



New Vision University

Deanship of Postgraduate studies

The Title of the Thesis

**The International cooperation on the restitution of criminal proceeds resulting from
corruption crimes**

Prepared by: Mohammad Soboh

Supervised by: Dr. Rafat Soboh

**This research aims at fulfilling the requirements of the master degree in
Comparative Private International law at the**

New Vision University (Georgia)

September 2021

Abstract

The study aimed to examine the matter of international cooperation on the restitution of criminal proceeds resulting from corruption crimes. The study has depicted those corrupt activities remain a global threat given the negative effects on human rights propagator, suppression of the rule of law, social justice, and promotion of a stable democratic political framework. Thus, the study has further indicated that corruption crimes are a concern for many nations thus requiring a concerted effort for its eradication and focused due process to ensure dispensation of justice. At a legalisation point of view, the United Nations Convention against Corruption has supported the goodwill of states to foremost prevent engagement in criminal and corrupt activities; and then ensuring the recovery of all proceeds that draw from such systematic crimes.

Table of Contents

Declaration	1
Acknowledgment	2
1.0 Chapter One: Introduction.....	3
1.1 Study’s Background	3
1.2 Aim of the study	6
1.3 Research Objectives	6
1.4 Legal Research Questions	6
1.5 Research Methodology	6
1.6 Thesis Structure	7
2.0 Chapter Two: The essence of the criminal proceeds of corruption crimes	8
2.1 Concept and Types of Criminal Proceeds of Corruption	8
2.2 Sources of Criminal Proceeds for corruption crimes.....	10
2.2.1 Administrative Corruption	10
2.3 Crimes of Smuggling Criminal Proceeds of corruption	14
2.3.1 Money Laundering	14
2.3.2 Smuggling Migrants	16
3.0 Chapter Three: Restitution of criminal proceeds of corruption crimes	19
3.1 The legal framework and the phenomenon of international cooperation on the restitution of the proceeds of corruption at international level 19.....	19
3.2 Criminal Proceeds Recovery Procedures in General.....	26
3.1.2 Criminal Proceeds Recoveries through Legal Means	35
3.2 The mechanisms for restitution of criminal proceeds.....	36
3.2.1 Criminal Confiscation	38
3.2.2 NCB Confiscation.....	39
3.2.3 Administrative Confiscation	40
3.2.4 The Criminal Proceeds Return.....	45
3.3 Obstacles towards the restitution of proceeds of crime.....	42
3.3.1 general obstcales	42

3.3.2 The legal obstacles.....	44
3.3.3 Operation Barriers.....	45
3.3.4 The Knowledge Base.....	46
3.3.5Principled concerns	47
4.0 Chapter Four: Conclusion and Legal Recommendations.....	49
4.1 conclusion.....	49
4.2 Legal Recommendations	51
References	58

Declaration

The completed thesis consists solely of my original ideas and has never been reproduced for the award of any other degree in law.

Acknowledgment

I thank all that have assisted me in completing the thesis.

Chapter One: Introduction

1.1 Study's Background

Corruption is a global menace that has adverse effects on the economy of states as well as the societies in general.¹ Further, the crime of corruption adversely leads to human rights violations, market distortion, violation of the rule of law and democracy.² The crime is present in all countries whether developed or developing however the crime is mostly detrimental to the latter. Several attempts and efforts were made to recognise corruption as a crime both at the municipal as well as the international level. At the international level there is the United Nations Convention against Corruption that is aimed at preventing and eradicating the crime. Among the key provisions of the Convention is the principle that requires the cooperation of states in preventing and detecting corruption in addition to returning the proceeds of the crime of corruption.³ The Convention was a major step towards eradicating corruption in various countries but its effectiveness is heavily undermined by corrupt high government officials who misuse and plunder national wealth.

According to reports made to the United Nations office on Drugs and Crime, developing countries lose billions of funds every year as a result of acts of bribery, corruption and misappropriation of funds.⁴ Further the reports indicate that the proceeds of these crimes are ultimately traced back into the 'world's financial centers'.⁵ Consequently the impact is heavily felt on the developing countries as their economic development and the provision of social services remains sluggish.⁶ Generally, the procedure for returning the proceeds of crime, tracing the assets back to the country of origin, freezing them or confiscating them is complex, ambiguous and tedious. The reasons for the complexities are that the process involves the engagement of multiple jurisdictions and in most cases the process is barred by legal, political and technical hindrances. In light of this the UN Convention against Corruption incorporated Chapter V to specifically govern the return of the proceeds of

¹ Reydams, 'Universal Jurisdiction: international and municipal legal perspectives' (2004), Oxford: Monographs in International Law

² Greenberg T, 'Money Laundering and Corruption: In J. E. Campos, & S. Pradhan, The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level' (2007) Washington DC: World Bank pp. 381-426

³ Ibid

⁴ Schabas W, An Introduction to the International Criminal Court, (Cambridge: Cambridge University Press 2007)

⁵ Ibid

⁶ Greenberg T, 'Money Laundering and Corruption: In J. E. Campos, & S. Pradhan, The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level' (2007) Washington DC: World Bank pp. 381-426

crime.⁷ The provisions require that stolen assets are to be returned to their country of origin and that state parties to the Convention are to undertake the necessary steps to confiscate, trace and return the proceeds of the crime of corruption. However the subject of asset recovery or the return of the proceeds of corruption is still at the top of the agendas of the global arena and the General Assembly of the United Nations.⁸

Corruption constitutes a moral and legal crime; whose detriments impacts a country's fiscal growth and it has been a concern at national and international levels due to its influence on the misuse of funds that could have otherwise been challenged to developmental projects⁹. The menace has often undermined the concept of good governance as well as economic empowerment of nations. In that regard, a need arises for retrieval of corruption proceeds to deter corrupt practices and combat this moral decadence in society¹⁰.

There is not a generally agreed-upon definition of corruption, although it can be described from global perception indices, whereby its properties are demonstrated. For instance, according to the Corruption Perception Index of Transparency International, corruption is labelled as public office' misuse in favour of personal gains. Moreover, what is more definitive are the proceeds of corruption, which denote the assets that are unlawfully obtained entirely or implicitly from committed corrupt practices¹¹.

As such, there is a global legal framework for the confiscation of looted public coffers that are expatriated to other foreign countries to help weaken corruption. According to Olujobi¹², confiscation of profits made from corruption connotes an anti-corruption tool that is designed to weaken corruption suspects' devices to help disincentivize others against the crime, compensate the victims of corruption as well as strengthen the legal environment to deal with anti-corruption.

⁷ Ibid

⁸ National Audit Office, 'The Assets Recovery Agency: Report by the Comptroller and Auditor General' (2007), London: The Stationery Office

⁹ Olujobi, O.J. (2021), "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", Journal of Money Laundering Control, Vol. ahead-of-print No. ahead-of-print.

¹⁰ Olujobi, O.J. (2021), "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", Journal of Money Laundering Control, Vol. ahead-of-print No. ahead-of-print.

¹¹ Salvo, M. (2016). Corruption and Money Laundering as a Threat to Financial Stability: 'Lava Jato' Case Study. SSRN Electronic Journal. 10.2139/ssrn.2788735.

¹² Olujobi, O.J. (2021), "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", Journal of Money Laundering Control, Vol. ahead-of-print No. ahead-of-print

Internationally, the United Nations Convention against Corruption offers the legal framework for dealing with corruption by fostering cooperation among states in the prevention as well as detection of corruption coupled with the restitution of such corruption proceeds¹³.

This convention therefore represents significant steps taken at international levels towards the eradication of the menace. However, there are internal shortcomings that impair this discourse such as the acts of corrupt officials in the government, who collude with criminals to protect corruption culprits and allow the use of their plundered resources, especially in countries with legal loopholes¹⁴. This study examines the phenomenon of international cooperation towards the restitution of corruption proceeds.

Problem Statement

The United Nations office on Drugs and Crime indicates that emerging economies are affected by corruption practices, as they lose billions of shillings annually due to acts of bribery, corruption as well as misappropriation¹⁵. Moreover, it is indicated that such corruption proceeds are expatriated in foreign countries, implying that the funds cannot be used in economic regeneration within the same economy¹⁶. As such, emerging economies feel this impact due to slowed economic growth and deterioration of social aspects of the people such as wellbeing and livelihood. Moreover, another challenge arises in the tracing of such funds, in a bid to return them to their country of origin through confiscation, which is often a complex process. Such complexities arise out of the ambiguous and tedious process involved in engaged multiple jurisdictions, hence implying that there is a potential of legal, technical as well as political hindrances in identifying and legally justifying proceeds of crime¹⁷. As per the guidelines established under chapter V of the UN Convention against Corruption, proceeds of corruption should be repatriated to their country of origin after they are confiscated from the criminals. However, the issue of asset recovery remains a top agenda globally.

