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

Human rights bodies and mechanisms

Study on utilizing non-repatriated illicit funds with a view to supporting the achievement of the Sustainable Development Goals

Report of the Human Rights Council Advisory Committee*

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

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I. Mandate and background

1. In its resolution 34/11, the Human Rights Council requested the Human Rights Council Advisory Committee to conduct a study, in continuation of the study requested by the Council in its resolution 31/22, on the possibility of utilizing non-repatriated illicit funds, including through monetization and/or the establishment of investment funds, while completing the necessary legal procedures and in accordance with national priorities, with a view to supporting the achievement of the Sustainable Development Goals of the 2030 Agenda for Sustainable Development, contributing to the enhancement of the promotion of human rights and in accordance with obligations under international human rights law.
2. The Advisory Committee was requested to present the outcome of the study to the Human Rights Council at its thirty-ninth session. In view of the complexity of the question, which went beyond legal issues and required the consideration of financial structuring, the Council agreed that it would be presented to it at a later session.
3. Also in resolution 34/11, the Advisory Committee was requested to seek, if necessary, further views and the input of Member States, relevant international and regional organizations, United Nations bodies, including the United Nations Office on Drugs and Crime, national human rights institutions and non-governmental organizations, in order to finalize the study.
4. Two States (Côte d'Ivoire and the Philippines) and one national human rights institution (India) responded to the questionnaire that was circulated.
5. At its twentieth session, the Advisory Committee established a drafting group to prepare the report. The group was composed of Ibrahim Abdulaziz Alsheddi, Ludovic Hennebel, Mikhail Lebedev, Ajai Malhotra (Chair), Mona Omar, Changrok Soh, Dheerujall Seetulsingh (Rapporteur) and Jean Ziegler.
6. In its resolution 40/4, the Human Rights Council requested the Advisory Committee to seek the views of regional and international experts and organizations, as well as United Nations bodies and non-governmental organizations, on the question, including by holding a one-day meeting in Geneva in April or May 2019.
7. The meeting was able to be held only on 7 October 2019 in Geneva and was attended by a former Governor of the Central Bank of Tunisia, the Special Rapporteur on the right to development, 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, the Head of the Debt and Development Finance Branch of the Division on Globalization and Development Strategies of the United Nations Conference on Trade and Development and a national human rights expert from Tunisia. The experts made certain useful proposals on the way forward, which are included in the present report.¹
8. In the study conducted pursuant to Human Rights Council resolution 31/22 (see A/HRC/36/52 and Corr.1), the Advisory Committee addressed the main challenges hampering and delaying the repatriation of illicit funds, drawing on earlier United Nations-sponsored studies, including those of the Independent Expert (A/HRC/22/42 and A/HRC/22/42/Corr.1, A/HRC/28/60 and A/HRC/28/60/Corr.1 and A/HRC/31/61). It also compiled relevant best practices for putting a stop to illicit flows of funds, which usually flow from developing countries or less developed countries to banks and financial institutions in developed countries, often after transiting through various jurisdictions. Measures to be taken by countries of origin and destination to facilitate the repatriation of funds were also described and recommended.
9. At the meeting held by the Office of the United Nations High Commissioner for Human Rights in June 2019 on the theme "Recommended human rights principles and guidelines for the return of stolen assets", to which the Advisory Committee was not a

¹ The experts from the United Nations Office on Drugs and Crime and from the Government of Switzerland could not attend. Lawyers engaged in the field of finance declined the invitation.

party, the broad principle relevant to the study was reiterated, that negotiations regarding the return of illicit assets between countries of origin and countries of destination should include a human rights component from the outset.

