

The Legal Framework for the Recovery of Proceeds from Corruption Crimes: Reality and Ambitions

Ali Ahmad Alzubi¹, Saleem Isaaf Alazab²
& Shaima “Moh’d Said” Al-Hussien³

Abstract

Recovering the proceeds looted through corruption crimes represented a necessary matter for the advancement of countries and the development of their economies. Therefore, these countries rushed to establish numerous mechanisms to ensure their right to recover those funds, with the United Nations Convention against Corruption of 2003 at the forefront. The research addressed the effectiveness of those mechanisms mentioned in the United Nations Convention against Corruption in Recovery, and we observed the research that international experiences in recovering funds and proceeds obtained from corruption crimes is a complex and expensive subject, and takes a long time, sometimes reaching dozens of years. This indicates that there is a problem regarding organizing recovery. We concluded that international agreements are still incapable and unable to resolve some of the legal and procedural issues arising from recovery. Hence, the pressure exerted by influential and benefiting countries from corrupt funds has increased the difficulty of achieving a significant result in recovering looted funds. We also concluded the necessity of encouraging entities working to provide appropriate training, practical evidence, studies, and experiences gathered from various successful and unsuccessful recovery cases. This includes urging countries to develop their legislation in line with the requirements of applicable international agreements to ensure the success of anti-corruption measures.

Keywords: Corruption Crimes, Asset Recovery, Looted Funds, Recovery Mechanisms, Proceeds.

Introduction

In recent decades, it has been observed that the phenomenon of corruption has significantly spread in both wealthy and poor countries. This has prompted the international community to strive towards eliminating this scourge, which has

¹Associate Professor in Public Law. Faculty of Law, Al-Balqa Applied University, Jordan. alialzubi@bau.edu.jo, ORCID: <https://orcid.org/0009-0005-6602-101X>.

²Associate Professor in Public Law. Faculty of Law, Al-Balqa Applied University, Jordan. dr.alazab@bau.edu.jo
ORCID: <https://orcid.org/0000-0002-7579-4808>

³Assistant Professor in Private Law. Faculty of Law, Ajloun National University, Jordan. S.Alhussien@anu.edu.jo, ORCID: <https://orcid.org/0009-0002-8091-9887>

become exceedingly dangerous. Consequently, countries around the world have united to establish international agreements that describe and warn against this phenomenon. These agreements set forth all necessary provisions to contribute to its eradication to mitigate the decline of public trust in institutions, particularly those involved in the management of public finances and the governance of the financial sector, and to work towards avoiding its risks and addressing its impacts.

Perhaps the most crucial measure in combating corruption is the recovery of assets obtained through corrupt activities. Therefore, the core issue of this research lies in assessing the effectiveness of the mechanisms for recovering proceeds from corruption-related crimes in achieving their intended objectives. Additionally, it seeks to identify the predominant international practices in this regard and the obstacles that hinder the attainment of this goal.

Moreover, this study aims to shed light on the international efforts undertaken at both global and national levels to recover funds obtained through corrupt actions and the embezzlement of public money. This research addresses the grave problem that troubles the international community, namely severe corruption, and the need for improved mechanisms to combat its destructive effects. It proposes a new framework to facilitate the tracing of assets looted through corrupt practices, which have been concealed in foreign jurisdictions, and to freeze, seize, confiscate, and repatriate these assets.

Hence, the most significant development issue is the theft of public assets, whose exact value is sometimes unknown when government assets are looted from developing countries (Greenberg et al., 2009, p. 7). Consequently, the true cost of corruption can exceed the wealth embezzled by national leaders. This results in the deterioration and erosion of trust in public institutions, especially those involved in the management of public finances and the governance of the financial sector; creates a weak, if not destructive, environment for private investment; and leads to corruption in systems providing social services, such as basic health and education programs, which particularly impacts the poor negatively.

However, recognizing that asset recovery is a cornerstone of international judicial cooperation in combating corruption and prosecuting offenders, the United Nations Convention against Corruption has placed significant emphasis on the issue of recovering proceeds from corruption-related crimes. This importance has been highlighted multiple times, dedicating a separate chapter with numerous provisions regulating the recovery of assets, specifically in Articles 51 to 59.