¹³ Reydams, 'Universal Jurisdiction: international and municipal legal perspectives' (2004), Oxford: Monographs in International Law

¹⁴ Salvo, M. (2016). Corruption and Money Laundering as a Threat to Financial Stability: 'Lava Jato' Case Study. SSRN Electronic Journal. 10.2139/ssrn.2788735

¹⁵ Schabas W, An Introduction to the International Criminal Court, (Cambridge: Cambridge University Press 2007)

¹⁶ Ibid [Schabas]

¹⁷ Olujobi, O.J. (2021), "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", Journal of Money Laundering Control, Vol. ahead-of-print No. ahead-of-print

1.2 Aim of the study

The aim of this study is to establish the possibility of international cooperation of states in the restitution of criminal proceeds of corruption crimes.

1.3 Research Objectives

The objectives of the study include the following:

1. To explore the essence of the criminal proceeds of corruption crimes
2. To examine the phenomenon of international cooperation as a pathway to asset recovery of proceeds of corruption and explain the mechanism of restitute these returns.
3. To provide recommendations on unified and effective administration of justice around restitution of criminal proceeds resulting from corruption crimes.

1.4 Legal Research Questions

The research question reads as follows:

RQ: How does international cooperation on the restitution of criminal proceeds help in the recovery of the proceeds of corruption.

1.5 Research Methodology [Comparative Methods]

The first approach (Doctrinal Methods) : This study adopted a library-based study that relied on doctrinal methods. Kharel¹⁸ argues that doctrinal legal research is adopted by legal practitioners, including judges, lawyers as well as jurists, to help them systematically reason while undertaking the research. In that regard, the researcher used this methodology to conduct an appropriate legal assessment of the issue of restitution of corruptly acquired monies among international partners. This assessment encompassed the utilization of various internet sources to achieve a heightened literature appraisal, case studies' evaluations as well as the analysis of relevant judicial as well as legislative provisions. This methodology further allowed the researcher to rely on the United Nations Convention against Corruption's chapter V provisions as well as the process involved in asset recovery internationally.

The researcher, therefore, analyzed the various obstacles towards the recouping of corruption proceeds and the essence of establishing a legal framework that allows forfeiture. Through such a framework, there will be reduced chances of criminals enjoying crime proceeds and make it less

¹⁸ Kharel, Amrit. (2018). Doctrinal Legal Research. SSRN Electronic Journal. 10.2139/ssrn.3130525. [p. 4]

appealing to individuals as well as restructure anti-money laundering laws as suggested by Olujobi¹⁹. Based on the established barriers and current provisions on international cooperation against corruption, appropriate policy recommendations are provided.

The second approach: (Descriptive and Analytica) : The researcher used this approach in order to achieve the second aim of the research, which is To examine the phenomenon of international cooperation as a pathway to asset recovery of proceeds of corruption and explain the mechanism of restituting these returns through the study and analysis of international agreements that link the international community.

1.6 Thesis Structure

The first chapter of this research focuses on the Introduction to the study where a background to the study sets the research in motion. The chapter addresses the aims and objectives in this research as well as outlining the research question to be considered throughout the study. Further the last part of this chapter clearly elaborates on the legal research method applied in the study.

The second chapter follows the first research objective outlined in the first chapter and therefore focuses on the essence of the criminal proceeds of corruption crimes. Further, the chapter delves into the concept and types of criminal proceeds of corruption, the sources of these proceeds and the crimes of smuggling criminal proceeds of corruption.

The third chapter is in line with the second objective and it therefore focuses on the concept and process of restitution of the criminal proceeds of corruption crimes. In detail the chapter looks at the general procedure for restitution of the criminal proceeds for instance through legal means and the mechanisms relied upon for these types of restitutions.

The fourth chapter is the concluding part subject to the third research objective and it incorporates the summary of the previous chapters, the limitations to the study as well as the proposed scholarly and practical recommendations.

¹⁹ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 2

Chapter Two: The essence of the criminal proceeds of corruption crimes

2.1 Concept and Types of Criminal Proceeds of Corruption

All internationally accepted international treaties against corruption make it a need for all states to act appropriately to confiscate the corruption proceeds. The United Nations Agreement against Corruption (UNCAC) describes "proceeds of crime" as "any asset/ money acquired from or acquired, direct or indirect, via the conduct of a crime" as provided in paragraph E of article 2 . The Warsaw Convention has an identical concept with the distinction that the term "any economic benefit" is used rather than "any money/asset".²⁰ According to UNCAC, proceeds of crime produced from crimes and financial fraud are entitled to confiscation.²¹

The current definition of proceeds of crime needs to be clarified to encompass direct proceeds from illegal activity and all indirect advantages such as transformation or reinvestment of direct proceeds.²² Therefore, proceeds can comprise any property, mainly property converted or transformed, totally or partially, into other material and assets that have been mixed with assets owned from lawful means, up to the evaluated worth of the intermingled benefits. It can comprise earnings or other advantages obtained from criminal proceeds and assets into or even with which criminal proceeds have indeed been changed, transformed, or mixed. As a result, Art (2) of Directive 2014/42/EU defines proceeds as any economic gain obtained directly or indirectly from the criminal offense; it can take the shape of any property and encompasses any transformation or reinvestment of direct proceeds any valued advantages.²³

In the case of an inappropriate advantage, a bribe is, for example, the direct proceeds of the crime.²⁴ In contrast, indirect proceeds are often activities or benefits obtained indirectly from the crime or the increase in the worth of the primary proceeds. For instance, if a corporation pays an authority to get deal and the deal's direct earnings are \$5 million, the indirect proceeds would be \$ 500 000 if the cash was kept for a year and yielded 10% simple interest. According to the OECD and the World Bank,

²⁰ Articles 21 and 22 of the Warsaw Convention and Article 7 of the Directive on the freezing and confiscation of proceeds of crime and instrumentalities in the European Union, op. cit.

²¹ Article 32 (1) a

²² See Simonato, M. (2015). Directive 2014/42/EU and Non-Conviction Based Confiscation: A Step Forward on Asset Recovery?. *New Journal of European Criminal Law*, 6(2), pg. 219

²³ See footnote 3

²⁴ See James, H. S. (2002). When is a bribe a bribe? Teaching a workable definition of bribery. *Teaching Business Ethics*, 6(2), pg. 201.

some instances of indirect proceeds involve the increment of a business that was won a valuable deal or the worth of other agreements acquired as "follow-ups."²⁵

According to Criminal Code of Estonia²⁶, a court must confiscate property obtained by a crime²⁷. In contrast, property derived directly by way of a crime represents the direct proceeds of crime. To put it another way, everything obtained from direct proceeds of corruption is termed derivative proceeds of criminality.²⁸ Money gained from the sale of assets obtained through a crime; assets purchased with money obtained directly from the execution of the crime (for instance, on condition of a financial bribe); profit produced by the assets obtained via an infraction are examples of these (investment returns, interest income, etc.).

Money, valuable items, and numerous different assets procured as a consequence of a crime and comprising the proceeds of certain assets are sensitive to confiscation and, if it was changed, entirely or partly into other assets, the total or partly changed asset is relevant to confiscation.²⁹ Any assets derived or obtained, direct or indirect, via the conduct of a crime and any financial gains or other advantages derived from utilizing such asset (except for asset connected to bona fide third actors and asset to be utilized to regain the property damage of a deceased, civil plaintiff) shall be confiscated.³⁰

Some ACN nations' legislation does not have a conception of derived proceeds of crime, nor is the seizure of such proceeds feasible in reality, or the extent of such collection is limited³¹. Even though most ACN countries' legislation includes provisions for the seizure of property of speculative proceeds of corruption, instances of such confiscation in exercise were only provided in the OECD survey, while many nations openly acknowledged a lack of or underdeveloped judicial practice in this area.³² As a result, the majority of ACN countries affirmed that seizure of derivative proceeds of corruption, like the following, is hypothetically covered under their legislations:³³

²⁵ OECD and The World Bank (2012), Identification and Quantification of the Proceeds of Bribery: Revised edition, February 2012, OECD Publishing, pg. 18.