10. The situation concerning the repatriation of illicit funds being highly unsatisfactory, in the study, the Advisory Committee considered the possibility of utilizing non-repatriated illicit funds, including by monetizing them and establishing investment funds, while the appropriate legal procedures were completed. Little work has been done to explore such possibilities. Several obstacles – of a legal, political or other nature – prevent the swift repatriation of illicit funds. The obstacles affect human rights and are highly detrimental to the countries of origin. The excessive delays and lengthy court procedures, such as in the cases involving the repatriation of illicit funds to Mali, Nigeria, Peru, the Philippines and Zambia, hinder development in many countries that are victims of transfers of illicit funds and may prevent such countries from attaining the Sustainable Development Goals by 2030.

11. In its resolutions 31/22 and 34/11, the Human Rights Council did not indicate whether the Advisory Committee should focus its study on the source of funds of illicit origin, in order to determine whether the funds emanated from the State, including public authorities and institutions, or whether they emanated from any other private entity or person. Taking a more general approach would mean looking at all illicit funds that are the result of illicit financial flows generated not only by economic or political authorities and institutions, but also by private citizens or companies, including for the purposes of tax evasion, embezzlement, money-laundering and the financing of terrorism.

II. Nature of illicit funds

12. In the study conducted pursuant to Human Rights Council resolution 31/22, the Advisory Committee provided an analysis of the definition of “illicit financial flows”, which is complex and not unanimously agreed upon. The Committee underlined that there were two interpretations of the word “illicit”: the first referred to funds illegally earned and the second referred to funds acquired from legitimate economic activities that became illicit due to a subsequent contravention or circumvention of the laws governing how those funds should be handled or addressed. Whereas it is true that the majority of illicit financial flows are related to cross-border tax transactions, corruption-based outflows constitute a small fraction of the total (A/HRC/36/52 and Corr.1, para. 9).

13. Illicit financial flows have a negative impact on human rights, irrespective of who is at the origin of the illicit transactions. However, with regard to the utilization of illicit funds pending repatriation, it would be more appropriate to look primarily at the illicit funds operated by the State, including other public authorities and institutions, so as to focus on the particular phenomenon of assets stolen and transferred by former dictators and their associates from developing countries to financial institutions in developed countries.

14. The reason for adopting such an approach is that judicial notice may be taken, in relevant cases, that certain heads of State (known to be dictators) and their associates have amassed immense fortunes abroad – the legitimate source of which cannot be explained. There arises a presumption that the funds are of illicit origin, even though that presumption is still subject to challenge in the courts of countries of destination and probably also in the courts of countries of origin. As explained below, it would be easier to have the funds frozen, either by judicial order or administratively. In its resolutions 31/22, 34/11 and 40/4, the Human Rights Council placed greater emphasis on corruption than on what may be termed management of private wealth.

15. The flow of funds coming from the management of private wealth, for example by shopping for tax advantages, may not always be seen as illicit funds under the law. It would be difficult to always rely on the presumption that the sources of funds in such cases are illicit. Funds transferred to offshore accounts and well-known financial centres have not always been gained illicitly. Furthermore, the courts in countries of destination tend to be strict in the application of the legal rules relating to the presumption of innocence, the presumption of lawfulness of transactions and the protection of property rights, which

means that, without reasonable grounds being put forward, they would reject any contention about the suspicious nature of certain funds. This is explained in detail by Radha Ivory of the University of Queensland in her analysis of the rich jurisprudence of the European Court of Human Rights and of local courts in protecting the human rights of individuals in cases of asset recovery.²

16. The possibility of utilizing non-repatriated illicit funds is therefore more realizable if applied to funds transferred by persons in the public domain or their associates and accomplices, such as former dictators who have absconded, who have passed away or who have been imprisoned, than to funds transferred by individuals in the private sector.

17. This does not preclude, however, the possibility of utilizing funds transferred by individuals in the private domain, should there be sufficient grounds for doing so, as there is in the case of unexplained wealth (i.e., where an individual who is not “in the public sector” in his or her country of origin cannot explain the source of the monies he or she is investing in the country of destination). Any course of action in that regard may still be subject to delays in judicial proceedings. Furthermore, not many jurisdictions have adopted the approach of shifting the burden of proof onto persons in whose name the funds or assets are held to explain the source of their wealth.