Literature review

Study by Samia Abdellaoui (2021) Recovering funds looted from corruption crimes, Countries have acquired the right to reclaim their looted assets by formulating international plans and strategies, ensured through treaty-based international cooperation, or through national measures reflected in domestic legislation that includes specific asset recovery mechanisms. Moreover, asset recovery is of paramount importance in the fight against corruption as it aims to strip criminals of their illicit profits and ensure they do not benefit from their crimes. This not only serves as a deterrent to future corruption but also helps to restore public trust and reinforce the rule of law by demonstrating that corruption does not pay.

Imad Al-Zamili (2017) "Methods of Recovering Embezzled Funds Derived from Corruption Crimes and the Position of Iraqi Legislation", found that the issue of asset recovery is highly complex in terms of legislation and implementation due to the lack of established laws regulating its procedures.

Karim Maarouf (2022) said in his study "Methods of recovering looted funds and criminal proceeds" that the recovery of looted funds is an issue with multiple dimensions, the most significant of which are political. This is true not only in the countries whose assets have been looted but also in the countries that have agreed to host these assets. Officials in these host countries face criticism from public opinion and political and economic pressures due to their collusion with corrupt leaders who have plundered the resources and wealth of their nations and people.

The researchers agreed in the journal "Droits et libertés" that corruption is a global scourge whose presence is not limited to developing countries only but is widespread even in developed countries. This is regardless of the nature of the prevailing political and economic system in them, and it has many negative and destructive effects on all fields and levels, especially political, administrative, economic, and social, which calls for urgent intervention to confront it. It is the main reason for disrupting the principle of the rule of law and for the decline in development in its various forms. It is the fundamental underminer of democracy and is the factor causing the increase in bureaucracy, administrative laxity, the spread of some economic ills, and the decline of society's values and morals.

Research Objective

- Exploring the optimal mechanisms for recovering proceeds obtained from corruption crimes by improving the mechanisms and policies related to this process.

- Understanding looted funds recovery operations and analyzing related policies. So that ways can be identified through which transparency and accountability can be enhanced. Entities responsible for corruption.
- Increasing its effectiveness to achieve financial justice and reduce corruption.

Methodology

The research adopted a descriptive-analytical approach to track the procedures and recovery mechanisms that resulted from the international and national efforts, and relied on a comparative approach to research the efforts and measures made by countries to recover their money and assets that were seized by corruption crimes and to evaluate those efforts and measures.

The Concept of Recovery and the Nature of Corruption Crimes

There are many terms used for the concept of recovery of funds obtained from corruption crimes, as the United Nations Convention against Corruption (UNCAC) used the terms “Asset Recovery” and “Direct Recovery of Property” (United Nations Convention, 2005, Articles 51, 53). And the Arab Anti-Corruption Convention used the term “Property Recovery” (Arab Convention against Corruption, Article 27), and other writings refer to the term “Recovery of The Looted Money” and others (Marmesh et al., 2015). Accordingly, we address this study through two successive sections:

A. The concept of recovery

The United Nations Convention against Corruption did not define the concept of recovery, despite mention of a few actions pertaining to the actual recovery of assets and property (United Nations Convention, Articles 54, 75). On the other hand, as stated in the Arab Anti-Corruption Convention, "what a state party confiscates of property is disposed of by returning it to its legitimate owners." (Arab Anti-Corruption Convention, Article 30; Article 21.7).

Recovery, as used in legal jurisprudence, refers to a set of coordinating and procedural texts found in Chapter V of the United Nations Convention against Corruption. The goal of recovery is to use mechanisms for cooperation amongst the state members of the Convention to return funds obtained from corruption crimes to their countries of origin (Mandeel, Volume 1, No. 36).

Also, another definition of “Recovery” is: A term that expresses a set of judicial and non-judicial measures and efforts made by the state to recover the funds that were looted from its wealth and resources, and derived from corruption, which were smuggled to foreign countries, or remained within the state itself."(Al Kharashi, 2016, p. 9). It was also defined as: "the process that aims to take the

necessary measures to return the smuggled assets to the victims of the crimes that resulted in these assets." (Abdul-Jabbar, 2021, p. 36).