²⁶ Criminal Procedure Code of the Republic of Estonia (2003, amended 2020) (English version), pg.3

²⁷ Article 83(1)

²⁸ See footnote 7

²⁹ Article 96(2) of Ukraine Criminal Code.

³⁰ Article 103 (1) of Armenia Criminal Code

³¹ Article (96)3 of Kyrgyzstan Criminal Procedure Code (CPC)

³² OECD (2018), Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia

³³ See Gallant, M. M. (2014). Money laundering consequences: Recovering wealth, piercing secrecy, disrupting tax havens and distorting international law. *Journal of Money Laundering Control*.

- a) Savings obtained as a result of expense reductions as a consequence of a offense (For instance, the sum of tax expenditures or customs charges that have been exempted as a result of bribery);
- b) Profits from the investing of direct proceeds of offense (for instance, interest on bank deposits, assets held on credit or earnings from securities, or as a consequence of a crime);
- c) A gain in firm worth as a result of a crime (for instance, as a result of lucrative government agreements and entrance into a new marketplace);
- d) revenues earned from executing rights acquired through corruption (for instance, incomes produced from running an oil or natural gas company depending on rights acquired through corruption)

2.2 Sources of Criminal Proceeds for corruption crimes

Recognizing the power and the geopolitical economy of assets is fundamental to property governance.³⁴ Property governance refers to the "rules, processes, and systems via which decision making is created regarding the usages of and control over property, the form in which judgements are instituted and enforced and the manner that able to compete preferences in property are managed." Thus, it includes customary, statutory, and religious decision-makers, procedures, and systems.³⁵ When viewed as a whole, property governance is ultimately focused on how people utilize and engage with specific properties. Property governance that is both efficient and enforceable offers a vital foundation for growth and an essential line of defence from various sorts of corruption. Moreover, it promotes resource security and assures long-term livelihoods for citizens who depend on the property as their most valuable social, economic, and cultural assets. For instance, the Dakhllallah's empirical results from over 63 nation's display that lower levels of land corruption are associated with; improved development metrics, higher rates of foreign investment, and high crop yields.³⁶

2.2.1 Administrative Corruption

In order to effectively examine the international frameworks applied in the restitution of crime proceeds, an examination of the concept of administrative corruption is undertaken. According to Dakhllallah, the focus of administrative corruption is twofold, including firstly taking an unjustified advantage to acquire crime proceeds, for example through bribery and secondly, and corrupt practices

³⁴ Ibid.

³⁵ Palmer, D., Fricska, S., Wehrmann, B., & Augustinus, C. (2014). Towards improved land governance. Food and, Pg. 781.

³⁶ See Dakhllallah, D. (2018). Where the Action Is: A Conceptual and Experimental Evaluation of Measurement, Dynamics, and Reputational Incentives in Corrupt Transactions. Stanford University.

that occur as a pathway to increased corporation efficiency and expedition of tasks³⁷. Although such a practice amounts to an illegality, some legal scholars including Pope³⁸, and Alloway³⁹ indicate that the vice should be considered a breach of contract law as opposed to criminal law and therefore such proceeds should be subjected through the provisions of contract law. This assertion is further supported by political corruption scholars, who argue that political bribery should not be conflated with corrupt practices in administrative law⁴⁰. Consequently, corruption cannot be argued to consist of well-networked actions since individual offenders collect bribes for themselves, leading to diminishing of communal bureaucracy, which further influences reduced bribery pay-outs and improved economic progress.⁴¹ The issue occurs, converting this prize into a traditional corruption, if the authority purposefully slows the job and therefore extorts the other side in expectation of gain, or if this "oiling of the wheels" provides an unjustified benefit the individual who delivers the reward. Assume that the regulatory load and delays result from external influences (mainly because of legislation). In this scenario, providing a "reward" (oiling) can assist businesses in reducing the expenses and inconveniences they incur.⁴² However, when the reasons are internal (diplomats causing problems or delaying rewards), they constitute a cost to businesses. The subject of why corruption crime is more in developing nations than in affluent countries, rather than why corruption varies between nations, is intriguing. One facet of this is the level to which bribery is structured. For example, in certain countries, paying authorities ex-post (like a percentage of profits) rather than ex-ante (like a bribe) to resolve a disagreement is usual procedure; thus, the economic implications are thought to be different in each circumstance.⁴³ The precise cause why corruption takes one type and not another, as Forgues and Blackburn point out, is an essential subject that has been generally disregarded and may have just very much to do with social, political, and cultural factors as it does with financial situations.⁴⁴

³⁷ Dakhlallah, D. Where the Action Is: A Conceptual and Experimental Evaluation of Measurement, Dynamics, and Reputational Incentives in Corrupt Transactions. Stanford University. (2018).

³⁸ Pope, J. (2010). Confronting corruption: the elements of a national integrity system.

³⁹ Alloway, Gerald. Corruption, Contracts and Common Law Illegality (2018). Victoria University of Wellington Legal Research Paper. SSRN.

⁴⁰ Šumah, Š., Šumah, A., Borošak, M. (2020). Political corruption. International journal of business

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

⁴⁴ Blackburn, K.;Forgues-Puccio, G. F. (2014). Why is corruption less harmful in some countries than in others? Journal of Economic Behavior & Organization, 72(3), pg. 806.

Political and financial conditions heavily influence corruption. Individuals are prepared to pay or provide money to avoid constraints; therefore, the more a nation's economic operation is controlled and restricted, the greater the approvals and officials' ability to decide.⁴⁵ The higher the risk of corruption; when officials are allowed the freedom to make decisions depending on discretion, corruption is a very real possibility. Likewise, a lack of openness and oversight by supervisory agencies contributes to corruption.⁴⁶ The non-transparent operation of both economics and politics is permitted when there is insufficient legal justification or governmental will to regulate, allowing corruption to thrive. Non-transparent, lengthy, or inadequate legislation affects corruption phenomena since laws can be construed in various ways (mainly in favour of the person who pays).⁴⁷ Dimant raises an excellent point when he states that the amount of public administration effectiveness influences how corruption can thrive.⁴⁸ The level of laws and permits determines this effectiveness. Unclear and Ineffective rules can contribute to corruption in two directions: first, an artificially imposed monopolist of power enables public workers to acquire bribes, which is premised on their dominant position and encoded in the scheme; second, unclear and ineffective laws cause delays, which promote natural individuals to bribes officials to accelerate the process.⁴⁹ The poor wages of city workers, who seek to better their financial status by accepting bribes, significantly affect corruption; the phenomena of corruption are thus affected by socioeconomic circumstances. Corruption occurs when agencies, governments, and organizations are unable to effectively manage corruption due to underpaid officials, which is an issue in developing countries with low revenue income streams to adequately reward local officials.⁵⁰ Low pay is not the primary source of corruption; a significant factor is the quality of government administration, which is a consequence of political "congestion" among authorities, with allegiance sometimes taking precedence over professional requirements. Some researchers also mention workplace pleasure as a factor that influences corruption. The higher levels of corruption, the fewer pleased authorities are with their job or

⁴⁵ Blackburn, K.;Forgues-Puccio, G. F. (2014). Why is corruption less harmful in some countries than in others? *Journal of Economic Behavior & Organization*, 72(3), pg. 806

⁴⁶ Blackburn, K.;Forgues-Puccio, G. F. (2014). Why is corruption less harmful in some countries than in others? *Journal of Economic Behavior & Organization*, 72(3), pg. 806

⁴⁷ Šumah, Š. (2018). Corruption, causes and consequences. In *Trade and Global Market*. IntechOpen.

