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Article

The Recovery of Criminal Proceeds from the Perspective of the United Nations Anti-Corruption Convention[1]

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Abstract: Corruption is widely recognized as a transnational crime due to its severe impact and its increasing connections to various other crimes, particularly economic and financial offenses. These crimes, in turn, have widespread effects on social and economic development and can destabilize countries. In response, nations have classified corruption as a transnational organized crime under the United Nations Convention against Corruption. This designation was formalized by the United Nations member states in 2004. Efforts by these states led to the establishment of two primary methods for recovering criminal proceeds: the first method involves direct recovery through civil legal processes, while the second focuses on confiscation after final criminal convictions.

Keywords: corruption, organized crime, criminal proceeds, illicit funds, confiscation, direct recovery, money laundering

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Introduction:

The negative repercussions of transnational organized crime, particularly in the economic sector, have driven the need for global efforts to establish preventive and deterrent measures aimed at curbing this growing issue. This led to the creation of the United Nations Convention Against Transnational Organized Crime in 2000. Given the widespread belief among member states that corruption is no longer merely an internal issue but a global challenge affecting economies and societies, it became clear that effective action was needed. The United Nations Convention Against Corruption was signed in 2003, incorporating a range of measures focused on international cooperation to combat economic crimes, including money laundering. Money laundering is especially concerning as it involves vast amounts of criminal assets that can threaten the political stability and sustainable development of nations. Illicit wealth can cause severe damage to democratic institutions and national economies, posing a serious risk to the rule of law.

Before delving deeper into this issue, one key question arises: How do the procedures for recovering criminal proceeds, as outlined by the United Nations Convention Against Corruption, contribute to combating or preventing such crimes?

To address this, we will outline the fundamental principles of the recovery process established by the Convention as follows:

1.States' Commitment to the Principles of Criminal Proceeds Recovery under Domestic Laws:

criminalizing behaviors that lead to the accumulation of significant illicit criminal proceeds is not enough to deter criminal organizations. These illicit gains often extend beyond the criminals' immediate arrest and are used for personal purposes, frequently becoming intertwined with legitimate funds. This blending of illegal and legal finances can have disastrous economic effects, including currency depletion, a reduced tax base, increased poverty, and the undermining of trade foundations. These issues harm key public policies, such as economic growth, education, healthcare, and environmental sustainability.

These concerns have led the international community, particularly the states party to the relevant convention, to seek collective solutions. A key goal is to limit the movement and spread of illicit funds across national borders, and to ensure the return of such funds to their countries of origin upon request. Such measures would significantly help repair the damage caused by corruption and enhance justice by removing the financial incentives that drive criminal activity. A unified approach is vital, especially given the variation in legal systems and the importance of maximizing aid and cooperation.

The following sections will address:

2.Prevention and Detection of Illicit Activities

2.1. The Need for a Comprehensive Legal System

The states parties under the United Nations Convention Against Corruption have adopted a series of measures that must be strictly enforced within domestic legal frameworks. These measures aim to combat this widespread issue by preventing corruption and exposing illicit financial flows. These procedures extend from anti-money laundering efforts, where states must integrate these measures to prevent and identify the movement of criminal proceeds.

Verifying Customer Identity and Financial Control Measures in the Context of Anti-Money Laundering

- Verifying the identity of customers as part of the broader system of control and oversight within financial institutions aimed at preventing and combating money laundering.
- Identifying the beneficial owners of funds deposited in high-value accounts and uncovering any pseudonyms or third parties that may be involved in conducting financial transactions.
- Conducting thorough investigations of accounts requested to be opened or maintained by individuals holding or previously holding important public functions, as well as their family members, close associates, or representatives, to identify any suspicious transactions and report them to the relevant authorities.
- Reporting to the competent authorities is essential. To facilitate this, the Convention outlines several measures that States Parties must incorporate into their domestic laws, drawing on regional and multilateral experiences and initiatives in the field of anti-money laundering. These measures include:
    - Issuing guidelines regarding the types of natural or legal persons whose accounts must undergo careful examination, as well as the procedures for opening accounts, including proper record-keeping.
    - Opening up avenues for cooperation with other countries, either at their request or initiative, to provide information about the identity of individuals (both natural and legal persons) for the purpose of a thorough examination of their accounts.

These measures enhance the vigilance and disclosure activities carried out by financial institutions as required by this agreement. Additionally, they play a dual role: they not only prevent future criminal activities but also facilitate investigations aimed at identifying and recovering assets. These procedures also contribute to promoting transparency, although they can have a negative impact on public officials in the country conducting the audits or in other jurisdictions.

2.2.Preventive and Detecting Measures in Criminal Proceeds Recovery:

Regarding vigilance and preparedness for subsequent stages in recovering criminal proceeds, particularly in detecting and preventing illicit financial activities, States Parties are obligated to consistently apply these measures. This includes maintaining records of financial transactions, particularly concerning the identity of beneficial owners, in accordance with Article 52 of the United Nations Convention Against Corruption.

