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**Advisory Committee
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Item 3 of the provisional agenda **Requests addressed to the Advisory Committee stemming from Human Rights resolutions:**
[**The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights**](https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session21/IllicitFunds.docx)

 Draft report on Study on the possibility of utilizing non-repatriated illicit funds (including through monetization and/or the establishment of investment funds)

(Draft report, February 6 2019,) prepared by Dheerujlall Seetulsingh, Rapporteur of the drafting group

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 I Mandate and Background

1. In Human Rights Council resolution 34/11, the Human Rights Council requested the Advisory Committee to conduct a study, in continuation of the study requested by the Human Rights 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 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 asked to present the requested study to the Human Rights Council at its thirty ninth session. In view of the complexity of the problem which went beyond legal issues and required a consideration of financial structuring, the Council agreed that the study be presented at the forty second session of the Council.

3. The Advisory Committee was also 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 above-mentioned study.

4. Two States (Côte d’Ivoire and 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, comprising Ibrahim Abdulaziz Alsheddi, Ludovic Hennebel, Mikhail Lebedev, Mona Omar, Ajai Malhotra (Chair), Changrok Soh, Dheerujlall Seetulsingh (Rapporteur) and Jean Ziegler.

6. The first study under Resolution 31/22 (now A/HRC/36/52) addressed the main challenges hampering and delaying the repatriation of illicit funds, drawing on earlier UN-sponsored studies including those of independent experts on Illicit Financial Flows [Juan Pablo Bohoslavsky (A/HRC/31/61) (A/HRC/28/60) and Cephas Lumina (A/HRC/22/42)]. The well documented study also addressed the Best Practices to put a stop to illicit flows of funds which usually take place from developing countries or less developed countries mainly to banks and financial institutions in developed countries, often after transiting through various jurisdictions. Measures to be taken by countries of origin and destination countries to facilitate the repatriation of funds were also described and recommended.

7. The situation concerning repatriation being highly unsatisfactory, this study is meant to look at the possibility of utilizing non-repatriated illicit funds, including through monetization and/or the establishment of investment funds while completing legal procedures. Little work has been done to explore this eventuality. It is well known that different obstacles legal, political or otherwise prevent the urgent or swift repatriation of those funds. These obstacles affect human rights and are highly detrimental to the countries of origin. The excessive delays, lengthy court procedures, for example in past cases regarding repatriation of illicit funds to Philippines, Nigeria, Mali, Zambia, Peru, hinder development in many developing countries which are victims of transfers of illicit funds and may prevent them from attaining the target of the Sustainable Development Goals by 2030.

8. The asset recovery process is a lengthy one. After the investigation and the tracing of the stolen assets which may have transited through different jurisdictions and following applications through a Mutual Legal Assistance Request to have the assets seized comes the stage of freezing the assets to prevent the holders from transferring them out of the jurisdiction of the requested State.

9. The latter would normally refuse to transfer the funds to the Requestor State unless there is a final judgement on their ownership in both States. The whole process has been known to take years whether it is based on criminal confiscation, civil proceedings, and civil procedures against property or civil actions. The alleged pilferers benefit from the presumption of innocence though in some instances they are deprived of this advantage if they cannot give a reasonable explanation about the source of their extraordinary and sudden enrichment. However they take advantage of all the human rights that accrue to them during the proceedings and a court trial, if any (see Radha Ivory, C.U.P.). Thus repatriation is not a straightforward issue.

10. The question to be dealt with here is the use to which these non-repatriated funds may be put in favour of the countries of origin pending repatriation.

11. The normal procedure is to have recourse to freezing while waiting for the cumbersome Mutual Legal Assistance procedures to be put into place and become operational. The purpose of freezing is to preserve these illicit funds and prevent them from being transferred elsewhere pending the outcome of litigation during which the so called owners of the funds would engage very capable and expensive legal advisers to resist attempts at repatriation. It is appropriate here to set out the obstacles to repatriation of illicit funds as they are the same obstacles which would prevent utilization of non-repatriated illicit funds for benefitial purposes.

