crime, and by international and regional organizations in preventing and combating all forms of corruption, and encouraging them to continue their consideration of the negative impact of illicit financial flows on the enjoyment of human rights, to further explore policy responses to the phenomenon, and to coordinate their efforts in this regard,

*Noting with appreciation* the Lausanne process initiative on practical guidelines for efficient asset recovery, the Stolen Assets Recovery Initiative of the World Bank Group and the United Nations Office on Drugs and Crime, and the outcome of the fourteenth session of the United Nations Conference on Trade and Development, held in Nairobi in 2016, and encouraging coordination among existing initiatives,

1. *Welcomes* the study of the Advisory Committee on utilizing non-repatriated illicit funds with a view to supporting the achievement of the Sustainable Development Goals, and takes note of the proposed courses of action in the study;<sup>1</sup>

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<sup>1</sup> A/HRC/43/66.

2. *Also welcomes* the work undertaken by 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, particularly economic, social and cultural rights,<sup>2</sup> and requests her to continue to consider the impact of illicit financial flows on the enjoyment of human rights as part of the mandate;

3. *Further welcomes* the high-level meeting on international cooperation to combat illicit financial flows and strengthen good practices on assets return, convened by the President of the General Assembly on 16 May 2019;

4. *Calls upon* all States that have not yet acceded to the United Nations Convention against Corruption to consider doing so as a matter of priority;

5. *Underscores* that the repatriation of funds of illicit origin is key for States that are undergoing a reform process and for improving the realization of economic, social and cultural rights, including the right to development, and for fulfilling their obligation to meet the legitimate aspirations of their peoples;

6. *Urges* requesting and requested States to cooperate to recover the proceeds of corruption, in particular, embezzled public funds, stolen assets and unaccounted-for assets, including those that are found in safe havens, and to demonstrate strong commitment to ensuring the return or disposal of such assets, including their return to the countries of origin;

7. *Urges* requested States to ensure the prompt and unconditional repatriation of funds of illicit origin to the countries of origin, and to actively participate in adopting a renewed, decisive and proactive commitment to tackle the phenomenon of illicit financial flows and their ensuing negative impact on human rights and the right to development, and to take urgent action to push forward the procedures aimed at the recovery of stolen assets;

8. *Encourages* requested States parties to the United Nations Convention against Corruption to respond to requests for assistance and to adopt such measures as may be necessary to enable them to provide a wider scope of assistance, pursuant to article 46 of the said Convention, in the absence of dual criminality;

9. *Asserts* the urgent need to return the proceeds of crime to the requesting countries without conditionalities, in accordance with the United Nations Convention against Corruption and with due process, to strive to eliminate safe havens that create incentives for transfer abroad of stolen assets and illicit financial flows, and to strengthen regulatory frameworks at all levels;

10. *Calls upon* all States to consider enacting legislation to address offences by business enterprises, including multinational corporations, that deprive Governments of legitimate domestic sources of revenue for the implementation of their development agendas, in compliance with their international obligations, including international human rights law;

11. *Underlines* that there is also 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;

12. *Calls upon* all States to seek to reduce opportunities for tax avoidance, to consider inserting anti-abuse clauses in all tax treaties and to enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities;

13. *Also calls upon* all States to consider waiving or reducing to the barest minimum reasonable expenses deducted when recovering assets, particularly when the requesting State is a developing country, bearing in mind that the return of illicitly acquired assets contributes to the achievement of the Sustainable Development Goals;

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<sup>2</sup> See A/HRC/46/29.

