

# Legal Procedures For The Recovery Of The Proceeds Of Corruption Crimes In National And International Law

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## **Abstract:**

This study aims to evaluate the effectiveness of the legal procedures followed in the process of recovering the proceeds of corruption crimes, which are considered among the most important legal mechanisms of national and international interest, so that they have become a major challenge for many public authorities, especially in light of the lack of full international cooperation to combat corruption on the one hand, and recourse to political considerations in some international practices on the other.

**key words:** Corruption crimes; legal mechanisms;  
international interest; judicial delegation; confiscation.

## **Introduction:**

The equitable distribution of national wealth is a primary objective of countries and governments, as it ensures that resources are not concentrated in the hands of a few or subject to the influence of corrupt individuals. This is particularly relevant in countries where governance is either internally or externally directed, or in countries that the lack of democratic systems of government in countries where various forms of corruption are prevalent has resulted in significant economic challenges. These challenges have led to the waste of national resources and the misappropriation of public funds, which have been transferred outside the region. Consequently, the issue of recovering these funds has become a significant burden for these countries. In addition to the challenge of combating corruption, some countries have historically demonstrated reluctance to collaborate with others in the

pursuit of its eradication and the prosecution of its perpetrators. This is particularly evident in instances where the illicit transfer of assets has occurred, and the rights holders are denied the recovery of their properties. Consequently, these countries tend to eschew any initiative that might facilitate the return of these assets to their rightful owners.

In pursuit of this trend and in implementation of this goal, the United Nations endeavored to garner the attention of the international community with the objective of establishing an international mechanism that would enable various international groups to combat corruption on the one hand and on the other hand, to recover assets that had been illicitly transferred to foreign countries. This would ensure that the people of these countries could benefit from their national wealth in a manner that is consistent with the principles of justice. The United Nations achieved this objective when it was able to persuade countries, including Algeria, to circumvent its 2003 anti-corruption convention.

The significance of this study may be found in its contribution to the advancement of international cooperation and the formulation of a unified strategy to target corrupt individuals, track them down, and punish them for the various corruption crimes they have committed. This strategy should also aim to deprive them of the financial benefits obtained through illicit means and to block the path of corrupt systems that enshrine legislation that leads to corruption and encourages its perpetrators. These objectives align with the frameworks and tools set forth by the United Nations Convention against Corruption.

However, the question posed by Part V of this Convention as to the feasibility of the international mechanisms adopted as practical models for the recovery of funds smuggled from corruption offences can be used as a reference for the national legislation of States parties to the Convention, thus harmonizing the various legal systems around the world and reflecting their cooperation to eradicate this scourge ?

To address this question, we conducted a comparative study between the different mechanisms included in the provisions of this convention and some regional conventions that are closely related to those provisions contained in National Law No. 06-01 on preventing and combating corruption without neglecting the other relevant national legislation, by highlighting the various mechanisms available, clarifying the relationship between the provisions of the United

Nations Convention and the various other regional anti-corruption conventions, which Algeria has ratified and from whose provisions it has derived legal texts through its national legislation, which constitute legitimate tools for recovering looted property, and one of the ways of cooperation between the various legal and regulatory systems to achieve this purpose.

We also assume that any fight against the phenomenon of corruption, in order to be effective, requires attention to the issue of strengthening international cooperation for the recovering of the smuggled funds, given to the complexity of such processes within the confines of a single State, as well as the need to establish a number of mechanisms that can either facilitate or impede the fight against corruption, including its penetration and spread. This is particularly relevant in the contest of preventing corrupt individuals from monopolizing the proceeds of their corruption crimes, and working to recover them by all available means, which has been of interest to the international community, and the various regional groups to which Algeria belongs, either by identity or geography, and encouraged it to engage in these efforts, by quickly joining several international conventions concerned with combating corruption, and replicating the various mechanisms included in national legislation, as we will verify by reviewing the various mechanisms included in the United Nations Convention against Corruption in the first point, and in the second point, the extent to which these mechanisms are included in regional agreements and Algerian law to achieve legislative integration as follows:

**first Topic: Recovery mechanisms available under the United Nations Convention against Corruption**

It should first be noted that the terms "asset recovery," "recovery of properties," and "recovery of stolen funds" are used interchangeably to describe the same concept. In accordance with Article 1 of the Arab Convention against Corruption 2010, the term "criminal proceeds" is defined as follows: "Any property derived or obtained, directly or indirectly, from the commission of an offense." This definition is also found in Article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which defines "any funds derived or obtained, directly or indirectly, from the commission of an offense stipulated in the first paragraph of Article 3" as "criminal proceeds." In contrast, the term "assets"

encompasses a broad range of ownership interests, including financial assets such as deposits in bank accounts, stocks, bonds, vehicles, and real estate. It also extends to ownership of companies and private property (Marmash, Lahham, & Sawalha, 2013).