 II. Challenges to repatriation and to utilization of non-repatriated funds

12. The first study of the Advisory Committee (A/HRC/36/52) listed out in *paragraph 5* the main challenges inhibiting the return of illicit funds which it is useful to summarize here.

(a) Lack of political will where illicit funds have become almost absorbed in the financial system of the destination countries with the result that the authorities would hesitate to take action against banks, other financial institutions and real estate developers who manage to launder illicit funds. A repatriation of illicit funds could in some cases have a negative multiplier effect on other sectors of the economy in destination countries like the construction industry where workers may lose their jobs. Furthermore, professional financial and legal service providers would suffer as they are in the business of tendering advice to depositors of illicit funds and managing their wealth.

(b) Where strong evidence is lacking about the illicit nature of funds, the authorities in countries of destination would even hesitate to go for freezing or to rely on non-conviction based confiscation.

(c) Similar legal difficulties arise where the funds have transited through multiple jurisdictions and their actual ownership has been hidden behind several veils of incorporation.

13. These challenges are totally relevant to the mode of utilization of the non-repatriated illicit funds and stand in the way of proposals of monetization and setting up investment funds. As long as an atmosphere of uncertainty prevails about the outcome of legal proceedings concerning requests for repatriation of illicit funds countries of destination would find it difficult and hazardous to put the suspect illicit funds to any use.

14. Whether it is State Institutions or banks or other financial institutions which have the frozen funds in their custody they would much prefer to play safe and preserve the status quo.

 III. Freezing illicit funds

15. The first problem to be tackled concerning freezing is that there must be a (tacit) agreement that the funds are of illicit origin without waiting for a court ruling on their nature. A study published by the World Bank ‘Few and Far – The Hard Facts on Stolen Asset Recovery’ mentions the Administrative Freezing and Confiscation Measures (would this create the possibility of utilizing non-repatriated illicit funds while lengthy procedures for repatriation are under way?) In such cases it is common knowledge that infamous former rulers or heads of government have been misappropriating assets and transferring them to institutions mainly in developed countries. The Government of destination countries have been willing to pass laws, regulations and decrees to freeze these assets. (Switzerland).

16. “*Other 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 Arab Republic of Egypt, Libya, or Tunisia, Canada, the European Union, Switzerland, and the United States are among the countries 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 political upheaval or internal turmoil in the foreign jurisdiction, their purpose being to preserve assets and prevent them from being transferred elsewhere*.

17. *“They are not meant to replace or circumvent mutual legal assistance. MLA will be required at some point, when domestic law enforcement needs evidence from the foreign jurisdiction to prove money laundering or support foreign bribery cases, or when the foreign jurisdiction needs to enforce its final judgment in domestic courts. However, MLA is known to be slow, formalistic, and complicated even for experienced jurisdictions, and more so for developing jurisdictions or those in transition. The added risk of dissipation or movement of assets militates in favor of taking proactive steps to freeze assets administratively and allow time for the jurisdiction harmed by corruption to respond. In this way, administrative orders and similar measures can freeze assets prior to a full formal request, complementing the MLA process.”*

18. *“Once these freezes are in place, several barriers have been encountered that have hindered progress in the actual recovery of the assets. The requesting jurisdictions indicate that they are unaware of the assets that are frozen and are having difficulty providing the information or evidence necessary to keep the freeze in place. Many of their initial requests are returned with requests for additional information—a frustrating yet frequent occurrence in the MLA process for all jurisdictions. Political instability and the continuing transition process have slowed progress even further, particularly in Arab Republic of Egypt and Libya.* 1”

19. Following the Arab Spring many members of the Organisation for Economic Co-operation and Development (OECD) adopted laws leading to administrative freezes. For instance Canada adopted the Freezing Assets of Corrupt Foreign Officials Act and Freezing Assets Corrupt of Foreign Officials (Tunisia and Egypt) Regulations whereby certain individuals were named. However such laws do not go as far as laying down steps for the return of the assets or for their use pending repatriation.