III. Freezing illicit funds

18. The asset recovery process is a lengthy one. After the investigation and tracing of the stolen assets, which may have transited through various jurisdictions, and after a request has been made through a mutual legal assistance mechanism to have the assets seized, the next stage is freezing the assets to prevent the holders from transferring them out of the jurisdiction of the relevant State.

19. The State that has frozen the assets would normally refuse to transfer the funds to the requesting State until such time as a final judgment has been delivered on the rightful ownership of the assets in question in both States.

20. The question is how the non-repatriated funds may be used in favour of the countries of origin, pending their repatriation, to help them to achieve the Sustainable Development Goals.

21. The first matter to be tackled concerning asset freezing is that there must be an agreement, albeit a tacit one, that the funds are of illicit origin, without waiting for a court to rule on the matter. In a study conducted in 2014, the World Bank mentioned the administrative freezing and confiscation measures that were used to freeze the assets held by individuals suspected of misappropriating the assets of Egypt, Libya and Tunisia. In those cases, infamous former rulers or Heads of Government had misappropriated assets and transferred them to institutions, mainly in developed countries. Some countries of destination have been willing to pass laws, regulations and decrees to freeze such assets. The authors of the study noted, for example, that:

Innovative measures that were quite successful – in terms both of broad application and of actual results obtained – were the laws, decisions and decrees passed requiring the freezing of assets held by individuals suspected of misappropriating assets of [Egypt], Libya or Tunisia. Canada, the European Union, Switzerland and the United States [of America] are among the countries [and entities] that acted rapidly to freeze assets, ultimately freezing 39 percent of the total value of assets frozen between 2010 and June 2012.

These measures differed from past cases because they were administrative in nature – an order by government to banks and other entities to freeze assets – as opposed to requiring a judicial order by a court or investigating magistrate, as well as a mutual legal assistance request. Such measures are typically reserved for situations such as

² Radha Ivory, *Corruption, Asset Recovery and the Protection of Property in Public International Law: the Human Rights of Bad Guys* (Cambridge, Cambridge University Press, 2014).

political upheaval or internal turmoil in the foreign jurisdiction, their purpose being to preserve assets and prevent them from being transferred elsewhere.³

22. More specifically, following the Arab Spring, laws leading to administrative freezes were adopted by a number of States members of the Organization for Economic Cooperation and Development (OECD). Canada adopted the Freezing Assets of Corrupt Foreign Officials Act and the Freezing Assets of Corrupt Foreign Officials (Tunisia and Egypt) Regulations, in which certain individuals were named. Such laws do not, however, go so far as to set out the steps for the return of the assets or for their use pending their repatriation.

23. The European Union has also adopted measures aimed at freezing the assets of persons who have misappropriated State funds of Egypt and Tunisia. Switzerland and the United States have done so in respect of Libya. In 2011, the Security Council, by its resolution 1973 (2011), decided to impose an asset freeze on members of the Qadhafi family and to freeze the funds and economic resources owned or controlled by the Libyan authorities, including those of the Central Bank of Libya, the Libyan Investment Authority and the Libyan National Oil Corporation. None of the measures, however, address how to utilize the frozen assets pending their eventual repatriation.

IV. Approach guided by the findings of the High-level Panel on Illicit Financial Flows from Africa

24. With regard to the African continent, the problem of illicit financial flows was thoroughly analysed in the report of the High-level Panel on Illicit Financial Flows from Africa.⁴

25. Although the High-level Panel did not specifically address the issue of the utilization of illicit funds pending their repatriation, in the report, it included a set of findings that point the way forward for the countries of origin of funds.

