PISSN : 2572-0007 - EISSN : 2661-7250

Legal Mechanisms for the Recovery of Proceeds of Corruption: A Comparative Analysis Between the United Nations Convention Against Corruption and Law No. 06-01 on the Prevention and Combating of Corruption

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Received: 18 / 07 / 2025 **Accepted**: 12 / 10 / 2025 **Published**: 04 / 11 / 2025

Abstract:
The recovery of criminal proceeds resulting from corruption offenses constitutes one of the core mechanisms of international cooperation aimed at repatriating illicitly transferred assets. Given the significant risks such a procedure may pose to individual rights—particularly as it entails the deprivation of property through seizure, freezing, confiscation, and restitution to rightful owners—it becomes imperative to establish clear rules and safeguards. These legal frameworks must, on one hand, protect the interests of the requesting State seeking to recover assets derived from acts of corruption, and on the other hand, uphold the rights of individuals and ensure the legality and due process of the recovery proceedings.

Keywords: *Asset Recovery,. Corruption Crimes, Confiscation, International Cooperation, United Nations Convention Against Corruption, Illicit Proceeds*

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I. INTRODUCTION

Corruption offenses are classified among the organized transnational crimes. Perpetrators of such offenses often resort to concealing the criminal proceeds derived therefrom by transferring them abroad, with the aim of obscuring their illicit origin and evading the reach of the law. This presents a significant obstacle that renders domestic criminal legislation insufficient to achieve its objectives in recovering assets that have been illicitly transferred abroad.

Therefore, international cooperation in combating corruption offenses has become essential to establish both procedural and substantive rules to counter this type of crime—whether through preventive measures to deter its occurrence or by implementing the necessary legal and judicial mechanisms for its prosecution. In this context, the United Nations Convention against Corruption (UNCAC) was adopted, reflecting the collective will of the international community to strengthen security and judicial cooperation in addressing corruption offenses, which pose a serious threat to global economies.

The Convention incorporates numerous substantive and procedural rules for combating corruption. Among the most notable are the mechanisms of international cooperation for the recovery of criminal proceeds derived from corruption-related offenses. Given the importance of such mechanisms in tracing, seizing, confiscating, and returning illicit assets to their rightful owners, the Algerian legislator addressed this matter within the framework of the provisions of Law No. 06-01 on the Prevention and Combating of Corruption.

Asset recovery, in this context, refers to the legal and judicial procedures undertaken at the international level to trace illicit funds transferred abroad, to identify and preserve them through preventive measures, and to initiate confiscation procedures, ultimately leading to their restitution to lawful owners. This raises the following questions: What are the methods and forms through which criminal proceeds can be recovered? And what procedural mechanisms exist for international cooperation in recovering assets derived from corruption offenses?

To address this problem, the present study is divided into the following three sections:

- Section I: Forms of Recovery of Criminal Proceeds
- Section II: Confiscation of Assets Derived from Corruption Offenses
- Section III: Restitution and Disposal of Recovered Assets

Section I: Forms of Recovery of Criminal Proceeds

The United Nations Convention against Corruption has identified several forms through which a State affected by the illicit transfer of criminal proceeds resulting from corruption offenses may claim recovery of such assets from the receiving State. Article 53 of the Convention stipulates:

"Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish ownership of property acquired through the commission of an offense established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offenses established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offenses;

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offense established in accordance with this Convention."

According to the text of this article, the recovery of criminal proceeds derived from corruption offenses takes three main forms.

Subsection I: Initiating a Civil Action to Establish Ownership

It is common for individuals involved in corruption offenses to transfer illicit proceeds from the country in which the crime occurred to another country in order to conceal and disguise the unlawfully acquired assets. In such cases, the harmed State may initiate a civil action in the jurisdiction where the criminal proceeds have been transferred, seeking recognition of its ownership rights over the assets in question.

Civil actions for asset recovery are characterized by their accessibility even in the absence of a criminal conviction. Such actions may be initiated independently of criminal proceedings and remain viable even in cases where a criminal court has rendered an acquittal, provided that sufficient evidence exists to support the civil claim and to establish that the assets in question were obtained through unlawful means(Belgraaf, 2016). In this context, the affected State may bring a civil suit as a claimant party, seeking the direct recovery of the illicitly acquired assets through judicial civil proceedings. (Mohamed Ahmed, 2015)

The importance of initiating a civil action becomes particularly evident when criminal prosecution is not feasible due to the death of the accused or the unavailability of the offenders. In such cases, liability may still be established based on civil standards of proof, without the requirement of a prior criminal conviction(Houam, 2019). The United Nations Convention against Corruption obliges States Parties to enable affected States to bring civil claims before the courts of the State in which the assets have been transferred. This obligation necessitates the adaptation and revision of domestic legislation to ensure that no legal barriers impede the initiation of such civil proceedings(United Nations, 2003, Art. 53).