⁴⁸ Dimant, E. (2014). The Antecedents and Effects of Corruption-A Reassessment of Current (Empirical) Findings. Pridobljeno na: https://mpr.ub.uni-muenchen.de/60947/1/MPRA_60974.pdf

⁴⁹ Ibid

⁵⁰ Allen, F., Qian, J. in Shen, L. (2015). Corruption and Competition. Obtained from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685219

status.⁵¹ They state that the private industry has more robust ethical principles than the government sector, particularly those that affect employee satisfaction, hence less unethical activities (especially corruption and theft).⁵² Svenson, who argues that city workers' salaries are thought to influence the acceptance of bribes in general (the higher a person's salary, the less likely they are to commit fraud), implicitly reinforces this. He goes on to add, however, that a greater wage improves the official's negotiating leverage towards the bribe-giver, resulting in higher payments. He also claims that relying on present studies; it would be impossible to evaluate whether a greater wage leads to less bribery.⁵³ Moreover, it does, however, function in particular situations and under proper management, so salary is not the only aspect to consider. Regrettably, the economy is frequently influenced by politics and frequently reflects the current policy; many methods are employed to limit competitors, and corruption is one of the instruments at one's disposal in the battle for a job.⁵⁴

Conversely, in the economy, it is occasionally taken into account that "the price of criminal proceeds is just an important cost of business." It's a requirement of the deal." Alternatively,⁵⁵ "If people cease bribing, their competitors will not."⁵⁶ As a result, they must pay to stay competitive." "Corruption and deception are not crimes in the traditional sense. They are just typical of the way things used to be done. Moreover, it is all part of the fun. It's something that everyone does." However, it is frequently merely a case of the business sector "oiling" the administrative wheel to have things worked out sooner or simpler.⁵⁷ However, the proverb: 'examples lead!' reflects the political consequences of corruption. Assume that the highest levels of governance (parties, government, and critical politicians) are corrupt. Corruption is pulled down to all ranks in this situation. Simultaneously, this immorality is promoted among the general public because no one respects organizations or the legal system.⁵⁸

Fraudulent government: such corruption happens when members of parliament or other essential prominent politicians extort bribes or make the decision on initiatives to be held out for selfish

⁵¹ Sardžoska, E. G., & Tang, T. L. P. (2016). Testing a model of behavioral intentions in the Republic of Macedonia: Differences between the private and the public sectors. *Journal of Business Ethics*, 87(4), pg. 514

⁵² Svensson, J. (2015). Eight questions about corruption. *The Journal of Economic Perspectives*, 19(3), pg. 35.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Cooke, S. (2019). *UNDERSTANDING CORRUPTION: WHY CORRUPTION EXISTS AND THE INSTITUTIONAL REFORMS NEEDED TO LESSEN ITS PRESENCE IN GOVERNMENT* (Doctoral dissertation, Johns Hopkins University).

⁵⁶ Boister, N., & Currie, R. J. (Eds.). (2014). *Routledge handbook of transnational criminal law*. Routledge.

⁵⁷ Ibid

⁵⁸ Ibid.

enrichment, or when the state, in exchange for political financing or financial enrichment, offers advantageous terms in terms of government agreements or provides protection from the defendant for corruption willing to commit at residence and a foreign country. Since people who commit corruption are less afraid of being prosecuted at home or in the country where the programs are implemented, they are more likely to do so. On the other hand, as examples show, corruption pervades the state apparatus from top to bottom.

2.3 The most important forms of the crime of smuggling the proceeds of corruption

2.3.1 Money Laundering

According to law enforcement specialists, the rapid expansion in the internationalization of crime is the characteristic of the new millennium.⁵⁹ Criminals cross borders as quickly as tourists, dumping victims in one country, concealing illicit proceeds in the other, and settling in a third.⁶⁰ A cell phone, a computer, internet access, and a bank profile maybe everything that is required to carry out a global money-laundering scheme to fund a terrorist act in one nation with funds earned in another or launder the revenues of multi-national structured crime.⁶¹ Political borders matter nothing to a 21st-century criminal. Criminals thrive on the limits placed on law enforcement agencies by archaic notions of state sovereignty and jurisdiction. National boundaries, of course, are still crucial to law enforcement officials in the 21st century. International jurisdiction over transnational crime does not exist.⁶² Transnational wiretap measures, search warrants, and procedures for confiscating illicit proceeds do not exist. What is considered a criminal in one location might not be considered a crime in the other. What defines authorized law enforcement power in one location may have no bearing in another or may even be illegal.⁶³ Everything else in police agencies is founded on unique nation-state legal and laws traditions. Thus, its collection of odd anachronisms that seldom meshes with the customs and rules of neighbouring countries or states around the globe. The way criminals have diversified the practice of laundering illegal proceeds is particularly concerning.⁶⁴ Of course, any crook wants to keep the proceeds

⁵⁹ Boister, N., & Currie, R. J. (Eds.). (2014). *Routledge handbook of transnational criminal law*. Previous reference

⁶⁰ Ibid.

⁶¹ Cassella, S. D. (2014). Bulk cash smuggling and the globalization of crime: Overcoming constitutional challenges to forfeiture under 31 USC 5332. *Berkeley J. Intl' L.*, 22, 98.

⁶² Ibid.

⁶³ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. *Economics & Politics*, 27(1), pg.121.

⁶⁴ Teichmann, F. M. J. (2017). Twelve methods of money laundering. *Journal of money laundering control*.page 43

of their crimes hidden from the authorities, avoid taxation, and utilize the money to fund subsequent criminal actions or live the "good life."⁶⁵ Many offenders in the US believe that moving money overseas is the best way to do that for various factors.⁶⁶ Furthermore, there is significant proof that many criminals conduct crimes in the US to collect money to fund terrorism in other countries. Sending illicit proceeds from one nation to another to conceal them from the police is one issue; transferring them to a second state to be utilized to murder defenceless individuals is a much more significant concern.⁶⁷

Corruption and money laundering are inextricably intertwined. Corruption actions that create huge sums of money include bribery and plundering public commodities that must be laundered - or "scrubbed" - before entering the financial network without the connotation of illegality.⁶⁸ At the same time, corruption can aid money laundering by influencing the mechanism by which funds (independent of the asset-generating offense) are laundered, allowing launderers to avoid all restrictions and sanctions.⁶⁹ According to IMF staff research, nations with an insufficient level of control of corruption have lower rates of conformity with anti-money laundering and counter-terrorist financing (AML/CFT) requirements.⁷⁰ There are various facets to the relation as held by Markovska and Adams between money laundering and corruption.⁷¹ Money laundering and corruption are frequently seen simultaneously, with one encouraging the other. Money laundering is used to disguise the origin and possession of significant riches generated by corruption. Money laundering, in other words, provides a means of escape for individuals involved in corrupt operations; it enables the offender to savour their illicit profits without fear of identifying the funds' actual source.⁷² The link of money laundering and corruption is recognized in international money laundering treaties. AML systems can be utilized to fight corruption by nations adopting their money laundering legislation to corruption offenses. Corruption, on the other hand, promotes to money laundering by paying bribes to people in charge of

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. Previous reference pg.123

⁶⁹ Verdugo Yepes, C. (2011). Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis.

⁷⁰ Hillman, A. L. (2004). Corruption and public finance: an IMF perspective. *European Journal of Political Economy*, 20(4), pg. 1067.

⁷¹ Markovska, A., & Adams, N. (2015). Political corruption and money laundering: lessons from Nigeria. *Journal of Money Laundering Control*.

⁷² Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. Previous reference pg.121

AML procedures.⁷³ In the fight against money laundering, both public and private domain entities play an important role. Bribes can be given to government organizations, like financial intelligence units (FIUs), that gather and evaluate suspicious transaction reports (STRs), or to businesses and private persons who are required to file them. Despite the lack of actual proof that state FIUs have been manipulated by money swindlers, FIUs' potential hazard to bribery has been highlighted.⁷⁴ The World Bank and the Egmont Group, for instance, are now conducting a study of 15 FIUs from across the world to examine their weaknesses and strengths on regulatory problems that are directly related to the subject of corruption.

2.3.2 Smuggling Migrants and Human Trafficking

The ties between migrant smuggling and corruption are numerous and intricate. A small number of them have been studied in-depth, but the majority have been noticed frequently and in various settings. Based on a nation's degree of growth, the degree of honesty in its multiple agencies, and its institutional capability to resist and combat corruption, the two kinds of crime are linked in different ways. Political, cultural, and economic issues and socioeconomic constraints on immigration and emigration are all critical.⁷⁵ Corruption in human trafficking varies significantly from nation to country. Corruption is a strong determinant of individuals smuggling out from a state since it can operate as a driving force for migration, similar to poverty, violence, and personal insecurity, generating a marketplace for migrant smugglers⁷⁶. The same is in line with Zhang and Pineda's human trafficking on a global scale study, which found that bribery is a promoter of human smuggling.⁷⁷ Corruption can strike at any time during the smuggling process, from the point of source through the point of delivery. Thus, it can cripple attempts to combat migrant smuggling since it weakens current infrastructure and mechanisms to defend borders, secure refugees, restrict immigration, and enforce the law.⁷⁸ Corruption on a broad scale is made feasible by the substantial earnings earned by human trafficking and migrant

⁷³ Mugarura, N. (2016). Uncoupling the relationship between corruption and money laundering crimes. *Journal of Financial Regulation and Compliance*.