26. The High-level Panel underlined the political nature of the issue, by acknowledging that the phenomenon and the effect of illicit financial flows required a solution which ultimately rested upon negotiations and enhanced international cooperation.⁵ In fact, the political significance of the issue is evident from the ongoing work in various forums to find a plausible solution. However, according to the High-level Panel, efforts should be better coordinated to ensure consistency and success in tackling illicit financial flows.⁶

27. The High-level Panel drew attention to the technical aspects of illicit financial flows and expressed concern about the divergent approaches in the work on disparate components of illicit financial outflows undertaken regionally by the African Union and regional economic communities and at the global level by the Group of 20, OECD, the World Bank, the International Monetary Fund and the United Nations.⁷

28. The High-level Panel further recommended that development partners help countries of origin to stop illicit financial flows (finding 14). The recommendation could be extended to wealthy countries of destination agreeing to the possibility of using frozen illicit assets to finance development projects in countries of origin. Doing so would require significant political will and acumen. It is an option that should be put on the negotiating table, and discussions should be held to identify the conditions under which such a novel procedure could take place.

³ Larisa Gray and others, *Few and Far: the Hard Facts on Stolen Asset Recovery* (Washington, D.C., World Bank, 2014), p. 41.

⁴ Economic Commission for Africa, "Illicit financial flows: report of the High-level Panel on Illicit Financial Flows from Africa" (Addis Ababa, 2015).

⁵ *Ibid.*, p. 65.

⁶ *Ibid.*

⁷ *Ibid.*

29. Given that illicit financial flows have been openly mentioned as an obstacle to the achievement of the Sustainable Development Goals, countries of destination, with the assistance of countries of origin, have the responsibility of creating a unified global architecture for tackling illicit financial flows.

30. Implementing the recommendations of the High-level Panel will make it easier to channel frozen illicit funds into investment projects in countries of origin while awaiting the completion of all legal procedures. As with other aspects of the matter, the modalities of doing so will only be worked out if there is the political will to do so. The following recommendation of the Panel, in particular, could open the door to the possibility of utilizing non-repatriated illicit funds for the establishment of investment funds:

The African Union should engage with partner institutions to elaborate a global governance framework that will determine the conditions under which assets are frozen, managed and repatriated. The framework should include the creation of escrow accounts managed by regional development banks that will serve as custodians of the assets determined to be of illicit origin.⁸

31. The High-level Panel concluded that a clear framework for the handling of frozen assets was needed. Creating an institutional escrow system in which regional development banks are designated as escrow agents would be one rational path to follow in that regard. In the view of the Panel, regulations and mechanisms were needed to ensure that financial establishments and banks identified and refused to accept illicit financial flows, rather than relying on self-regulation by banks. Global frameworks on asset recovery should be reconfigured to require that frozen assets be placed in escrow accounts in regional development banks rather than allowing banks that are culpable in accepting such deposits to continue to benefit from them.⁹ Banks that are determined to have been complicit in the receipt of illicit funds should not be allowed to keep those funds while they are frozen. Accepting tainted funds should also be rendered highly unattractive to banks.

V. Obligations of countries of destination to allow the utilization of non-repatriated funds

32. In view of the fact that all States, especially the countries of destination of funds, have committed themselves to the achievement of the Sustainable Development Goals, there is a binding obligation on their part to support all measures that would help developing countries, especially the countries of origin of illicit funds, in that regard. At the meeting of experts, held at the request of the Human Rights Council, in Geneva on 7 October 2019, the possibility of utilizing non-repatriated illicit funds, including through monetization and/or the establishment of investment funds to support the achievement of the Goals, was considered.

33. Several Sustainable Development Goal targets relate to the topic of illicit funds. Goal 16, on peace, justice and strong institutions, includes target 16.4, by which States committed to significantly reducing illicit financial and arms flows, strengthening the recovery and return of stolen assets and combating all forms of organized crime by 2030.

34. Under Sustainable Development Goal 17, on partnerships for sustainable development, and target 17.1, Member States committed to strengthening domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection. Preventing flows of illicit funds and advancing the repatriation of such funds fall within the scope of target 17.1. Under target 17.9, Member States committed to enhancing international support for implementing effective and targeted capacity-building in developing countries to support national plans to implement all the Goals, including through North-South, South-South and triangular cooperation.