The United Nations Convention of October 31, 2003, General Assembly Resolution no. 58/4 (D-58), is the first convention at the United Nations level to combat corruption, which came about in response to the challenges posed by global corruption and the resulting backwardness, poverty and violation of human rights, and to put an end to the difficulties faced by States, particularly with regard to the procedural aspect and the difficulty of proving it, as a result of the secrecy that surrounds the transfer of funds and property derived from corruption crimes, which makes it difficult to determine their location, with the absence of the slightest coordination or international cooperation between countries, not to mention the shortcomings of national institutional and legal means, or their inadequacy to trace these funds, even the differences in legal systems related to confiscation and the accompanying ineffectiveness and length of recovery procedures in judicial cooperation agreements between countries, in light of the lack of political will to embody this cooperation, added other difficulties (Mouri, 2018, p. 37), and the United Nations Convention against Corruption aims to strengthen measures aimed at preventing corruption, and combating it in the public and private sectors, and obliges the States Parties to it to implement a wide and detailed set of anti-corruption measures through laws, institutions and national practices, as well as through international cooperation between those involved in it. It also constitutes a comprehensive international framework and an integrated legal instrument capable of assisting States in taking the necessary measures to address the problem of illicit financial flows across borders.

Perhaps the most important of these mechanisms are those contained in Chapter V of this Convention, which makes the recovery of assets a fundamental principle and requires States Parties to provide each other with the greatest possible assistance and support in this area, which prompted Algeria to rush to ratify this Convention and to ratify it with reservations by Presidential Decree No. 04-128 of April 19, 2004, published in issue No. 26 of the Official Journal of the People's Democratic Republic of Algeria of April 25, 2004. Since the Convention is the most focused and clear in the fight against and prevention of corruption, not to mention the binding

nature it has for its members, Algeria took the initiative to adopt a set of mechanisms provided for in Articles 52 to 59 of the same Convention in Chapter V of the 2006 Law on the Prevention and Fight against Corruption, i.e. Law No. 06-01 of February 20, 2006 on the Prevention and Fight against Corruption, published in issue No. 14 of the Official Journal of the People's Democratic Republic of Algeria of March 8, 2006. It reads as follows:

**The first requirement: Development of procedural systems**

There is no doubt that the effectiveness of procedural systems related to methods of searching and investigating the source of funds resulting from the commission of corruption crimes, and the destination to which these funds were transferred, increases the chances of tracking them and facilitating the process of recovering them, especially in light of the accuracy of these transfer operations in concealment, and the end result of these smuggled funds in money laundering operations, not to mention the technological development that has facilitated smuggling operations, as a result of the confidentiality provided by the means of communication in linking communications and the ease of movement between the perpetrators of corruption crimes and the parties to whom the collected funds are to be smuggled (Mouri, 2018, p. 38). In order to overcome such difficulties, the United Nations Convention against Corruption has established a set of rules that help to frame the means of investigation and inference about the proceeds of corruption crimes, which are summarized by the United Nations Convention against Corruption in Article 52, as follows:

- Observing banking transparency to block money-laundering operations resulting from corruption crimes.
- Prohibiting the establishment of fictitious banks, which are banks that do not have a physical presence and are not affiliated with a financial group subject to supervision.
- Keeping bank records to refer to them during financial transfer monitoring operations when conducting investigation and research procedures.
- Obligating public employees to disclose their financial assets.
- Automatic cooperation in exchanging information regarding corruption proceeds.
- Judicial protection to recover financial proceeds and property resulting from corruption crimes.

- Managing the receipt of information regarding suspicious financial transactions.