⁷⁴ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. Previous reference pg.121

⁷⁵ UNODC (2015). *Migrant Smuggling in Asia – A Thematic Review of the Literature*. Bangkok: UNODC.

⁷⁶ Aronowitz, A. A. (2014). & Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It", *European Journal on Criminal Policy and Research*, 9 (2): 163–195, p. 171.

⁷⁷ Zhang, S. X. and S. L. Pineda (2014) "Corruption as a Causal Factor in Human Trafficking", in *Organized Crime, Culture and Policies*, New York: Springer.

⁷⁸ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation Previous reference, pg.121

smuggling operations. Corruption and various forms of bribery are utilized to generate or manipulate migrant smuggling chances, such as circumventing or neutralizing restrictions to avoid irregular migration, exploiting or abusing irregular migrants, and shielding smuggling processes from smuggling processes police agencies and court proceedings.⁷⁹ Corruption is also a significant impediment to effective international collaboration in fighting against migrant smuggling.⁸⁰ Further, it jeopardizes any faith and mutual relationship of trust necessary for continuing cross-border collaboration, whether it's in border control, criminal investigations, control of immigration, or information sharing.⁸¹

According to the United Nations, corruption can happen at low and high levels in public officials, ranging from ministers, ambassadors, and border guards to consular authorities, law enforcement officers, and airport maintenance people.⁸² Bribes and advantages may be given to visa-issuing officials and immigration authorities at an advanced rank, for instance, in exchange for providing a service or turning a blind eye.⁸³ Airport, security, immigration, and airline employees may be compensated to do anything as simple as certifying paperwork without thoroughly checking it or opening a gate at a lower level. Several corrupt authorities who have become migrant traffickers' partners are not just crooks who take bribes on the side. Instead, their level of cooperation with smugglers suggests that they are complicit in the criminal enterprise. Officials have been known to be the instigators or organizers of smuggling operations in the past. They are also involved in fraud, extortion, acts, and protection rackets.⁸⁴ Their role in migrant smuggling could be just one of several illicit operations they engage in. Authorities who are not actively engaged in a migrant smuggling operation, on the other side, may find alternative methods to benefit from illegal activities or exploit illegal refugees and migrants.⁸⁵

⁷⁹ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. *Economics & Politics*, 27(1), pg.121

⁸⁰ Chêne, M., & Jancsics, J. S. D. (2018). Corruption at borders. U4 Helpdesk.pg. 15

⁸¹ Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. *Economics & Politics*, 27(1), pg.121

⁸² United Nations (2010). Report of the Monitoring Group on Somalia Pursuant to Security Council Resolution 1853 (2008), Security Council. S/2010/91, p. 34

⁸³ Ibid.

⁸⁴ See Watson, J. (2013, June 21). Former border patrol agents sentenced to 30 years in immigrant smuggling case. NBC News. Retrieved from http://usnews.nbcnews.com/_news/2013/06/21/19081188-formerborder-patrol-agents-sentenced-to-30-years-in-immigrant-smuggling-case?lite

⁸⁵ Ibid.

Migrant traffickers might locate partners in the private domain in addition to focusing their attention on government officials.⁸⁶ People in crucial private sector companies and entities, like interstate commerce, job agencies, transporters, and business owners, security service suppliers, fishing industry business owners and workers, teaching staff, port facilities, and airport personnel, are frequently targeted for corruption or intimidation.⁸⁷ They could be able to penetrate these private-sector entities as well. The smugglers may necessitate confidential information from these private industry people, or they may be willing to produce false documentation (concrete evidence of residency, residency certificates, credential of employment, certificate of studies, and so on) in assistance of a visa, border control, or refugee implementation.⁸⁸ Persons operating for private security providers at airports and other checkpoints might assist migrants and smugglers in avoiding detection.⁸⁹

Organized criminal gangs are not always involved in migrant smuggling. To assist migrant smuggling and other international illicit behaviour, these groups often heavily rely on corruption, frequently in combination with violence and intimidation.⁹⁰ Corruption has crippled border security, immigration control, surveillance systems, and criminal groups poised to benefit from this weakness.⁹¹ Migrant trafficking is, at its core, a business. Just like any enterprise, the criminals engaged want to save expenses, maximize profits, and minimize risk, including the possibility of being arrested and prosecuted. Corruption enables smugglers to increase revenues and minimize risks when smuggling activities are carried out on a massive or routine basis.⁹² They employ the vast sums of money earned by their smuggling operations to buy the cooperation of corrupt government officials. Corruption is a simple way to get around or neutralize immigration controls, law enforcement, and border security. Thus, it enables smugglers to provide a "quality service" to irregular migrants while charging much more.⁹³ Corruption enables migrant smuggling groups to operate with comparative impunity in the worst-case scenarios.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Jancsics, D. (2019). Border corruption. *Public Integrity*, 21(4), pg. 413.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Dandurand, Y. (2017). Human trafficking and police governance. *Police Practice and Research*, 18(3), pg. 325.

⁹² Ibid.

⁹³ Carling, J. (2016). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, IOM Migration Research Series No. 23. Geneva: IOM .page 89

Chapter 3: Restitution of criminal proceeds of corruption crimes

3.1. The legal framework and the phenomenon of international cooperation on the restitution of the proceeds of corruption at international level

In this chapter, the researcher examines, through the methodology highlighted in the introduction, the legal framework of restitution of crime proceeds by focusing on how international cooperation fosters the confiscation of illegally acquired properties in a given country and kept or invested in overseas countries. Therefore, the various provisions provided by international laws on how countries should cooperate and work together to strengthen the legal mechanisms for fighting corruption are discussed in this chapter.

Most corruption proceeds are expatriated to foreign countries, and hence the local economies do not benefit from the reinvestment of such funds. Olujobi, through secondary doctrinal research, indicates that in most cases, suspects of corruption scandals keep their proceeds in foreign countries or reinvest them there, and they begin making frantic efforts to offer no attributions of the proceeds to specific crime illusory⁹⁴. In that regard, the swindled proceeds can include properties that have either been materially transformed into assets, including mixed with legally acquired resources. Consequently, according to Article 2 of EU Directive 2014/42/EU, crime proceeds constitute any economic gains that are directly or indirectly accrued from the commission of criminal offences, and it can take the form of illegal acquisition of property and its subsequent transformation or reinvestment of its proceeds⁹⁵. In agreement with the latter assertion, Salvo, through a quantitative study that adopted a risk matrix methodology, indicates that whereas the criminal standards to benefit in monetary and psychological terms after converting illegally acquired proceeds, they also incur a potential cost, encompassing their probability of being convicted and lose future incomes due to serving a prison sentence⁹⁶. In addition,

⁹⁴ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 1

⁹⁵ Greenberg T, 'Money Laundering and Corruption: In J. E. Campos, & S. Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*' (2007) Washington DC: World Bank p. 383

⁹⁶ Salvo, M. *Corruption and Money Laundering as a Threat to Financial Stability: 'Lava Jato' Case Study*. SSRN Electronic Journal. (2016). P. 16

according to Ayoade, corruption and scandalous individuals thrive due to weakness in the legal systems that are not politically strengthened to fight the menace⁹⁷. In agreement with the assertion above, Olujobi indicates that in such political systems where corruption is tolerated, it presents challenges that bedevil anti-corruption agencies, thus hindering their efficiencies⁹⁸. As such, this aspect can be argued to be a precursor to slackened in terms of pellucidity as well as discharging a reasonable regulatory control devoid of the details revealed by anti-corruption agencies⁹⁹. The absence of a steadfast approach to fighting corruption led to averseness in the discharge of efforts to confiscate criminal proceeds by international anti-corruption agencies¹⁰⁰. Therefore, it can be argued that even though there are active anti-corruption agencies, the legal loopholes always allow individuals, especially those bestowed with state or public authorities, the opportunity to engage in scandalous dealings and transfer these illegally acquired funds into foreign destinations, where tracing them is hard.

The international legal mechanism has set out mandatory repatriation of illegally acquired assets through a series of proposals presented and developed by internationalist doctrine since the 1980s¹⁰¹. Under this introduction of a legal mechanism, corruption and subsequent expatriation of its proceeds in foreign countries were defined as an illicit act that encompassed depredation, which was committed to meet the personal ends of rulers, public officials as well as private individuals. Therefore, corruption proceeds are properties embezzled by public officials who are the advantage of accessing such properties and expatriating them for personal gains at the expense of serving the interests of their nations' populations. Consequently, it can be argued that corruption is interpreted in international frameworks for restitution of crime proceeds as the violation of human rights by diverting economic resources meant to benefit them economically, hence depriving the nation of its right to autonomously using its wealth as well as assets for the benefit of its citizens. Hartmann provides that people's right to enjoying public wealth and resources cannot be deprived and therefore engaging in corrupt practices

⁹⁷ Ayoade, M.A., "Evaluating the legal architecture on corruption in Nigeria," the Nigerian Journal of Contemporary Law, Vol. 18 No. 1, (2012). p. 51.