⁸ Ibid., p. 86.

⁹ Ibid., p. 70.

35. In the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, States pledged to redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption through strengthened national regulation and increased international cooperation.

36. The Declaration on the Right to Development, which the General Assembly adopted by its resolution 41/128, outlines the principles that should guide policy decisions at the national and international levels with respect to financing for development. Under article 1, communities should have full sovereignty over their natural wealth and resources, and under article 2, the benefits of development should be fairly distributed. Member States are called upon to taking all measures necessary for the realization of the right to development and to ensure equality of opportunity for all (art. 8). In addition, at the international level, the Declaration places a duty on States to cooperate with each other, both to promote more rapid development among developing countries and to remove obstacles to comprehensive development (arts. 3 (3) and 4 (2)). There are strong existing international commitments therefore linking the right to development, financing for development and combating illicit funds. Article 57 of the United Nations Convention against Corruption refers to the “legitimate owners” of assets and the “victims of the crime”. Under the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, “victims” include persons who, individually or collectively, have suffered economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States.

37. In his report to the Human Rights Council in July 2019, the Special Rapporteur on the right to development recommended that States should shift from a donor-recipient paradigm to a genuine partnership with developing countries, as envisaged in the Declaration on the Right to Development and Sustainable Development Goal 17, and that States should base their development financing on the priorities of recipient partners and guarantee that beneficiary States have ownership of development projects carried out with that financing (A/HRC/42/38, para. 73).

38. Moreover, a human rights-based approach to asset recovery implies that communities in the country where illicit funds originate may be recognized as rights holders and thereby enabled as key actors in processes and decisions that affect them, rather than being passive recipients. Framing the repatriation of funds as a human rights issue therefore portrays the countries bearing the frozen assets as duty bearers towards the countries of origin, with an obligation to help the rights holders to pursue their human rights claims.

39. Sustainable Development Goal 8, to promote sustained, inclusive and sustainable economic growth, is directly linked to the enhancement of socioeconomic rights, especially in developing countries. States, in the case of countries of destination as duty bearers, have an obligation to provide effective remedies for human rights violations, including legal and administrative procedures to facilitate the utilization of funds when recourse to justice takes more time than it should.¹⁰ From this perspective, the utilization of non-repatriated funds is a crucial component in supporting the realization of Goal 8.

40. The Addis Ababa Action Agenda, the 2030 Agenda and Agenda 2063 of the African Union further highlight the importance of tackling illicit financial flows. By some estimates, illicit flows from Africa could be as much as \$50 billion per year, which is approximately double the official development assistance that Africa receives per year. Using the proceeds of the investment of illicit funds would be part of the contribution of countries of destination to development assistance. Stopping illicit financial flows from Africa is a key policy priority for the continent – and for the world – a priority reflected in the Special Declaration on Illicit Financial Flows adopted by the Heads of State and Government of the African Union in 2015.

¹⁰ This is indirectly addressed in the document entitled “Who will be accountable? Human rights and the post-2015 development agenda”, issued by OHCHR and the Centre for Economic and Social Rights (Geneva and New York, 2013).

41. By adhering to the United Nations Convention against Corruption, States incur a binding obligation to fight corruption and to remedy the pernicious consequences of the transfer of illicit funds. Given that the ultimate repatriation of funds has become a challenging and long drawn out process, a middle ground should be sought. Some form of compensation to countries of origin must be transparently devised and accepted to make the funds productive for the benefit of the people in the countries of origin so that they may achieve nationally determined priorities. The possibility of utilizing illicit funds gives a glimmer of hope to developing countries that have suffered from the plundering of their economies.