In this regard, Algerian legislation grants the affected State the right to bring a civil claim in Algeria where the illicit assets have been transferred to its territory. Article 62 of Law No. 06-01 on the Prevention and Combating of Corruption provides:

"Algerian judicial authorities shall have jurisdiction to hear civil claims brought by States Parties to the Convention, for the purpose of recognizing their ownership rights over property derived from acts of corruption."

This provision affirms that any State Party to the United Nations Convention against Corruption, if harmed as a result of the transfer of criminal proceeds stemming from corruption offenses to another State, may bring a civil action to recover those unlawfully acquired assets.

Subsection II: The Right of the Affected State to Claim Compensation

Article 53, paragraph (b) of the United Nations Convention against Corruption refers to the possibility for an affected State to claim compensation for the damages it has suffered in the context of criminal proceedings aimed at imposing sanctions for corruption offenses. In alignment with this provision, the Algerian legislator addressed this measure under Article 62, paragraph 2 of Law No. 06-01 on the Prevention and Combating of Corruption, which states:

"The judicial authorities adjudicating the claims referred to in paragraph 1 of this Article may order persons convicted of acts of corruption to pay civil compensation to the requesting State for the damage it has sustained."

This article confirms that the decision to award compensation to the affected State is discretionary and falls within the authority of the competent judicial body. Furthermore, the court adjudicating corruption offenses may rule on civil compensation in favor of the affected State through an ancillary civil action heard within the context of the criminal trial(Haha, 2013).

Subsection III: Issuing Measures to Safeguard the Rights of the Affected State

Article 53, paragraph (c) of the United Nations Convention against Corruption provides:

"Each State Party shall, in accordance with its domestic law, take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offense established in accordance with this Convention."

This measure is considered one of the direct mechanisms for asset recovery, and consists of taking all necessary steps to safeguard legitimate ownership rights. It is typically implemented upon issuance of a confiscation order by a judicial authority, which must simultaneously consider third-party claims based on lawful ownership.

The Algerian legislator has adopted this provision under Article 62, paragraph 3 of Law No. 06-01, which states:

"In all cases where a confiscation order may be issued, the court hearing the case shall take all necessary measures to safeguard the legitimate ownership rights that may be claimed by another State Party to the Convention."

Section II: Confiscation of Assets Derived from Corruption Offenses

Confiscation is one of the criminal sanctions resulting from corruption offenses. Perpetrators of such crimes often resort to transferring the illicit proceeds abroad in order to launder them and conceal their unlawful origin. The purpose of confiscating these assets is to undermine the primary objective pursued by criminal organizations—namely, profit generation. Confiscation does not only apply to funds directly obtained from corruption offenses, but also extends to any assets derived therefrom or assets of equivalent value(Hayat, n.d.). Accordingly, this measure has been addressed in the United Nations Convention against Corruption and has been enshrined in Algerian law through the Law on the Prevention and Combating of Corruption.

Subsection I: Definition of Confiscation

The Algerian legislator defines confiscation in the Penal Code as the permanent transfer of ownership of assets to the State, whether such assets consist of specific property or the equivalent monetary value thereof, where appropriate (Penal Code, Art. 15). Likewise, the Law on the Prevention and Combating of Corruption defines confiscation as the permanent deprivation of property by order of a judicial authority (Law No. 06-01, Art. 2).

Accordingly, the confiscation of assets derived from corruption offenses refers to the seizure of tangible and monetary items that are either the proceeds of, or were used in, the commission of the offense (Malekia, 2016).