⁹⁸ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 3

⁹⁹ Yusuf, Y.M. "Nigerian perspectives on the recovery and repatriation of assets", in Ayoade, M.A. and Igbinedion, S.A., *Legal Perspectives to Corruption, Money Laundering and Assets Recovery in Nigeria*, 313. (2015). P. 2

¹⁰⁰ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 6

¹⁰¹ Borlini, L. S., & Nessi, G. *International Asset Recovery: Origins, Evolution and Current Challenges*. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713. p. 1

amounts to an illegality since it contravenes this fundamental human right that should transcend all others¹⁰². Based on the above argumentation, therefore, returning corruptly acquired assets to their countries of origin amounts to a logical consequence. However, despite the legal provision on the fundamental privilege of citizens to enjoy their wealth and natural resources, the mechanism for restitution of corruption proceeds relied exclusively on protective treaties for cultural objects and drug trafficking until the 1990s¹⁰³.

In recent times, the international focus on recovering proceeds of corruption has increased since the vice is deemed to be a major deterrent to domestic progress. In that regard, the establishment of the United Nations Convention against Corruption (UNCAC) constituted an anti-corruption convention towards fostering member states' cooperation towards repatriating crime proceeds¹⁰⁴. In this case, the convention provides a framework through which member countries can request other international partners to offer aid in recuperating corrupt incomes. According to Article 30 and Article 31 of the convention, members states are obliged to declare such offensive commissions as being liable to sanctions and the sanctions are commensurate with the offence's severity¹⁰⁵. Moreover, the convention's fifth chapter stipulates that corruption proceeds can be recovered under member states' mutual cooperation¹⁰⁶. In that regard, therefore, crime proceeds from criminal practices can be recovered and repatriated to their countries of origin of an individuals' foreign investments are ascertained to have been acquired through unlawful means.

In addition, according to Articles 43, 44, as well as 46 of the UNCAC, the obligations for international cooperation, repatriation and aid in common law countries are provided with regard to restitution of corruption proceeds¹⁰⁷. Similarly, the Convention's articles 53, 54 as well as 55 stipulate measures of corruption income recuperation and provide member states with obligations of surrendering corruption proceeds once another member state sends requests over the same, having established

¹⁰² Hartmann, J.M., *Government by Thieves: Revealing the Monsters Behind the Kleptocratic Masks*, Syracuse Journal of International Law and Commerce, 24 (1997). P. 1

¹⁰³ Borlini, L. S., & Nessi, G. *International Asset Recovery: Origins, Evolution and Current Challenges*. SSRN Electronic Journal. (2014). doi:10.2139/ssrn.2391713

¹⁰⁴ Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention against Corruption: A Commentary*, 2019.

¹⁰⁵ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021)

¹⁰⁶ *Ibid*)

¹⁰⁷ Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention against Corruption: A Commentary*, (2019).

through legal means that the expatriated funds are indeed illegally acquired funds¹⁰⁸. The same articles also stipulate that actions of civil forfeiture can be initiated against the expatriated asset and Article 57 envisages that such illegally expatriated assets can be confiscated from the individual under civil forfeiture¹⁰⁹. In that regard, it is necessary for corruption proceeds' civil forfeiture to be provided for member states to execute such repatriation of incomes. According to Olujobi, forfeiture that is based on non-conviction amounts to a civil description and its burden of proof is based on probabilities' balance¹¹⁰. As for countries that are not signatories to the convention or ratified the convention's provisions should do so in order to overcome the hurdles encountered in expatriating crime proceeds.

According to Munyai & Agbor, the international instruments adopted in the fight against corruption reveal that different approaches are used by states that are parties to the international framework to offer a mechanism of recovery of stolen assets¹¹¹. Therefore, such efforts are instrumental in contributing towards the international reduction of corruption levels by confiscating illegally acquired assets that are expatriated to other countries to hide their illegal origin. For instance, Monteith and Dornbierer contend that corruption proceeds that are orchestrated by senior officials of a state may transcend both national as well as international borders; hence, the international recovery framework attempts to establish an easier pathway for recovering such assets¹¹². In that regard, therefore, international mechanisms are the basis upon which this legal framework is established to aid in the process of restitution of corruption proceeds. For instance, the global programme held by The United Nations Office on Drugs and Crime (UNODC) against corruption places obligations on the member states to establish legal infrastructures on illegally acquired funds, including corruption proceeds, and therefore effective policies and practices on anti-money laundering helps track the movement of such funds¹¹³. In addition, the international mechanisms have established a unit of financial intelligence that is fully functional to ascertain as well as proficiently track corruption proceeds¹¹⁴. In addition, bribery,

¹⁰⁸ Rose, Cecily, Michael Kubiciel, and Oliver Landwehr, previous reference .p.106

¹⁰⁹ Ibid

¹¹⁰ Ibid

¹¹¹ Munyai, A., & Agbor A., A. Delineating the role of foreign governments in the fight against corruption in Africa, *Cogent Social Sciences*, 6:1, 1778988. (2020). P. 3

¹¹² Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (p. 12). (2013). Basel: Basel Institute on Governance.

¹¹³ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 13 Doi. 10.1108/JMLC-09-2020-0107.

¹¹⁴ Olujobi, O.J. "Recouping proceeds of corruption: previous reference P. 13

which is a form of corruption, is prohibited, and several legal mechanisms established to help combat it as well as repatriate such illegally acquired funds to their host countries¹¹⁵. For instance, with the OECD countries, there is an established Anti-Bribery Convention, which regulates and attempts to reduce the volume of corrupt practices among the member countries by discouraging bribery via sanctions on such transactions¹¹⁶. Further, the OECD Anti-Bribery Convention's Article 9 provides for state partnerships in fighting against proceeds of corruption from bribery transactions invested in foreign countries, which helps in reducing instances of expatriating corruption proceeds to other member countries. Overall, it can be argued that the availability of these international frameworks helps countries establish legal means towards the restitution of corruption proceeds.

Borlini and Nessi indicate that the idea that influenced the creation of a multilateral cooperation system to aid in recovery, as well as restitution of assets acquired through crime-related activities, is nascent, although the illegal acquisition of properties has long been a phenomenon that has detrimental social-economic impacts¹¹⁷. Borlini and Nessi argue that spirited international efforts have been devoted in this discourse to help in recovering corruptly acquired and expatriated assets through cooperation among state parties¹¹⁸. This cooperation is vital in identifying, tracking as well as recovering the laundered funds, which was initially established in United Nations General Assembly in 2007 and subsequently during G7's meeting at Okinawa as a vital pathway to fighting cross-border corruption¹¹⁹. Consequently, the UN Convention against Corruption of 2003 was established as an international framework for recovering corruption proceeds¹²⁰.

However, despite the creation of an international legal mechanism to help in the repatriation of crime proceeds to their countries of origin, several bottlenecks are experienced. For instance, there are challenges in identifying the origin as well as the nature of assets that are proceeds of crime, particularly in situations where the perpetrators hide the assets in complicated schemes of shell companies coupled with providing opaque lines of beneficial ownership, thus necessitating the application judicial due

¹¹⁵ Munyai, A., & Agbor A., A. Delineating the role of foreign governments in the fight against corruption in Africa, *Cogent Social Sciences*, 6:1, 1778988. (2020). P. 3

¹¹⁶ Laryea, E. *Paperless trade: Opportunities, challenges and solutions* (Vol. 1). Kluwer Law International BV. (2002). P. 12

¹¹⁷ Borlini, L. S., & Nessi, G. *International Asset Recovery: Origins, Evolution and Current Challenges*. SSRN Electronic Journal. 2014. P. 2 doi:10.2139/ssrn.2391713

¹¹⁸ *Ibid*

¹¹⁹ *Ibid*

¹²⁰ *Ibid* [note 43]

process to ascertain whether the assets were indeed acquired through corrupt means¹²¹. In addition, there is a challenge with regard to securing control over assets frozen in foreign jurisdictions, which requires the help of the country's political will across various stakeholders within and outside government offices.¹²²

Apart from examining the international framework for corruption proceeds' restitution, it is also imperative to consider the various mechanisms through which these funds are repatriated to their countries of origin and the corrupt criminals punished. Boucher et al. contend that the proceeds of corruption are either confiscated, illicit profits disgorged, fines levied commensurate to the value of benefits as well as contractual restitution; however, in some cases, these remedies can be combined¹²³. The focus of this research was on restitution, and therefore, the mechanisms of restitution are discussed, the fate of recovered assets and the obstacles encountered. Contractual restitution encompasses situations where the government official takes part in corrupt practices in order to award contracts¹²⁴. When victims or parties to the contract file claims for contractual restitution, the tribunal established to arbitrate the case or the acting court of law may declare the contract as illegal; hence, it becomes invalid and unenforceable¹²⁵. In that regard, the implication here is that such a contract encompassed fraudulent extortion whereby corruption was used to vitiate consent. Under such circumstances, the government is entitled to terminate the contract, void its obligations as well as claim damages¹²⁶. Then the proceeds of corruption must be tracked and confiscated, which brings the international legal framework into perspective in situations where the incomes generated are expatriated to other countries¹²⁷.