42. Article 31 (3) of the United Nations Convention against Corruption requires States parties to adopt legislative and other measures to regulate the administration by the competent authorities of frozen, seized or confiscated property covered by the Convention. In 2019, the Open-ended Intergovernmental Working Group on Asset Recovery of the Conference of the States Parties to the Convention produced revised draft non-binding guidelines on the management of such assets (CAC/COSP/WG.2/2019/3), guideline 12 of which reads as follows:

Regardless of the institutional arrangements in place for asset management, States may wish to consider equipping relevant institutions with adequate skills and capacities and empowering them to enter into the necessary agreements or arrangements, including, as appropriate, with other public bodies or external contractors, as required for their effective functioning.

43. Those capacities would enable institutions set up such entities as an asset recovery unit to invest those assets in safe securities like government bonds. However, no mention is made as to whether the assets or the returns would be used to the benefit of countries of origin (see CAC/COSP/WG.2/2019/3).

44. Under the United Nations Environment Programme Finance Initiative, the global financial sector is called upon to mobilize private sector finance for sustainable development to serve people and the planet, while delivering positive impacts. Banks have committed to the ambitions set out on the principles for responsible banking, principle 1 of which is to align their business strategies to be consistent with and contribute to individuals' needs and society's goals, as expressed in the Sustainable Development Goals, the Paris Agreement on climate change and relevant national and regional frameworks.¹¹

45. In that context, banks in countries of destination that accept tainted funds from countries of origin should commit themselves to releasing those funds, if so required by their own States, for investment to benefit the country of origin pending their repatriation. Although such a procedure may meet with certain obstacles, banks would be failing in their duty, given that they may not have abided by the requirement to "know your client" when accepting deposits from illicit sources in the first place.

46. An additional burden falls upon the financial regulatory authorities of banks and other financial intermediaries in countries of destination in that they must control banks in terms of good governance. 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, made such a recommendation following his visit to Switzerland in 2017 (see A/HRC/37/54/Add.3).

47. The possibility exists therefore of utilizing non-repatriated illicit funds in the countries of destination through monetization and/or the establishment of investment funds for the benefit of the countries of origin to support them in achieving the Sustainable Development Goals. The countries of destination, which are developed countries in most cases, have a duty in that respect and cannot continue to benefit from the spoils of the acts of unscrupulous individuals who entrust those funds to banks in countries of destination, in violation of the economic and social rights of the people of the countries of origin, to whom they rightfully belong.

¹¹ See www.unepfi.org/banking/bankingprinciples/.

VI. Proposed courses of action

48. Below are proposals for utilizing non-repatriated illicit funds, with a view to supporting the achievement of the Sustainable Development Goals, that emerged from the meeting of experts in October 2019. Each proposal entails certain risks and challenges. In view of the intricacy of the subject, financial specialists must be consulted to evaluate the nature of the investments and their modalities and to conduct an assessment of the risks involved in reaching the desired results.

Proposal A: creation of a special fund in the country of origin

49. The first step in exploring the possibility of utilizing the illicit funds which have not been repatriated is identifying those funds in the country of destination. They may already have been identified, if there has been a request from the country of origin under a mutual legal assistance agreement between the two countries. Otherwise, as exemplified under the Foreign Illicit Assets Act of Switzerland, the initiative could also emanate from a country of destination that wants to be a clean financial centre or to safeguard its interests.

50. Under this procedure, assets pertaining to illicit funds, especially in the case of dictators who have absconded, who have passed away or who have been imprisoned, may be frozen through an administrative procedure or through a judicial procedure that is not conviction based. If there are criminal proceedings, it is likely that they will be protracted, but if there is cooperation between the authorities of the two countries, there may be speedier civil proceedings for freezing the assets to prevent them from being transferred out of the country and, ultimately, for enabling their utilization for the benefit of the citizens of the country of origin.

51. The country of destination should be in a position to permit the utilization of such illicit funds first so that they do not lie dormant and unproductive and so, in addition, they may be beneficial to the country of origin in reaching the Sustainable Development Goals by 2030.