Article 64 of the Law on the Prevention and Combating of Corruption outlines a series of procedural and substantive legal measures that must be observed by the requesting State seeking the recovery of assets and proceeds obtained through corruption offenses and confiscated by Algerian authorities. Among these measures are the following:

First: Submission of a Confiscation Request

Submitting a confiscation request constitutes the initial step through which a State affected by a corruption offense may seek the confiscation of criminal proceeds, assets, or equipment connected to the offense. The request must be addressed to the State in which the assets have been transferred, with the aim of initiating appropriate measures for their seizure and eventual confiscation. In this context, Article 64 of the Law on the Prevention and Combating of Corruption provides:

"In accordance with the prescribed procedures, the judicial authorities or competent bodies may, upon request from a State Party to the Convention, whose courts or competent authorities have issued a freezing or seizure order concerning the proceeds derived from any of the offenses referred to in this law—or assets, equipment, or tools used or intended to be used in the commission of such offenses—order the freezing or seizure of such property, provided there are sufficient grounds to justify such measures

and evidence indicating that the ultimate disposition of the property will be confiscation."

Second: Required Information in a Confiscation Request

The Algerian legislator has established a set of formal and substantive requirements that must be met in any confiscation request. These are outlined in Article 66 of the Law on the Prevention and Combating of Corruption, which states:

"In addition to the necessary documents and information that cooperation requests must contain in accordance with applicable bilateral and multilateral agreements and national law, requests submitted by a State Party to the Convention for the purpose of obtaining or executing a confiscation order must include the following:

1. *A statement of the facts relied upon by the requesting State and a description of the requested measures, as well as a certified copy of the underlying order, where available—particularly in cases involving requests for freezing, seizure, or other provisional measures;*
2. *A description of the assets to be confiscated, including their location and value, where possible, along with a factual summary detailed enough to allow national judicial authorities to issue a confiscation order in accordance with applicable procedures, in cases where the request seeks the issuance of such an order."*

Third: Competent Authority to Receive Confiscation Requests

The confiscation request submitted by the affected State must be directed to the Minister of Justice, who is responsible for transmitting the request to the competent judicial authority. Article 67 of the Law on the Prevention and Combating of Corruption provides:

"The request submitted by a State Party to the Convention for the confiscation of criminal proceeds, assets, equipment, or other means referred to in Article 64 of this law and located within the national territory shall be addressed directly to the Ministry of Justice, which shall forward it to the Public Prosecutor at the competent judicial authority.

The Public Prosecutor shall submit the request to the competent court along with its own motion. The court's decision may be appealed and subject to cassation in accordance with the law.

Confiscation orders issued pursuant to requests submitted under this Article shall be executed by the Public Prosecutor using all legal means."

Section III: Restitution and Disposal of Recovered Assets

The restitution of recovered assets constitutes the final stage of the confiscation process and is of particular importance, especially regarding the disposition and management of such assets. This includes measures to prevent the offender from administering or disposing of their property (Abdel-Meguid, n.d.). The restitution of criminal proceeds is a crucial step, as it represents the ultimate objective of the confiscation process—raising the question of whether such assets should revert to the State in whose territory the corruption offense was committed(Haha, 2013, p. 313), or to the State that suffered direct harm as a result of the offense.

Despite the significance of determining how the assets are to be disposed of and to whom they are ultimately returned, the Algerian legislator merely referred to the provisions of the United Nations Convention against Corruption in Article 70 of Law No. 06-01, without providing further detail.

Subsection I: Mechanisms for Disposing of Criminal Proceeds

The United Nations Convention against Corruption addresses the issue of disposing of confiscated assets in Article 57, which states:

"Property confiscated by a State Party pursuant to Article 31 or Article 55 of this Convention shall be disposed of, including by returning it to its prior legitimate owners pursuant to paragraph 3 of this Article, in accordance with the provisions of this Convention and the domestic law of the confiscating State.
Each State Party shall, in accordance with the fundamental principles of its domestic law, take such legislative and other measures as may be necessary to enable its competent authorities to return confiscated property, upon request by another State Party, in accordance with the provisions of this Convention, taking into account the rights of bona fide third parties."
From the text of this article, several key observations may be drawn:

- **First Observation:** The Convention affirms that if criminal proceeds derived from corruption offenses are confiscated by the State in whose jurisdiction the offense occurred, such assets shall be disposed of by returning them to the affected State.
- **Second Observation:** The Convention does not explicitly specify the entity to which the confiscated assets are to be returned. Instead, it uses the term *"prior legitimate owners,"* which is a broad concept that may encompass not only States but also public or private institutions and corporations that hold lawful claims to the confiscated property (Al-Ghobary, n.d.).