14. *Reiterates* the importance of full compliance with international human rights law in relation to the return of proceeds of crime, in particular due process rights in criminal or civil law matters against persons presumed to be responsible for corruption, tax evasion or other related criminal conduct and with respect to freezing and forfeiture;

15. *Invites* the Conference of the States Parties to the United Nations Convention against Corruption to consider ways of adopting a human rights-based approach in the implementation of the Convention, including when dealing with the return of the proceeds of crime, and appreciates the continued efforts of 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 the proceeds of crime and to strengthen international cooperation in asset recovery;

16. *Calls upon* States to continue to consider the establishment of an intergovernmental working group on the negative impact of illicit financial flows on the enjoyment of human rights, and to explore further policy responses to the phenomenon;

17. *Acknowledges* the important role that civil society can play in exposing corruption and drawing attention to the negative impact of the non-repatriation of funds of illicit origin on the rule of law and the realization of economic, social and cultural rights, and reiterates in this context the obligation of States to protect reporting persons in accordance with article 33 of the United Nations Convention against Corruption and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms;

18. *Welcomes* national initiatives to adopt anti-money-laundering legislation as an important step in the fight against corruption and the willingness demonstrated by some States to cooperate in facilitating the return of the proceeds of crime, and calls for more robust regulations in this regard, including through the implementation of policies aimed at reducing the flow of the proceeds of crime, and ensuring their return and the provision of technical assistance to developing countries;

19. *Encourages* all States to share best practices in the freezing and recovery of funds of illicit origin;

20. *Calls for* further international cooperation through, inter alia, the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, in accordance with the principles of the United Nations Convention against Corruption, and in this regard encourages close cooperation at the national and international levels between anti-corruption agencies, law enforcement agencies and financial intelligence units;

21. *Calls upon* all States requested to repatriate funds of illicit origin to uphold fully their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, in accordance with the United Nations Convention against Corruption, and to make every effort to achieve the repatriation of funds of illicit origin to the requesting States in order to diminish the negative impact of non-repatriation, including 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 and enhancing cooperation in this regard between competent agencies, in particular taking into account the risks of dissipation of those funds and, where appropriate, by delinking confiscation measures from a requirement of conviction in the country of origin;

22. *Calls upon* all States requesting the repatriation of funds of illicit origin to uphold fully their commitment to make the fight against corruption a priority at all levels and to curb the illicit transfer of funds, and 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;

23. *Reaffirms* that it is the obligation of the State to investigate and then prosecute corruption on the basis of evidence, and calls upon all States to strengthen criminal and/or civil proceedings directed at freezing or restraining funds of illicit origin, and in this context encourages requested States to provide information on legal frameworks and procedures to the requesting State and to remove barriers to asset recovery, including by simplifying their legal procedures and responding to requests for mutual legal assistance;

24. *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, particularly economic, social and cultural rights to conduct a new study, in connection with the previous relevant studies conducted by the mandate holder and the Advisory Committee, on a proposed non-binding set of practical guidelines for efficient asset recovery aiming at curbing the illicit transfer of funds and mitigating its negative effects on the enjoyment of human rights with a view to help requesting and requested States to strengthen their cooperation in this regard, and to present the study to the Human Rights Council at its fifty-second session;

25. *Requests* the Secretary-General and the United Nations High Commissioner for Human Rights to provide all the assistance, including financial resources, necessary to allow the Independent Expert to carry out the mandate set out in the present resolution, and calls upon all relevant stakeholders, including States and United Nations bodies and agencies, and other international and regional entities to cooperate fully with the Independent Expert in this regard;

26. *Encourages* States parties to consider, where appropriate, and in accordance with national law, the opportunity of referring to the draft Lausanne guidelines for efficient recovery of stolen assets in their practice, and any other relevant instruments;

27. *Stresses* the need for transparency in financial institutions and effective due diligence measures to be applied by financial intermediaries, calls upon 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 an efficient mutual legal assistance regime to States requesting repatriation of those funds, and encourages the promotion of human and institutional capacity-building in that regard;

28. *Decides* to convene, before its fiftieth session, a one-day intersessional seminar on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin 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 relevant stakeholders;

29. *Requests* the High Commissioner to present a report on the seminar to the Human Rights Council at its fifty-first session;

30. *Requests* the Secretary-General to bring the present resolution to the attention of all States Members of the United Nations and forums dealing with the issue of the repatriation of funds of illicit origin within the United Nations system for consideration and necessary action and coordination as appropriate, particularly within the context of the Conference of the States Parties to the United Nations Convention against Corruption and the United Nations Conference on Trade and Development;

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