52. The funds may be transferred to the country of origin by the ministry of finance, ministry of financial affairs or central bank of the country of destination. There must be a precondition, however, that the transferee will not put the funds into the consolidated fund or annual budget of the Government. A special fund should be created for the utilization of the money.

53. A separate board of management should be set up consisting of representatives from the public sector, including the central bank, and the private sector to decide on the use and allocation of the funds. The funds will be in the nature of a solidarity fund reserved for social projects to improve the living conditions of the population, especially those who are living in poverty.

Proposal B: creation of a fund of funds

54. One type of market-based re-empowerment scheme through which the non-repatriated assets could be revalued and reactivated monetarily and financially is the creation of a fund of funds in which each country of origin concerned would participate. The advantages of such a mechanism are manifold and include:

(a) Portfolios made of diverse assets from investments in bonds and equities, direct investment in different sectors, and indirect investment through a multitude of channels, such as asset management funds, private equity funds, hedge funds, payment funds, environmental funds, social funds and governance funds;

(b) Distribution of risk, which reduces the probability of losses and increases the opportunities of profit.

55. Countries of destination would entrust non-repatriated illicit funds to the newly created fund for investment. The other participants could be the Governments of the

countries of origin and any third parties and local or foreign investors, including national or regional or multinational or multilateral financial institutions.

56. The fund of funds would enjoy total freedom regarding the composition and management of their portfolios. However, two types of priorities should be taken into consideration:

(a) Investing, although not exclusively, in the real sector and the financial sector of the countries of origin;

(b) Lending greater attention to the activities that help to safeguard the environment, boost social equity and improve the quality of governance.

57. Revenues from such funds should be used to advance the implementation of the Sustainable Development Goals, in accordance with national priorities, determined through wide consultation and participation processes. The management of the funds and the utilization of the profits should be fully transparent. Systems should be set up to provide access to reliable, timely and easy to comprehend information thereon.

58. Working as a group would generally reduce each developing country's individual risk, and together they could avoid high trading costs, because the fund of funds would spread fee liability across all investors. Therefore, when properly managed, investment funds may provide a safe, consistent rate of return through which the countries of origin would progressively retrieve the amount of monies previously lost in the illicit financial flows. Investing in an equity fund, or investment fund, would entail buying shares of a portfolio overseen by a professional portfolio manager appointed by the country of origin. The portfolio manager would be responsible for picking the stocks in the portfolio and for the buy, sell and hold decisions.

59. The advantage of an investment fund is that money may be invested in a wide portfolio of shares and securities so as to spread risk and ensure "safe" returns. Destination countries holding funds must be willing to release them, however, which is dependent upon the political approach taken and bilateral negotiations. The funds could be managed by a mutual agency with several partners involved, which could provide more assurance to the country of origin.

Proposal C: creation of a fund governed by national central banks

60. One expert was more favourable to the setting up of a fund governed by or associated with national central banks, a view appertaining to the sovereignty of the country of origin. Investment funds channelled through international financial markets to generate private investment in developing economies must be considered very critically, given that it can be extremely expensive, uses public funds to subsidize private funds and could potentially lead to a simple shift from public to private corruption.

Proposal D: creation of a sovereign wealth fund in the country of destination

61. A sovereign wealth fund is also a means for utilizing the illicit funds which have not been repatriated. The country of destination could establish a sovereign wealth fund using the frozen illicit funds, which would be a State-owned investment fund investing in real and financial assets such as stocks, bonds, private equity funds or hedge funds. The return from the investments could be used for the benefit of the countries of origin.

62. Such a fund structure would enable Governments of countries of origin to apply for finance for specific programmes at low interest rates.

Proposal E: channelling the funds through regional banks

63. Another proposal is to channel the funds through regional banks, which have the financing of projects in member countries as an objective. This would be in line with the

proposals made by the High-level Panel on Illicit Financial Flows from Africa. Funds would be allocated pro rata to the countries of origin concerned. Where central banks act as independent monetary authorities, they could play a key role in the transfer of funds and in the supervision over the use of the illicit funds. However, for the whole scheme to succeed, there must be a political decision with human rights as a main concern.