### **The second requirement: Confiscation**

Confiscation for the purpose of recovery is one of the most effective tools in the fight against corruption, as it provides protection by returning to their owners the funds obtained through the commission of corruption crimes, especially when these funds are public and the number of victims is large. It also contributes to the fight against money laundering and transnational crimes and, from another point of view; it is considered a proof of the existence of realistic international judicial cooperation. Article 54 of the United Nations Convention against Corruption summarizes the types of confiscation in three methods (Suleiman, 2008):

- The first method is for the competent authorities of the country to which the funds and property derived from corruption were smuggled and transferred to implement the confiscation orders issued by the courts of other countries within the framework of international judicial cooperation.
- The competent authorities in the country to which the money derived from corruption was transferred, to confiscate these funds or properties of foreign origin pursuant to a judicial decision regarding the crime of money laundering, or any other crime falling within its jurisdiction.
- The competent authorities of the country to which the money or property derived from the crime of corruption has been smuggled shall carry out the administrative confiscation of the latter, without a judicial decision of conviction, in cases where it is impossible to prosecute the perpetrator due to his death, absence or any other reason.

### **The Third requirement: Taking precautionary measures**

It is well known that confiscation procedures are long and time-consuming due to the complexity of these procedures, in addition to the fact that these crimes are considered to be transnational crimes that require different procedures than those within the borders of the home country, which may provide an opportunity for corrupt individuals to transfer, transform, conceal or dispose of smuggled funds or property. Therefore, it has become necessary to adopt some precautionary or temporary measures, pending the completion of confiscation procedures, to prevent such transfers, transportation, concealment, or disposition, which may affect the funds or property derived from the commission

of corruption crimes and complicate the confiscation process. These measures include those referred to in the United Nations Convention against Corruption, Paragraph 2 of Article 54, with regard to the freezing or seizure of funds and property derived from corruption offences, which are in fact provisional measures with the ultimate aim of achieving the confiscation of such funds or property.

**Second Topic: The recovery mechanisms available under regional agreements and Algerian law**

Article 154 of the Algerian Constitution stipulates, "treaties ratified by the President of the Republic shall prevail over the law under the conditions set forth in the Constitution ». Among the treaties ratified by Algeria relating to the fight against corruption, in addition to the United Nations Convention against Corruption, were the African Union Convention and the Arab Convention. What these agreements contained in terms of legal and regulatory texts and measures required the Algerian legislator to harmonize its legislation with the amendments required by the provisions of these agreements. In order to achieve this objective, the Algerian legislator enacted Law No. 06-01 on the Prevention and Fight against Corruption, in order to incorporate the provisions of the conventions, especially those related to the mechanisms for the recovery of assets obtained from corruption crimes, which are the subject of this study. It also came in the implementation of the provisions of the Constitution, and in accordance with several organic orders and laws, including the Penal Code, the Basic Law of the Judiciary and the Basic Law of the Civil Service. Therefore, this law is considered a reference framework for combating and fighting corruption (Marzouki & Ben Amer, 2019, p. 231), and therefore we must review the legal mechanisms for the recovery of assets contained in each of the two regional agreements separately, then we conclude with those mechanisms adopted by the Algerian legislator to complete the construction of its apparatuses concerned with combating and preventing corruption, especially since Algeria has been exposed to major operations of theft of public funds committed by a group of corrupt people, through which sums of money, property, real estate, bonds, etc., were transferred, smuggled, sold, or transferred to other countries. Were transferred, smuggled and looted, estimated at billions of dollars, which must be recovered, and perhaps this is the ultimate purpose of preparing this study :

### **The first requirement: Recovery Mechanisms Available under the African Union Convention on Preventing and Combating Corruption**

The African Union is considered by some to be one of the pioneering organizations in the fight against corruption (Daghmash, 2018, p. 37), as its Convention on Preventing and Combating Corruption, adopted at the Second Ordinary Session in Maputo on July 11, 2003, was the first treaty text to address acts and practices related to corruption. It included a set of mechanisms that allow the prosecution and punishment of corrupt persons, and also allows countries to return the proceeds of corruption crimes within the texts of Articles 16 to 21 of the same Convention, activating the system of return of property and proceeds obtained from corruption crimes, by specifying some rules that oblige the States Parties within the limits of the crimes mentioned in the Convention (Nedjar, 2013/2014, p. 106). However, this Convention has been criticized for not including specific articles on the subject of asset recovery, as is the case with the United Nations Convention against Corruption, and has been limited to calling for the confiscation of proceeds in Article 16. Perhaps this is due to the weakness of the institutional apparatus within the African continent. Algeria ratified the Convention by Presidential Decree No. 06-137 of April 10, 2006, published in issue No. 17 of the Official Journal of the People's Democratic Republic of Algeria of April 16, 2006. Having been among its signatories since 2003.