20. Similarly, the European Union adopted decisions about freezing assets of persons who had misappropriated state funds of Tunisia and Egypt. Switzerland and the United States did so for Libya. The United Nations Security Council by way of Resolutions in 2011 decided on an asset freeze against Gaddafi and his family as well as on funds and economic resources owned or controlled by the Libyan authorities (for example the Central Bank of Libya, the Libyan Investment Authority and the Libyan National Oil Corporation)

21. Again such measures however do not prescribe the mode of utilization of the frozen assets pending their eventual repatriation.

 IV. The Mbeki Report

22. The problem from the African Continent perspective has been thoroughly analyzed and discussed in the Report of the High level Panel on Illicit Financial Flows from Africa chaired by former President Mbeki.

23. The 15 findings in its C*hapter 4* may be conveniently listed here:

**Finding 1:** Illicit financial flows from Africa are large and increasing

**Finding 2:** Ending illicit financial flows is a political issue

**Finding 3:** Transparency is key across all aspects of illicit financial flows

**Finding 4:** Commercial rates of illicit financial flows need closer monitoring

**Finding 5:** The dependence of African Countries on natural resources extraction makes them vulnerable to illicit financial flows

**Finding 6:** New innovative means of generating illicit financial flows are emerging

**Finding 7:** Tax incentives are not usually guided by cost-benefit analysis

**Finding 8:** Corruption and abuse of entrusted power remains a continuing concern

**Finding 9:** Stimulating and expressing the process of asset recovery and repatriation

**Finding 10:** Money laundering continues to require attention

**Finding 11:** Weak national and regional capacities impede efforts to curb illicit financial flows

**Finding 12:** Incomplete global architecture for tacking Illicit Financial Flows

**Finding 13:** Financial secrecy jurisdictions must come under closer scrutiny

**Finding 14:** Development partners have an important role in curbing illicit financial flows from Africa

**Finding 15:** Illicit Financial Flow issues should be incorporated and better coordinated across United Nations processes and Frameworks.

24. The report does not address the issue of use of illicit funds pending their repatriation, but the Findings are crucial to point the way forward in achieving the ends which would be beneficial to countries of origin.

25. Stress is laid on the political nature of the problem so that the solution rests upon negotiations and enhanced international cooperation-

*“the nature of the actors, the cross border character of the phenomenon and the effect of illicit financial flows on State and society attest to the political importance of the topic. Similarly, the solutions to illicit financial flows that are subject of ongoing work in various global forums attest this political significance.”*

26. The Report draws attention to the technical aspects of illicit financial flows and is concerned about divergences in approach in the work of what it calls disparate components of illicit financial flows undertaken regionally by the African Union and regional economic communities and at the global level by the G20, Organisation for Economic Co-operation and Development, the World Bank, the International Monetary Fund and the United Nations. The Report recommends that there should be more coordination to ensure consistency and success in tackling the problem.

27. At the local level in the countries of origin of illicit funds considerable legal and financial expertise is required not only to curb illicit financial flows, but to detect them to be able to initiate the process of asset recovery. Findings 11 and 12 deal with this issue in greater detail.

28. The Report recommends that development partners should help the countries of origin to stop illicit financial flows. Could this be extended to richer destination countries agreeing to the possibility of using frozen illicit assets as a matter of urgency to finance development projects in the developing countries? This requires political will and acumen and should be put on the negotiation table to lay down the conditions under which this novel procedure can take place.

29. Now that illicit financial flows have been openly mentioned as an obstacle to the achievement of the Sustainable Development Goals the richer countries of destination have the responsibility of incorporating the creation of what is called a unified global architecture to tackle illicit financial flows.