Subsection II: Circumstances for the Restitution of Confiscated Assets
The United Nations Convention against Corruption outlines the specific circumstances under which confiscated assets are to be returned. These are detailed in Article 57 of the Convention, and three primary cases can be inferred in which proceeds and assets derived from corruption offenses are subject to restitution (Abdel-Meguid, M. A., n.d.). The Convention links these cases to earlier legal provisions, notably Article 46 on mutual legal assistance and Article 55 on international cooperation for purposes of confiscation. The identified cases are as follows:
Pursuant to Articles 46 and 55 of the Convention and paragraphs 1 and 2 of Article 57, the requested State Party shall:

1. **First Case:** In cases involving the embezzlement of public funds or the laundering of such embezzled funds, as referenced in Articles 17 and 23 of the Convention, restitution shall follow confiscation under Article 55 and must be based on a final judgment rendered by the requesting State Party. However, this requirement may be waived by the requested State Party, allowing it to return the confiscated property directly to the requesting State Party.
2. **Second Case:** In cases involving proceeds of any other offense covered by the Convention, when confiscation has been executed under Article 55 and based on a final judgment from the requesting State Party, the requested State Party may also waive the judgment requirement and return the confiscated property if the requesting State Party has provided reasonable proof of ownership, or if the requested State Party acknowledges the damage suffered by the requesting State Party as a basis for restitution.
3. **Third Case:** In all other situations, the requested State Party shall give priority consideration to returning the confiscated property to the requesting State Party, or to the prior legitimate owners, or to compensating the victims of the offense.

Subsection III: Provisional Measures Concerning Assets Derived from Corruption.
Since criminal proceeds obtained through acts of corruption are acquired by unlawful Means, it is imperative for the State to which such assets have been transferred to take provisional measures by initially freezing or seizing them. This ensures that the perpetrator does not dispose of, dissipate, or conceal these assets (Rabeh & Flayej, 2019), which would hinder any future restitution efforts.

The process of asset recovery and repatriation can often be lengthy, which increases the risk that the assets may be transferred, laundered, or hidden to obstruct recovery efforts. For this reason, several legal systems have established precautionary and protective measures to preserve these assets and prevent tampering (Al-Ghobary, P365.).

The United Nations Convention against Corruption also addresses these provisional measures under Article 54, paragraph 2, which provides:

"Each State Party, in order to provide mutual legal assistance pursuant to article 55, paragraph 2, of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or other competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of subparagraph (a) of paragraph 1 of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of subparagraph (a) of paragraph 1 of this article;

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property."

- In this context, the Algerian legislator has established a number of formal and substantive conditions governing the freezing and seizure of assets as precautionary tools for safeguarding property derived from corruption (United Nations, 2003, Art. 64). These conditions include:

1. **First Condition:** Provisional measures may only be undertaken upon the request of a State Party to the Convention, where its courts or competent authorities have issued a freezing or seizure order relating to the proceeds of corruption offenses or to property, equipment, or instruments used or intended for use in the commission of such offenses.
2. **Second Condition:** There must be sufficient grounds to justify the imposition of such provisional measures, along with credible indications that the property in question will ultimately be subject to confiscation.
3. **Third Condition:** The provisional measures must be executed by the competent judicial authorities, based on substantiated evidence and information submitted by the requesting State Party seeking confiscation.

Conclusion

From the foregoing, it can be concluded that the recovery of criminal proceeds smuggled abroad may take various forms and is governed by both procedural and substantive frameworks as stipulated in the United Nations Convention against Corruption and Law No. 06-01 on the Prevention and Combating of Corruption. Among the main findings reached in this regard are the following:

- Provisional measures play a crucial role in preparing for the confiscation of property and assets derived from acts of corruption, particularly given that the procedures for asset recovery can be protracted due to the complexity arising from their dual national and international dimensions.
- The confiscation of assets obtained from corruption-related offenses aims to eliminate the principal motive pursued by criminal organizations—namely, the pursuit of illicit profit. Confiscation does not only target assets directly acquired

through corruption offenses but also encompasses their proceeds or the equivalent value of such assets.

Recommendations

- There is a pressing need to strengthen international cooperation in combating corruption by developing multifaceted and diversified plans and strategies.
- It is essential to unify international efforts in judicial and security cooperation by expanding the scope of mutual legal and judicial assistance, particularly for the purpose of enhancing international collaboration in the collection of evidence during the investigation and trial phases.
- It is also necessary to establish clear rules for tracing looted funds and assets by adopting preventive arrangements aimed at uncovering and preventing illegal transfers.

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