### **The second requirement: The recovery mechanisms available under the Arab Convention against Corruption of 2010**

The Arab Convention against Corruption is somewhat late compared to its counterpart issued by the African Union and the one concluded by the United Nations in 2003, as it was approved at the joint meeting of the Councils of Arab Ministers of Interior and Justice held in Cairo on December 21, 2010 and entered into force on June 29, 2013. Despite its delay, it has kept pace with the provisions of the United Nations Convention against Corruption regarding the issue of recovery of assets obtained from committing acts of corruption in Articles 7, 27 to 30 thereof, which deal in detail with the recovery of assets, seizure and confiscation, and considered in Article 3 thereof: "the enhancement of Arab cooperation in preventing, combating and detecting corruption and the recovery of assets" as one of the basic objectives of the Convention, while Article 2 thereof defined criminal proceeds



as we discussed above. Algeria, like its predecessors, also ratified the Convention by Presidential Decree No. 14-249 of September 8, 2014, published in issue No. 54 of the Official Journal of the People's Democratic Republic of Algeria of September 21, 2014. The texts contained in the Arab Convention on the recovery of assets are consistent with those of the United Nations Convention, and therefore its provisions have become part of the national legal and regulatory texts.

### **The Third requirement: Recovery Mechanisms Available under Law 06-01 on the Prevention and Combating of Corruption**

Law 06-01 aims to support measures to combat corruption, as does the relevant United Nations Convention, and it is compatible with the same Convention in terms of its enumeration of types of crimes within Chapter Four, i.e. within Articles 25 to 56, in the same manner as the United Nations Convention against Corruption, except that what is criticized about Law 06-01 is that it criminalizes all the crimes stipulated in this chapter, even for crimes that were classified as felonies before its abolition (Marzouki & Ben Amer, 2019, p. 232). While Chapter Five of it is entitled International Cooperation and Recovery of Assets, within Articles 57 to 70, in accordance with Chapter Five of the United Nations Convention, which is entitled Recovery of Assets, and through it embodied the rules stipulated in the same Convention.

In conclusion, Algerian legislation is in line with the various international conventions ratified by Algeria in order to achieve a kind of legislative and regulatory integration, since the United Nations Convention against Corruption is considered a practical guide on which countries that have ratified it rely when drafting their legislative texts, and it also provides technical assistance in the field of investigations and inquiries, This enables Algeria, within the framework of these texts and in the context of international judicial and political cooperation, to recover assets smuggled out of Algeria, and does not prevent it from concluding numerous bilateral and multilateral judicial and legal cooperation agreements in its efforts to combat corruption and thereby to combat money laundering and transnational crime.

### **Conclusion:**

The United Nations Convention against Corruption of 2003 is the beacon that has guided the member states of the Convention to eliminate the scourge of corruption, in light of

the growth of this phenomenon, and worked to provide assistance to countries that were greatly harmed by the looting of their public funds, and smuggling them abroad, which makes it difficult to trace the path of these funds and recover them, especially in the midst of the reluctance of countries to cooperate with each other and facilitate the return of assets to their original owners.

Perhaps the most important findings are that there is still a reluctance on the part of some parties to establish real international cooperation, especially in the judicial aspect, to combat the scourge of corruption, and the absence of a real political will to help countries develop their institutions so that they are capable of eliminating this scourge within an effective and advanced legal and regulatory framework.

There is also a confusion between political interests and the legal obligations that countries have towards each other, especially in societies that do not have democratic systems of government and do not respect human rights.

Therefore, we believe it is necessary to make the following recommendations :

- Raising the issue of the international protection of human rights and helping to establish democratic systems of governance, free from all interference and blackmail, so that national societies can monitor how natural resources are spent and how national wealth is distributed in a way that serves sound economic and social policies.

- The need to expedite the conclusion of bilateral agreements with countries where looted funds are located, in parallel with rapid accession to the United Nations Convention against Corruption.

- Reviewing the classification of corruption crimes in Algerian law and removing some of them from the scope of misdemeanors so that penalties can be increased in accordance with the gravity of the act, especially with regard to the looting of public funds, which constitute the lifeblood of national economies.

- The need to introduce a specialization among judges that will provide them with sufficient knowledge of the methods and techniques of investigation, detection and tracing of the various transfers that affect the funds obtained through corruption crimes, and work to recover them.

**Footnotes:**

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