30. If the recommendations in *Chapter 5* of the Mbeki Panel are implemented that will ease the channeling of frozen illicit financial funds in the investment projects in the countries of origin while waiting for all legal procedures to be completed. The modalities remain to be worked out as they rest squarely upon political foundations. One specific recommendation could open the door to the possibility of utilizing non-repatriated illicit funds through the establishment of investment funds.

31. *“The African Union should engage more partners institutions to elaborate on global 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 (Page 86 of Report Chapter 5).”*

32. The report of the High Level Panel on Illicit Financial Flows from Africa (chaired by former President Mbeki) on stimulating and expediting the process of asset recovery and repatriation further states -

33. *“One matter of concern in the context of asset recovery efforts is the treatment of frozen funds. Our view is that not only should accepting tainted funds be rendered highly unattractive to banks but also banks that are determined to have been complicit in the receipt of illicit funds should not be allowed to keep these funds while they are frozen. A clear framework for the handling of frozen assets is needed. Creating an institutional escrow system in which regional development banks are designated as escrow agents seems to be one rational path to follow in this regard.*

34. *Policy implication: Regulations and mechanisms are needed to ensure that financial establishments and banks identify and refuse 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.”*

 V. Projects Channeling Funds

35. Looking at the possibilities of utilizing non-repatriated illicit funds implies venturing into unchartered territory. The need for cooperation among the partners is the first prerequisite. The cooperation consists in reaching an agreement to establish a legal framework or various legal frameworks depending on the legal status of the partners.

36. In the first instance the main parties are the countries of origin and the banks and financial institutions in the countries of destination. As long as the illicit funds are in the custody of banks and financial institutions, the latter would insist that all legal procedures be followed to resolve disputes on the nature of these funds and their legitimate ownership. In cases where freezing of the funds has taken place, the State may intervene as a third party (see for example, Swiss legislation on the issue) to assist in the utilization of the funds.

37. One remote possibility is where banks and financial institutions in destination countries are willing to lend amounts corresponding to the illicit funds to countries of origin for development projects. In such cases it is obvious that the banks will require adequate guarantees to cover the risks of lending and ensure reimbursement. It may ultimately be found that the illicit nature of the funds has not been proved and the borrower country will have to reimburse the funds. As this course of action is quite problematic it may prove more useful to turn to the State in the destination country or to look at intermediate institutions through which the use of illicit funds may be channeled pending their repatriation. These could tentatively be:

(1) the World Bank;

(2) the International Finance Corporation;

(3) the International Monetary Fund;

(4) the Regional Development Banks;

(5) the Joint Fund for SDGs

38. As far as the role of the State in the destination country is concerned (and this has been mentioned above in the case of Switzerland) where the State (in the destination country) has enacted laws leading to the freezing of non-repatriated illicit funds or has administratively ordered the freezing of the funds, would the State (after having taken the funds from the local Banks) be prepared to either lend the corresponding amount of the funds to the new government in the Country of Origin which would put the funds to good use for projects in line with the attainment of the Sustainable Development Goals? Or would the State in the destination country itself deal with the private sector in the destination country or in the country of origin to invest in projects which would benefit the country of origin? The same conundrum pertaining to guarantees and reimbursement arises if the illicit nature of the funds is not ultimately proven. A high level of trust is required here and considerations of conditionality may govern such cases.

39. One avenue of cooperation between Countries of Origin and Destination Countries would be to set up an Investment Fund on the model of the Danish Investment Fund for Developing Countries (IFU). Attention must be drawn to the fact that the funding which is being tapped in the case of the IFU emanates from Danish Companies willing to invest in projects that support sustainable development in Developing Countries, thus contributing to the realization of the Sustainable Development Goals. (SDG 8 on the promotion of inclusive and sustainable growth). Obviously conditionality is more the rule than the exception in such cases.

40. Investments with IFU have: 2

(1) created considerable direct and indirect employment;

(2) enabled significant technology transfer;

(3) embedded leading sustainability practices;

(4) generated sizable tax revenue locally/spillover in other sectors

(5) enabled greater enjoyment of economic and social rights

(6) led to improvement in living standards.