Moreover, recovering funds obtained from corruption crimes aims to eliminate the same establishment of justice, the reestablishment of confidence in member states, and finally leads to the economic development of states (Abdeen, 2018, p. 30).

In light of this, we conclude that recovery is the process of tracking and tracing the looted funds through acts of corruption that are criminalized in international conventions and national laws, freezing them. Accordingly, this leads to confiscation and returning them to their countries of origin or their legitimate owners through the following legal, judicial, and diplomatic procedures and mechanisms for this purpose, if any.

B. The nature of the proceeds from corruption crimes

Article (2) of the United Nations Convention against Corruption indicated that the proceeds of crime are: (Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence), and further indicated that what is meant by property is: ("Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets) (United Nations Convention, Article 2; Article 17, paragraph (e / d)).

The 2010 Arab Anti-Corruption Convention also indicated that the concept of funds obtained from corruption offenses is: (*any property derived or obtained, directly or indirectly, from committing any act of corruption criminalized by this Convention*) (Arab Anti-Corruption Convention, 2010, Article 1, paragraph 6).

Furthermore, the Convention listed many forms in which corruption proceeds take place, but with different descriptions, as in Article (51) which indicated that the proceeds may be in the form of a promise to a public official of an undue advantage or offered to him directly or indirectly, whether for the benefit of the employee or others. Articles (21, 22) of the same Convention apply the previous provision to entities affiliated with the private sector.

Accordingly, Article (20) refers to another form of revenue, which is the illicit enrichment of a public official by increasing his assets by a large amount that he cannot reasonably justify with his lawful income.

As a consequence, Article (23) refers to the transformation of the form of the proceeds of crime by replacing or transforming the property to conceal or disguise its source, true nature, or location, for instance (launder the proceeds of

crime). Article (31) of the Convention refers to (A) *proceeds of crime derived from offenses established by this Convention or property, the value of which corresponds to that of such proceeds; and (B). property, equipment, or other instrumentalities used in or destined for use in offenses established by this Convention*. So, the proceeds from corruption include compensation for damages arising from corruption offenses (United Nations Convention, Articles 35).

Through our research on all of the aforementioned articles, we have discovered that the nature of those proceeds is not restricted to real estate or immovable properties but can also take the form of unfairly awarded benefits.

Additionally, we have discovered that the term "revenue recovery" refers to any kind of looted money or asset that is taken from state funds in the public and private sectors. By natural or legal persons after an act that is prohibited by the United Nations Convention.

- The term "**Assets**" here include two types:
 1. **Cash Assets:** It includes all cash assets that are ready or convertible into cash easily and quickly (Abdeen, 2018, p. 54), and it also means cash obtained from any act that has been criminalized in international conventions and national laws, such as embezzlement and direct bribery (Abdel-Zaher, 2018, p. 272). It is noted that the United Nations Convention did not refer to money explicitly but indirectly referring to the crimes covered by the Convention (United Nations Convention, Articles 60-62, Chapter 6).
 2. **In-Kind Assets** (United Nations Convention, Article 2): These include assets whose useful life is relatively long and lasts for years, such as lands, buildings, corporate ownership, and others (Al Kharashi, 2016, p. 22). Accordingly, we see that the in-kind assets include many forms that the assets may have and that cannot be converted into money quickly like all movable properties, including bonds and shares such as intangible movables like intellectual property rights and tangible movables. Movable rights, such as debt securities, securities, investment portfolios, and others, are among the others.

Recovery Mechanisms and International Experiences

The United Nations Convention has referred to several mechanisms to combat corruption, including preventive measures such as anti-corruption establishment bodies in countries and adherence to approved codes of conduct and requirements for financial disclosure and management of public funds. In addition

to taking national legislative measures to criminalize specific acts such as bribery, embezzlement of public funds (Saeed, 2019, p. 79), and abuse of public office trading in influence and obstructing the justice course by concealing assets and money looted from corruption, money laundering, and others (United Nations Convention, Articles 43-50). Moreover, the subject of our study is mainly related to the recovery of assets, the approval of the convention for criminal responsibility, tracking the looted assets, freezing them, seizing them, confiscating them, returning them to their rightful owners, and taking the necessary measures (United Nations Convention, Articles 51-59, Chapter 5). Accordingly, we address this study in two successive sections:

A. Recovery mechanisms in accordance with the United Nations Convention and some International Convention

The recovery mechanisms include two main mechanisms:

First: The direct recovery mechanism: According to Article (53) of the United Nations Convention (United Nations Convention, Article 53), which allows a state member of the Convention to file a civil case before its courts to prove its right to recover its property, provided that sufficient evidence is available to prove that these funds were obtained from criminal and illegal methods, and to obtain from these courts orders to freeze, seize, confiscate, and return funds to their legal owners, as part of a series of procedures after obligating countries to amend their internal laws for this purpose (Abdul-Jabbar, 2021, p. 85).

Second: Indirect recovery mechanisms or recovery through international cooperation: This mechanism includes several procedures, including the use by each country of special investigative methods such as electronic monitoring and other forms of surveillance, covert operations appropriately used within its territory, and cooperation in freezing and seizing the proceeds of corruption.

In addition to taking the necessary measures, such as confiscation and cooperation in returning assets to their legal owners, countries consider the possibility of concluding bilateral conventions in these areas, mutual legal assistance in investigations, and prosecutions, obtaining evidence, establishing units for financial intelligence information to investigate suspicious transactions, cooperation in extradition (United Nations Convention, 54-58), and many other related measures.

Hence, the United Nations Convention against Transnational Crime of 2000, referred to the recovery of funds looted by an act of corruption, and about recovery, the Convention referred to some mechanisms in the field of recovering assets obtained from corruption crimes, including subjecting the

criminal acts mentioned in the Convention to prosecution and sanctions, and that each state party shall endeavor to ensure the maximum effectiveness of law enforcement measures. The Arab Anti-Corruption Convention also dealt with the mechanism for recovering property and proceeds arising from corruption crimes (Saeed, 2019, p.103), cooperation and taking the necessary measures in this regard (Arab Anti-Corruption Convention, Article 27-31), and the mechanism for the transfer of criminal procedures and the extradition of criminals (Arab Anti-Corruption Convention, Article 14,17,22,23).

Furthermore, The Arab Convention considered asset recovery a basic principle in the convention and the Arab Ministers of Justice Conference No. (28) indicated the need to work on recovering the looted funds. It was discussed that the Egyptian proposal would create an Arab court with the authority to order the recovery of the embezzled money (Daqdaq, 2021).

Although, international cooperation in the money field of recovery is considered the most important axis in the field of control and recovery (Abdel Ghaffar, 2018, p. 32), because most of the money obtained from corruption crimes is the subject of money laundering crimes to legitimize it, which is usually deposited in foreign banks and financial institutions (Al-Diri & Abdel-Al, 2019, p. 205).

The International Convention against Corruption focuses on this aspect of the state's members, whose legal system allows another state member to file a civil case before its courts to recover assets or appear in internal judicial procedures to implement the compensation claim (Anti-Corruption Convention, paragraph 710). Thus, in some jurisdictions, local authorities can file a civil lawsuit in front of domestic or foreign civil courts, just like any other person who wants to collect the earnings of corruption (Jean et al., 2011).

B. The Effectiveness of Recovery Mechanisms and International Experiences

When examining the effectiveness of recovery mechanisms, it is necessary to separate the recovery in which the looted funds are distributed between two or more countries, which is considered complex and costly and requires great efforts, and the recovery within the scope of the country itself, in which the money was not transferred to another country.

In this case, the recovery does not constitute any problem as long as the money has not been transferred abroad, which makes it easier for the state to track it and work to freeze, confiscate, and return it as it is subject to the authorities of the state and its national laws.

However, the problem arises when funds are moved out of the state in which they are held or into one or more other nations. As a result, the recovery becomes tied to multiple nations, directly affecting their sovereignty and national laws. As such, adhering to international conventions and pertinent national laws is imperative throughout this process.

Therefore, we must focus on this case, as it is a complex process that faces many legal and procedural complications and is considered a real test for the recovery process. Some countries developed guidelines for their recovery procedures, such as Britain, Switzerland, and France (Narmin Marmesh et al, 2015, p. 9).