The UNESCO Convention offers guidelines on the means that should be adopted in prohibiting and preventing any impending illegal exportation as well as transfer of cultural property. The convention was established in 1970 to deal with restitution of illegally transferred cultural properties by providing

¹²¹ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation, 2015.

¹²²¹²² Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation, 2015.

¹²³ Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012)

¹²⁴ Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012).

¹²⁵ Ibid [note 50]

¹²⁶ Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012).

¹²⁷ Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.

primis a general obligation to all national services that are competently bestowed to facilitate the recovery of such properties under Article 13(b)¹²⁸. This obligation applies to all objects that are victims of illicit transfer to other jurisdictions, and it is mitigated by national laws' consistency limit, which is envisaged under Article 13(a)¹²⁹. Moreover, according to Article 13 (c) of the UNESCO convention, it is stipulated that national governments must include a clause in the legal systems that provides for property recovery in relation to goods that are either lost or stolen¹³⁰. The latter provision can only be exercised by the legitimate owner of such goods or its representative¹³¹. In such a case, the state parties involved undertake to offer facilitation for the restitution of property, which is inalienable by the country of origin, as evidenced through classification as well as declaration and this is explicitly provided for in Article 13 (d) of the UNESCO convention¹³². Additionally, and most importantly, Article 7 (b) provides that the State Parties must undertake appropriate recovery measures as well as return the cultural property that had been stolen from its country of origin¹³³. This action is executed through diplomatic actions, whereby the country that is victimized by the corrupt practices requests the foreign country to assist it in the recovery and repatriation of the swindled assets¹³⁴. However, although the UNESCO convention provides a pathway for relieving the aggrieved state in recovering its stolen assets, Borlini and Nessi contend that there are certain issues that cannot be solved by this convention in relation to the restitution of property, including action ex Article 7 coupled with its relationship with the claim of ownership under ordinary conditions¹³⁵. In such circumstances, the Convention does not offer reprieve with regard to the criteria that should be adopted in computing a just compensation for third parties that were innocently entangled in such stolen assets, as well as the fact that this Convention fails to offer a

¹²⁸ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The UNESCO Convention of 14 November 1970 came into force on the 24 April 1972.

¹²⁹ Ibid [Note 53]

¹³⁰ Ibid [Note 53]

¹³¹ Ibid [Note 53]

¹³² Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹³³ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The UNESCO Convention of 14 November 1970 came into force on the 24 April 1972

¹³⁴ Ibid [Note 58].

¹³⁵ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

mechanism for making decisions with regard to requesting state's burden of proof content¹³⁶. Therefore, this convention works alongside others to help establish an international legal framework as well as encourage the establishment of national legal structures to cooperate towards the restitution of corruptly acquired properties.

In addition, at regional levels, some conventions offer remedies for addressing compensation claims by victim states. For instance, Article 1 and Article 3 of The Council of Europe Civil Law Convention on Corruption require state parties to commence an action for obtaining full compensation in the event of damages accruing from corruption practices¹³⁷. Additionally, in Article 8, the convention grants state parties the permission to allow all parties to a contract that has been undermined to initiate a court action to void the contract, notwithstanding their entitlement to claim for damages¹³⁸. Likewise, Article 8 of the Arab Convention against Corruption requests state parties to give the right to initiate an action for compensation to the member states that have been victimized, while Article 30 of the same convention outlines the importance of repatriation of recovered assets to their owners as well as compensation of victims¹³⁹. In the following subsection, a discussion on the procedure adopted in asset recovery is provided.

3.1.2. Criminal Proceeds Recovery Procedures in General

The aims and core method for recovering assets are essentially the same whether the property is sought through non-conviction based (NCB) or criminal restitution, prosecutions in a private civil or foreign state action.¹⁴⁰ In private civil lawsuits, evidence is obtained, and law enforcement personnel working under the oversight of or in direct collaboration with examining magistrates or prosecutors or by private detectives or other interested individuals track properties. Law enforcement can use specific investigation tactics in conjunction with acquiring publicly accessible data and intelligence from police

¹³⁶ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹³⁷ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation. (2015)

¹³⁸ Ibid

¹³⁹ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation. (2015)

¹⁴⁰ United Nations Convention against Corruption (UNCAC), art 54(1)(a) and 54(2)(a)

departments or other federal agency databases. Some measures (such as search and seizure warrants, electronic surveillance, account surveillance orders or production orders) may need the approval of a prosecutor or court, while others could not (for instance, information from the public, physical surveillance, and witness interrogations and interviews). Private detectives will not have the same rights as law enforcement.¹⁴¹ Still, they will be permitted to utilize publicly accessible sources and file civil orders with the courts (like an on-site review of records, production orders, expert reports, or pre-filing testimony). Proceeds and instruments subject to seizure must be safeguarded during the investigations process to prevent dissipation, transportation, or destruction. In some civil cases, prosecutors, investigative magistrates, and law enforcement authorities may be given the ability to demand the seizure or restraint of assets liable to confiscation in some jurisdictions. Judicial approval is required in other civil law systems. With few exceptions in seizure proceedings, an injunction to restrict or take assets in a common-law jurisdiction typically needs judicial authorization. International collaboration is required for the effective recovery of property that has been relocated to or concealed in foreign states.¹⁴² It will be necessary to compile facts, the adoption of interim measures, and the final seizure of corruption revenues and instruments. When assets are seized, collaboration is essential for their recovery. Extradition, "informal help," and mutual legal assistance (MLA) requests are all examples of international cooperation.¹⁴³ Informal cooperation is frequently employed between counterpart authorities to obtain intelligence and information to aid in investigations and coordinate plans and processes for criminal proceeds recovery.¹⁴⁴ A MLA proposition is a textual plea aimed at obtaining evidence (via coercive measures such as investigative tactics), secure interim remedies and seek to have local orders carried out in a foreign country. Whenever a court authorizes the confiscation of property, seizure, or detention of assets, action must be done to execute the order. An MLA request should be filed if criminal proceeds are situated in a foreign country. The order can then be implemented by officials in the abroad jurisdiction either by (1) securing a domestic order relying on the asking jurisdiction's evidence (or order) (indirect enforcement) or (2) formally registering and executing the asking jurisdiction's order in a home-court (direct enforcement).¹⁴⁵ The process of mutual legal aid will

¹⁴¹ World Bank, Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan (Washington, DC, 2007),

¹⁴² UNCAC, art. 55 and 57.

¹⁴³ UNCAC, art. 53 requires that states parties take measures to permit direct recovery of property

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

be used to accomplish this. Private civil judgments for damages or reimbursement, like other civil judgments, will require to be executed utilizing the same methods as other civil judgments.

Borlini & Nessi indicate that the idea that influenced the creation of a multilateral cooperation system to aid in recovery as well as restitution of assets acquired through crime-related activities is nascent although illegal acquisition of properties has long been a phenomenon that detrimental social economic impacts¹⁴⁶. Borlini & Nessi argue that spirited international efforts have been devoted in this discourse to help in recovering corruptly-acquired and expatriated assets through cooperation among state parties¹⁴⁷. This cooperation is vital in identifying, tracking as well as recovering the laundered funds, which was initially established in United Nations' General Assembly in 2007 and subsequently during G7's meeting at Okinawa as a vital pathway to fighting cross-border corruption¹⁴⁸. Consequently, the UN Convention against Corruption of 2003 was established as an international framework for recovering corruption proceeds¹⁴⁹.