(7) improved Corporate Governance

41. The World Bank already monitors the use of repatriated illicit funds and ensure that they are utilized in such a way as to benefit the local population whether it is for poverty reduction strategies or for investment in projects. (World Bank Stolen Asset Recovery Programme) [see Chapter on ***The Legal Aspects of the World Bank’s Work in Human Rights: Some Preliminary Thoughts* in *Human Rights and Development*** ed. by Alston and Robinson – O.U.P. 2005)].

42. International institutions are now clearly conscious of human rights obligations and operate in such a way as to further economic and social rights. They insist that borrower countries or recipients abide by certain human rights goals. Such conditionality is acceptable if it is for the achievement of the SDGs and is in line with the national priorities of supporting economic and social rights for all, creation of employment, access to safe drinking water, environmental sustainability and overall poverty reduction strategies.

43. How far the World Bank could play this role concerning non-repatriated illicit funds remains to be seen as it would require the taking of major policy decisions (amending the statutes)? The World Bank would oversee the sectors in which the ‘non-repatriated funds’ are being allocated while promoting the direct involvement of the poorest sections of the population in economic activity through lending for agriculture, rural development and small scale enterprises again paying full attention to national priorities.

44. An important agency of the World Bank Group can play a crucial role here. The Multilateral Investment Guarantee Agency (MIGA) provides political risk insurance or guarantees to private investors and lenders to encourage foreign direct investment (FDI) into developing countries. Indeed, Political risk insurance (PRI) is a tool for businesses to mitigate and manage risks arising from the adverse actions – or inactions – of governments. As a risk-mitigation tool, PRI helps provide a more stable environment for investments in developing countries. This could further support an eventual investment fund by making it more attractive to foreign investors, and by the same token, contribute to developing a sounder environment for public-private partnerships in the Countries of Origin.

45. This would apply equally to the International Finance Corporation and the International Monetary Fund, should the possibility of channeling non-repatriated illicit funds to countries of origin through the two institutions be contemplated. Though they have never been brought to engage in this particular role the commitment which these two institutions have towards human rights is not in dispute (see Chapter on ***Putting Human Rights Principles into Development Practice through Finance: The Experience of the International Finance Corporation*** by Peter Woicke and the Chapter on ***Human Rights, Poverty Reduction Strategies and the Role of the International Monetary Fund*** by Mark W. Plant in ***Human Rights and Development*** ed. by Alston and Robinson – O.U.P. 2005).

46. Would these institutions accept to be burdened with the responsibility of managing non-repatriated illicit funds and lending them to countries of origin with a view to supporting the achievement of the SDGs? Would they agree that the people of the countries of origin are the rightful owners or claim holders of the non-repatriated funds?

47. The Mbeki Report raises the possibility of non-repatriated illicit funds being deposited in escrow accounts in regional development banks. The latter banks too are now fully conscious of their responsibility to integrate human rights considerations in their work (see Chapter on the ***Impact of Human Rights Principles on Justice Reforms in the Inter-American Development Bank in Human Rights and Development*** ed.by Alston and Robinson – O.U.P. 2005). Can Regional banks be crucial actors in financing development through the issue of bonds to individuals and private institutions?.

48. Modalities have to be worked out of how the illicit funds will be placed in the regional development banks. Again this entails negotiations and agreement among member states to amend the statutes and other rules of lending of the Banks.

49. Should this be considered feasible the Regional Banks would be able to lend the illicit funds to countries of origin for essential projects.

 VI. Monetization

50. The process of monetization would imply converting non-monetary assets into legal tender which would earn interest.

51. A promissory currency as a means of lending to countries of origin which could use the funds for investment projects

52. How far practicable?

53. No reaction to any proposal of monetization mentioned in Resolution 34/11 has been forthcoming.

 VII Investment funds

54. As for Investment Funds in Securities there are practical difficulties in view of the risk factor. First of all, it is assumed that it is the authorities or an institution controlled by the State in a destination country that would invest in the Funds in either the destination country or other countries. It is true that the risk would be spread when the money is placed in an Investment Fund which would in turn invest in a portfolio of securities to maximize returns.