Further, to lay a sound basis for evaluating the effectiveness of the mechanisms we referred to, it is necessary to review some international experiences in this regard, including the experience of the Philippine government after the overthrow of former President Marcos through a popular revolution, where he was seizing public money and laundering money by investing in the real estate sector in the United States of America and depositing it in various local and foreign banks under pseudonyms In programmed accounts, what is remarkable about this experiment is that it lasted 18 years and achieved only some success (Belgrave,2016,p.422).

Regarding the experience in Nigeria, the government attempted to retrieve funds that had been taken by its president, Sani Abacha, from Switzerland. Abacha was charged with embezzling over five billion dollars. So, it took approximately seven years for Nigeria to retrieve part of the funds, and inquiries continue concerning the remaining funds.

As for the Peruvian government, it revealed a large network that took control of the country and was accused of looting two billion dollars in bribery and extortion. After conducting investigations, establishing a new anti-corruption system with mechanisms, special criminal procedures, establishing courts and prosecution offices, and international cooperation with Switzerland, the United States, and the Cayman Islands, the Peruvian government was able to recover part of the looted funds (Belgrave, 2016, p. 422).

As for the Tunisian experience, after great efforts, it was able to recover part of the money looted from the ousted president, Zine El Abidine, his wife and relatives after sending (64) judicial representations supported by proven documents to (25) countries (Belgrave, 2016, p. 422). As well as the Egyptian experience, the World Bank report indicated that the amount of looted funds amounted to 143 billion, and that the maximum Egyptian efforts reached were to freeze the funds of former officials without recovering any part of the funds. As well as the Egyptian experience, the World Bank report indicated that the amount

of looted funds amounted to 143 billion and that the maximum Egyptian efforts reached were to freeze the funds of former officials without recovering any part of the funds (Daghmarsh, 2020, p. 311).

Whereas the Egyptian efforts did not succeed in returning any money, despite the formation of several committees, the investigation of thousands of complaints, and the implementation of several initiatives. Perhaps this is what some referred to, namely the unstable political conditions, weak experiences, poor coordination, and lack of political will, especially since there are no conviction provisions. The symbols of the former Egyptian regime were acquitted in the Egyptian courts (Abdel Meguid, 2017, p. 12).

Likewise, in the Algerian experience, sufficient efforts were not made due to the absence of political will and the lack of movement among civil society organizations (Belgrave, 2016, p. 424).

As for the Iraqi experience, the information obtained indicates that hundreds of millions of dollars have been smuggled to safe havens abroad until this moment, and they have not been claimed or sought to be recovered (al-Maliki, 2020, p. 1).

After studying these experiences carefully, we find that the reasons for prolonging the recovery period are in fact due to two packages of reasons: The first package arises from countries that demand the recovery of their money and the lack of real political will or lack of genuine desire for internal reasons in the state, as it has moved from an oppressive regime to a more oppressive one that works to loot the money.

The second package relates to the countries from which the money is required to be returned, which hinder refunding the money or delay refunding it to the farthest possible extent because they benefit greatly from this money in their economies.

Conclusion

Recovering looted money from corruption crimes is the result of countries' efforts despite high costs and complexity. Political, legal, and procedural barriers make it nearly impossible, hindering sincere intentions. Current mechanisms in international conventions, including the United Nations Convention against Corruption, lack impact and effectiveness, facing numerous problems and lengthy processes. This may prompt claimants to abandon recovery efforts, especially as they struggle to resolve legal and procedural issues amid pressure from influential countries and beneficiaries of corrupt funds, complicating recovery further.

Recommendations

- International conventions establish obligations for countries to collaborate in recovering looted funds. They impose conditions regarding compliance with national laws, encompassing areas such as banking secrecy, asset seizure, prosecution, confiscation, proceeds return, and criminal extradition.
- Highlighting the international Convention's binding nature on states, it surpasses internal laws. Even if these laws remain unchanged, states cannot use them to avoid returning looted funds or show laxity in fulfilling their obligations.
- Establishing legal committees and unified joint working groups at the international level is essential for recovering funds looted through corruption. And these committees should operate in accordance with a dedicated recovery protocol appended to the United Nations Convention against Corruption.
- It's imperative to earnestly address and eliminate safe havens for corrupt funds. Penalties should be enforced on countries violating this, aiming to prevent illicit funds from reaching them in the first place. This entails establishing an international criminal court specialized in recovery, with provisions binding on Convention signatories. These provisions mandate states to take measures facilitating the tracing and direct recovery of illicit funds.
- The United Nations organizations should create a comprehensive guide comprising provisions, procedures, and standardized measures for recovering looted funds and combating corruption. This guide must be universally applicable to all cases, without exceptions.