Preventing and detecting the transfer of proceeds derived from criminal activities requires States Parties, with the assistance of their supervisory bodies, to prevent the establishment of banks with no physical presence or affiliation with regulated financial groups—commonly known as "shell" or "fictitious" banks. States are obliged to ensure that their financial institutions refuse to enter or continue correspondent banking relationships with such institutions.

From a financial transparency perspective, countries are also encouraged to establish an effective system for the declaration of financial assets held by public officials, with penalties for non-compliance. They are also required to cooperate bilaterally and multilaterally in sharing this information with other authorities for investigative purposes, ensuring that public employees with foreign financial interests disclose their relationships and maintain appropriate records, under threat of sanctions.

2.3. Direct Recovery of Assets:

The recovery of criminal proceeds sometimes necessitates cooperation through civil justice, particularly when criminal prosecution is not feasible due to the death or absence of perpetrators. This is a fundamental mechanism for asset recovery, as criminal prosecutions may lack the evidence required for direct confiscation. In such cases, states should establish civil standards to recover funds without the need for a criminal conviction.

Legal assistance in civil cases related to corruption involves:

- Allowing countries to file civil lawsuits in each other's courts to claim ownership of property acquired through corruption, in accordance with their domestic laws.
- When a State Party adopts civil procedures in place of criminal ones, the principle of reparation must be applied, ensuring that the affected state is compensated. Courts should be authorized to mandate that perpetrators involved in organized crimes, particularly those addressed in international conventions, compensate the state for the damage caused. Legal distinctions exist between the two procedures: in civil suits, the state is the victim party, while in public lawsuits, the right to compensation is determined after a criminal conviction.
- Taking necessary measures to ensure that judicial or competent authorities protect the legitimate property claims of other countries during confiscation proceedings.

3 . International Cooperation in Confiscation:

Criminalizing acts that constitute organized crime and punishing perpetrators is a preliminary measure in fighting these crimes. However, merely convicting perpetrators is insufficient if they retain access to their illegal gains, which may be passed to family members or associates, allowing them to continue illicit activities.

States Parties must therefore take additional measures to prevent criminals from using their illicit proceeds for other purposes. One of the most effective strategies is to seize and confiscate property acquired through criminal means. Confiscation follows criminal conviction, whereas direct

1.Managing Property for Confiscation Purposes: Authorities are authorized to manage property to preserve it for confiscation, such as retaining it after an arrest or criminal charge connected to its possession.

2.International Cooperation for Confiscation:

International collaboration under United Nations conventions, particularly those addressing organized crime and corruption, extends beyond cooperation during investigation or prosecution. It also covers all actions related to the confiscation of criminal proceeds or assets equivalent to these proceeds, including property, tools, or equipment used or intended for use in crimes. This includes efforts to identify, trace, freeze, or seize such assets, even if they haven't been mixed with legitimate funds or transferred.

International cooperation for confiscation requires states to commit to internal laws or any relevant agreements (bilateral or multilateral) that include the following responsibilities:

- Referring cooperation requests to the competent authorities to issue a confiscation order, and ensuring its enforcement if issued. Requests must detail the property to be confiscated and the facts that support the request, allowing the requested state to issue the order based on its laws.
- Accepting confiscation orders from foreign courts in the requesting country to confiscate criminal proceeds within the receiving country's territory. The request must include a copy of the confiscation order, a justification, and relevant details about its implementation.

States may refuse cooperation for confiscation or temporarily halt measures if there is insufficient evidence or if the property's value is minimal. However, the requesting state must be given a chance to present further justification for continuing the process.

Moreover, international cooperation for confiscation can extend beyond the confiscation stage to include the return and disposal of exceptional assets from criminal activities. This is a key action in implementing the principles of the United Nations Convention against Corruption, aiming to safeguard countries' economies from illicit funds that undermine the rule of law and foster corruption. The return of criminal proceeds to the rightful owners is seen as a crucial step in combating corruption, following previous measures outlined in the agreements.

The United Nations Conventions against Organized Crime and Corruption require cooperation in recovering or disposing of legitimate funds, considering the original ownership at the time of the crime. If the requesting state cannot prove ownership or claim to be the sole affected party, it can request compensation for the damage caused. Additionally, the requesting state may deduct reasonable costs incurred during the confiscation process.

Conclusion:

The United Nations Convention to Combat Transnational Organized Crime and Corruption addresses the consequences of these crimes, especially the spread of illicit wealth, by implementing a range of administrative and judicial measures. These measures focus on international cooperation, where states take legislative actions that emphasize prevention and deterrence (such as prosecution) and the eventual return and disposal of criminal assets as a productive step in combating these crimes.

Despite these efforts, the fight against transnational organized crime is still a work in progress, as these crimes continue to rise, often linked to terrorism and economic offenses. Consequently, the States Parties must approve the following:

- The mandatory nature of these agreements, given the severity of the issue.
- Extending judicial jurisdiction throughout the stages of cooperation, while respecting state sovereignty.
- Standardizing cooperation agreements between state parties.
- Establishing multilateral bodies, including joint judicial entities, to focus on recovering criminal proceeds at all stages.
- Recognizing the international nature of these crimes and creating an independent judicial body to handle them in line with the principles of the United Nations conventions on organized crime.

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