55. Since the countries of origin cannot be the beneficial owners of the return on the investment, it is doubtful how this would assuage their plight pending the repatriation of funds *(How can the countries of origin benefit from the returns unless there is an agreement that the capital of the illicit funds is not being diminished/altered and that it is only the returns on investment that are being repatriated?)*

56. Furthermore investment in stocks is risky as the value of shares may go down, thus lowering the value of the illicit funds.

57. The role of a professional portfolio manager is crucial in this respect to ensure a plus value to the capital. Otherwise illicit funds could be invested in fixed income funds or bonds issued by governments. The latter would be less prone to risk as they would generate a steady income when they rest upon corporate debt or government debt issued by Central Banks.

58. Engaging asset management professionals will entail looking at what entities are tasked with the preservation, use of seized (frozen) and confiscated assets.

*(****To check whether this has been addressed by the Calabria and Lausanne process footnote 35, 36)***

59. The need for product governance and distribution.

60. Crucial elements are greater transparency and alignment of interest as well as accountability of the Investment Funds.

61. An alternative arrangement

62. An Investment Fund under the control of an Official Authority in the Destination Country would be beneficial as there would be an official guarantee as to the security and non-dilapidation of the illicit funds which have been frozen.

63. However the possibility of monetization or setting up investment funds is a remote one, given that such initiatives have not been tested.

 VIII Cooperation

64. In view of all the imponderables and uncertainties surrounding monetization and investment funds it may be advisable to search for alternatives within existing avenues of cooperation and build upon them to launch other initiatives. Since the possibility of monetization or setting up Investment Funds may be problematic, it is essential that Destination Countries and Countries of Origin should cooperate on the issue of repatriation as it a matter of urgency to help developing countries to attain the Sustainable Development Goals.

65. The Stolen Asset Recovery (STAR) Initiative: Challenges, Opportunities and Action Plan points to the direction in which the situation may evolve in favour of Countries of Origin of illicit funds. It lists out the international instruments to combat corruption and to deal with corrupt behavior adopted by the Organization of American States, the Organisation for Economic Co-operation and Development, the Council of Europe, the European Union, the African Union, the United Nations or the Financial Action Task Force even before the United Nations Convention Against Corruption entered into force in December 2005. Under the *Article 46* of UNCACstates parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings, including for the purpose of return of assets.

66. Article 57 (UNCAC).

67. Example of Swiss Authorities - Abacha, Peru (page 24)

68. Freezing is possible with a limited amount of initial evidence

 IX. Action plan

69. The Action Plan mentioned in the STAR document (Chapter 6) presents an Action Plan Matrix to remove obstacles which countries of origin face when requesting the return of assets in destination countries and which destination countries have knowingly and unwittingly placed in the way.

70. A close cooperation between the United Nations Office on Drugs and Crime and the World Bank Group (WBG) is required.

71. *A broader partnership will also be needed to implement coordinated, international requests to freeze assets in relation to a specific Politically Exposed Person (PEP). One of the biggest challenges facing developing countries is in getting other countries to freeze stolen assets. These requests are usually made before criminal or civil investigations have been initiated, often without knowing bank account transaction information and sometimes while the government official is still covered by some form of domestic immunity. The problem is that a PEP could easily move funds from one jurisdiction to another in order to escape detection and freezing. UNODC and WBG, in partnership with other agencies and individual governments, could seek to establish a uniform request methodology for victim governments to use in making simultaneous international requests for assistance in freezing stolen assets.*

72. *A related initiative involves the creation of a STAR Focal Point List, to help sending countries to know whom to contact in receiving countries for immediate assistance in the case of an emergency. The speed electronic communications (including wire transfers) and the perishability of evidence require real-time assistance. The G-8 and others have established 24-hour contact systems to handle terrorism, computer crime, and other issues.*

 [Paragraph 6.2.a. of STAR initiative].