References

- Abdeen, S. A. (2018). *International Legal System for Recovering Embezzled Funds*. Dar Al-Nahda Al-Arabiya.
- Abdel Jabbar, M. S. (2021). *International Cooperation in Seizing Funds Obtained from Corruption Crimes* (Master's thesis). University of Babylon.
- Abdel Majeed, R. S. A. (2017). *Egyptian Efforts in Recovering Embezzled Funds Abroad as an Effect of Non-Disposal Orders: A Dissertation Presented as a Requirement for the Degree of Doctor of Criminal Law*.
- Abdel Zaher, A. (2018). *Criminal Confrontation of Money Laundering in Arab Legislation* (2nd ed.). Dar Al-Nahda Al-Arabiya.
- Abdelghaffar, M. (2018). *Evolution of Mechanisms of International Judicial Cooperation in Criminal Matters in the Field of Arresting Fugitives and Returning Them in Light of Modern Crime Prevention Mechanisms*

- (Master's thesis). Institute of Judicial and Legal Studies, Ministry of Justice, Bahrain.
- Al-Deri, I., & Abdel Aal, M. S. (2019). *Corruption Crimes between National and International Countermeasures* (1st ed.). National Center for Legal Publications.
- Al-Maliki, Z. J. (2020, August 12). Obstacles to Recovering Iraqi Embezzled Funds. *Al-Mothakaf Electronic Journal*, Issue 5090.
- Belgrave, S. (2016, March). Recovery of funds obtained from corruption crimes. *Journal of Rights and Freedoms in Comparative Systems*, 2(3), 45-78.
- Daghmash, M. S. (2020). *Strategies for Confronting Financial, Administrative Corruption and Criminal Confrontation and the Consequences of Financial Corruption* (2nd ed.). Arab Studies Center for Publishing and Distribution.
- Dakdak, M. A. (2017). *Analytical Study of the Arab Convention against Corruption*. Retrieved from (Sudaneseonline.com.)
- Establishment of an Arab Center for Recovering Embezzled Funds*: Paper presented to the Arab Center for Legal and Judicial Research, Thirteenth Conference of Heads of State Litigation Agencies in Arab Countries, Beirut, September 19-21, 2017.
- Jean, Pierre Brun, Larissa Gray, Clive Scott, & Kevin M. Stephenson. (2011). *Asset Recovery Handbook: A Guide for Practitioners* (7th ed.). The International Bank for Reconstruction and Development/The World Bank. Retrieved from www.worldbank.org
- Kharashi, A. A. A. (2016). *Recovery of Embezzled Funds and Assets Obtained from Corruption Crimes*. New University Press.
- Malikiya, N. (2016). International cooperation in the field of assets recovery from administrative corruption crimes. *Professor Al-Research Journal for Legal and Political Studies*, 1(4), 12-15.
- Marmash, N., et al. (2015). *Regulatory Framework for Asset Recovery at the Local and International Levels*. Study issued by the Institute of Law, Birzeit University, Palestine.
- Mendil, N. A. (2018). *International cooperation in the recovery of criminals and assets obtained from corruption crimes*. Paper presented at the Legislative Reform Conference: Towards Good Governance and Anti-Corruption, hosted by the Building Foundation for Culture and Media, University of Kufa. Published in the *University of Kufa Journal*, 18(34), 167.
- Saeed, M. H. (2019). *International Legal Means to Combat Corruption Crimes* (Master's thesis). Middle East University.
- Theodore S. Greenberg, Linda M. Samuel, Wingate Grant, & Larissa Gray. (2009). *Looted Asset Recovery* (7th ed.). The International Bank for Reconstruction and Development/The World Bank. Retrieved from www.worldbank.org