64. As far as investments are concerned, the current trend is towards looking at criteria other than just high financial return when investing, including those relating to environmental, social and corporate governance, and their integration into investment analysis. Socially responsible investment is important for the achievement of the Sustainable Development Goals. Climate change and the pressure on resources have raised environmental concerns, and such sustainability issues must be taken into account in making investment choices. Given that socioeconomic concerns are closely linked to the Goals, responsible investment has been taking a larger share of the investment market.¹²

65. The Global Impact Investing Network encourages investments in companies and funds that generate social and environmental impact along with financial returns.¹³ Recently, asset managers have increasingly been shaping investment strategies around United Nations targets to safeguard the environment, boost social equity and improve the quality of governance.¹⁴ The United Nations Development Programme has published standards to guide private equity fund managers towards investments that advance the achievement of the Sustainable Development Goals.

VII. Joint Fund for the 2030 Agenda for Sustainable Development

66. Another possibility would be to use the Joint Fund for the 2030 Agenda for Sustainable Development to channel the investment of funds that have been frozen in countries of destination. Set up in 2018, it is aimed at supporting Member States' efforts to achieve the Sustainable Development Goals and providing new sources of financing. It is expected that Member States will make voluntary contributions to the Joint Fund.

67. The Joint Fund for the 2030 Agenda has several objectives, including: (a) to provide integrated policy support; (b) to create robust financing systems; (c) to incentivize integrated and transformative policy shifts; (d) to support national development priorities; (e) to promote scalable investment opportunities aimed at advancing the Sustainable Development Goals; (f) to attract longer-term public and private blended financing; (g) to ensure transparency and diversity of the portfolio of the Joint Fund; and (h) to manage risk and oversee effective monitoring and reporting to all partners.

68. Countries of destination of illicit flows of funds could use the returns from the investment of non-repatriated illicit funds as a contribution to the Joint Fund for the 2030 Agenda to finance efforts aimed at the achievement of the Sustainable Development Goals in the countries of origin of the illicit funds. Use of the Joint Fund in this way merits consideration and should be thoroughly studied before implementation.

VIII. Conclusions

69. The proposals analysed above for utilizing non-repatriated funds would require arduous negotiation among States and other parties concerned. Their implementation is possible only if, in a spirit of cooperation, all parties agree to make policy changes with a view to achieving the Sustainable Development Goals and realizing a better world in which the resources of developing countries and less developed countries are not pilfered to the detriment of their populations. Countries of destination that benefit

¹² See the Principles for Responsible Investment of the United Nations Environment Programme Finance Initiative (www.unpri.org/pri/about-the-pri).

¹³ See the Global Impact Investing Network (<https://theginn.org>).

¹⁴ Jennifer Thompson, "Why more asset managers are taking cues from UN sustainability goals", *Financial Times*, 21 October 2019.

from illicit flows of funds have an obligation under international law to help countries of origin to reach the Goals, and that requires engaging all efforts in that direction.

70. In paragraph 12 of its resolution 34/11, the Human Rights Council invited 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 appreciated 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.

71. In paragraph 15 of the same resolution, the Human Rights Council called 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.

72. The present report contains several proposals for utilizing non-repatriated funds by setting up investment funds, which would be to the advantage of countries where the illicit funds originated. The advice of financial and investment specialists must be sought on the detailed modalities of how to maximize returns and how the investments would lead to the achievement of the Sustainable Development Goals.

73. It is of fundamental importance that work should continue on finding ways and means to utilize funds of an illicit nature for the benefit of the countries of origin, pending their eventual repatriation, especially given the huge amount of funds involved, which could help to move forward development efforts in countries of origin, the importance of which is also reflected in Human Rights Council resolution 40/4.