 X The joint fund

73. The new Joint Fund for the 2030 Agenda for Sustainable Development (Joint/Fund) set up in 2018 will support Member States efforts to achieve the Sustainable Development Goals. The Fund is intended to provide new sources of financing. It is expected that Member States will make voluntary contributions to the Fund.

74. Is there a possibility that non-repatriated illicit funds may be mobilized for that purpose?

75. Would destination countries be prepared to contribute frozen illicit funds to the Joint Fund to be used for sustainable development programmes?

76. Among other objectives the aims of the Joint Fund are the following:

- Integrated policy support;

- Create robust financing systems;

- Incentivize integrated and transformative policy shifts;

- Support national development priorities;

- Promote scalable Sustainable Development Goals investment opportunities;

- To attract longer term, public and private blended finance;

- Ensure the transparency and diversity of the Fund portfolio;

- Manage risk and oversee effective monitoring and result reporting to all partners.

 XI. Capacity development and training

77. Asset recovery can be a highly complex field of work, requiring expertise, funds, coordinated action and persistence. Training and technical assistance are sometimes needed to pursue asset recovery cases, particularly in those countries lacking institutional framework and experience.

78. Several international and inter-governmental organizations with assistance from development agencies and donor countries have begun addressing this challenge. International organizations such as the [United Nations Office on Drugs and Crime](https://en.wikipedia.org/wiki/United_Nations_Office_on_Drugs_and_Crime) (UNODC), the World Bank's STAR Initiativeand the Swiss-based non-governmental organization International Centre for Asset Recovery (ICAR) have been offering training and capacity development.

79. Several organizations have taken steps to address the lack of easily accessible, comprehensive and practical information on international asset recovery. This lack of information has been identified as a key problem by a number of countries at the first meeting of the UNCAC Open-Ended Working Group on Asset Recovery held in Vienna in August 2007. The ICAR hosts an online Asset Recovery Knowledge Centerthat includes technical publications, news articles, case studies, and individual country laws. Other organizations such as the STAR Initiative have created in-depth handbooks and manuals to assist practitioners.

[For information only]

May not be included in Final Report

 XII. Conclusion

80. The possibilities of utilizing non-repatriated funds are remote and would require far-reaching changes which may take time and which may be subject to arduous negotiation among States and other concerned parties. There is hope only if in a spirit of cooperation all parties agree to make policy changes to achieve the SDGs which would be for a better world where the resources of developing countries and less developed countries are not pilfered to the detriment of the population.

81. There is the call expressed in the African Union Special Declaration on Illicit Financial Flows adopted by the African Heads of State and Government in 2015 (OP3) -

82. “RESOLVE to ensure that all the financial resources lost through illicit capital flight and illicit financial flows are identified and returned to Africa to finance the continent’s development Agenda in this regard. DIRECT AUC supported by member states, to mount a diplomatic and media campaign for the return of illicitly outflown assets.’

83. Thus creating global awareness and using diplomatic relations may provide a more effective agenda than relying on legal and financial negotiations. Unfortunately Africa is still at the stage of “making proposals for strengthening and clearly articulating measures based on African interests that can help curtail IFFs at the regional and global levels to achieve the longer term target is Agenda 2063.

84. Another solution would be to improve upon the United Nations Convention against Corruption and establish an International Court or Tribunal to deal with corruption and illicit transfers of funds. This International Corruption Tribunal should develop more diligent procedures than the International Criminal Court if it were to be effective. It would permit the utilization of non-repatriated illicit funds under specific conditions.

85. It could also resort to Arbitration and promote mediation. Negotiations would take place as in the Abacha case where part of the illicit funds was remitted to the Abacha family for an early settlement of the dispute. This would operate retrospectively, not for future transfers of illicit funds.