However, despite the creation of an international legal mechanism to help in the repatriation of crime proceeds to their countries of origin, several bottlenecks are experienced. For instance, there are challenges in identifying the origin as well as the nature of assets that are proceeds of crime, particularly, in situations where the perpetrators hide the assets in complicated schemes of shell companies coupled with providing opaque lines of beneficial ownership, thus necessitating the application judicial due process to ascertain whether the assets were indeed acquired through corrupt means¹⁵⁰. In addition, there is a challenge with regard to securing control over assets frozen in foreign jurisdictions, which requires the help of the country's political will, across various stakeholders within and outside government offices.¹⁵¹

Apart from examining the international framework for corruption proceeds' restitution, it is imperative to also consider the various mechanisms through which these funds are repatriated to their countries of origin and the corruption criminals punished. Boucher et al. contend that the proceeds of

¹⁴⁶Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. 2014. doi:10.2139/ssrn.2391713

¹⁴⁷ Ibid

¹⁴⁸ Ibid

¹⁴⁹ Ibid

¹⁵⁰ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation, 2015.

¹⁵¹ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation, 2015.

corruption are either confiscated, illicit profits disgorged, fines levied commensurate to the value of benefits as well as contractual restitution, however, in some cases these remedies can be combined¹⁵². The focus of this research was on restitution and therefore the mechanisms of restitution is discussed, the fate of recovered assets and the obstacles encountered. Contractual restitution encompasses situations where the government official takes part in corrupt practices in order to award contracts¹⁵³. When victims or parties to the contract files claims for contractual restitution, the tribunal established to arbitrate the case or the acting court of law may declare the contract as illegal, hence it becomes invalid and unenforceable¹⁵⁴. In that regard, the implication here is that such a contract encompassed fraudulent extortion whereby corruption was used to vitiate consent. Under such circumstances, the government is entitled to terminate the contract, void its obligations as well as claim damages¹⁵⁵. Then the proceeds of corruption must be tracked and confiscated, which brings the international legal framework into perspective in situations where the incomes generated are expatriated to other countries¹⁵⁶.

Article 51 of The UN Convention against corruption 2003 offers the remedy for restitution of corruption proceeds by providing a fundamental principle that compels all State Parties to cooperate with one another to offer measures of ascertaining the criminality of the funds in question and provide any much-needed assistance¹⁵⁷. This principle acts at a multilateral level and binds state parties whereby it outlines that the illegally acquired assets should be returned to its country of origin¹⁵⁸. In that regard, it can be argued that the convention aids in the process of restitution by averring state parties a moral obligation of returning funds originating from crime. According to the Open Society Justice Initiative, this fundamental principle places upon state parties with a legal obligation of returning illegally acquired assets to their country of origin, which implies that failure to comply with the provision attracts legal

¹⁵² Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012)

¹⁵³ Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012).

¹⁵⁴ Ibid [note 50]

¹⁵⁵ Boucher, R., Sandage, J. B., & Devan, J. The legal framework for the treatment of proceeds of active bribery. 15-27. (2012).

¹⁵⁶ Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.

¹⁵⁷ Ibid [note 54]

¹⁵⁸ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

consequences on the country where funds were expatriated to¹⁵⁹. In addition, the aspect of the fundamental principle provides the relevant cooperation channels among member states by highlighting how the article binds all state parties to the Convention towards the recovery and restitution of corruption proceeds. Moreover, the Vienna Convention, 1969's Articles 31-33, have a hermeneutic criterion that is deeply embedded to provide that interpretation of the Treaty should be in good faith in order to offer maximum benefits for all the state parties¹⁶⁰. In addition, the UN Convention on Corruption, 2003, under Article 1 (b), it is outlined that international cooperation should also be accompanied by technical assistance to facilitate the fight against corruption, including recovery of assets acquired through crime¹⁶¹. Article 3(1) additionally defines the scope of applying the Convention by mentioning the rights of State parties in freezing, seizure, confiscation, as well as the return of such proceeds as outlined in the procedure of repatriation to their countries of origin¹⁶².

In that regard, therefore, it can be seen that in addition to the Convention's general scope having clauses for the repatriation of illicitly acquired funds, other articles enshrined under chapter 5 can be objectively interpreted to the view of restitution as enshrined in Article 31(1) of the Vienna Convention¹⁶³. In that regard, it is not possible for the Convention to be restrictively interpreted in order to safeguard state parties' sovereignty because, on the contrary, the convention emphasizes an interpretation that fosters state parties' widest cooperation¹⁶⁴. In addition, Borlini and Nessi argue that state parties that intend to deduce the traditional praxis, from Article 51, there is a customary rule that asserts that corruptly acquired assets must be repatriated. It must be noted that during negotiations of the Convention, developing economies wanted the Convention to define asset recovery and repatriation as an inalienable right conferred to nations; however, strong dissension to this proposal led to it being referred to as the fundamental principle¹⁶⁵. In that regard, discussing the framework for internal cooperation towards the restitution of corruption proceeds requires a critical examination of the United Nations Convention Against Corruption, 2003, as delineated below:

Primarily, Article 52 of the Convention complies with the mandate conferred to the Ad Hoc Committee in stipulating ways of prevention as well as detection that crime proceeds have been

¹⁵⁹ Ibid [Open Society Justice Initiative.]

¹⁶⁰ Ibid [note 54]

¹⁶¹ Ibid [note 54]

¹⁶² Ibid [note 53]

¹⁶³ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.

¹⁶⁴ Ibid [note 63]

¹⁶⁵ Pieth, M. (ed.) *Recovering Stolen Assets*, Bern: Peter Lang. (2008).

transferred¹⁶⁶. According to the mandate, an interdisciplinary approach should be constituted coupled with plurality as well as diverse tools to facilitate the recovery of assets. In addition, the same Article 52 further has embedded principles of transparency coupled with due diligence upon financial intermediaries¹⁶⁷. These financial intermediaries must verify the owners of the bank accounts or their beneficiaries, particularly for individuals holding prominent public offices, as enshrined in Article 52 (1) of the Convention¹⁶⁸. This framework ensures that much detail is known with regard to the public officials' personal details as well as those of their families¹⁶⁹. In addition, the same article indicates that family members, as well as the close associates of prominent public officials, should be scrutinized so that it is easier to detect suspicious transactions¹⁷⁰. Finally, the Article further provides that such transactions of prominent people, their families and close associates should be transferred into special archives¹⁷¹. This aspect is envisaged under the policy of *know-your-customer*, which was voluntarily adopted and recommended under the Financial Action Taskforce, and this has been transformed into a binding tool internationally¹⁷². Actually, these recommendations have been integrated into Terrorist Financing's Eight Special Recommendations, which have since been recognized by the International Monetary Fund as well as the World Bank as standardized measures of fighting money laundering as well as prevent financial aid offered to terrorism¹⁷³. Among these recommendations, Recommendation 6 is outstanding with regard to the procedures adopted in implementing the policy of *know your customer*, as it relates to private banking and how public office holders should be scrutinized. In that regard, this recommendation outlines the preferential services that are offered by some financial intermediaries to outstanding state officers, and it posits that these individuals should be subjected to continuous scrutiny and suitable measures adopted to verify their accounts' origins. However, although this recommendation offers better remedies for preventing and tracking the proceeds of corruption, the UN Convention does

¹⁶⁶ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.

¹⁶⁷ Ibid [note 66]

¹⁶⁸ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹⁶⁹ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹⁷⁰ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹⁷¹ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003

¹⁷² Financial Action Task Force. Financial Action Task Force on Money Laundering: The Forty Recommendations. [Paris]: FATF Secretariat, 2003.

¹⁷³ Ibid [note 70]

not provide for the same¹⁷⁴. According to Borlini and Nessi, the inclusion of measures envisaged under the Financial Action Task Force's recommendations on curbing money laundering could have provided essential pathways that hinder depositing as well as transferring of illegally-acquired funds between different financial intermediaries as well as favour the detection of such illegal dealings at their placement stages¹⁷⁵. Instead, the UN Convention stipulates that in order for state parties to embrace the identification measures articulated in Article 52(1), they must issue advisories in compliance with their local laws as well as the regional or multilateral originations' initiatives¹⁷⁶. These initiatives detail the legal or natural individuals whose accounts require special monitoring by the financial intermediaries within their jurisdiction.¹⁷⁷ The Convention stipulates that such advisories must be issued to the relevant organizations when enforcements are required to inform them of individuals whose accounts require special monitoring¹⁷⁸. According to the Open Society Justice Initiative, the financial institutions in question can be notified based on a state's autonomous request or following another state's request according to the guidelines of the UN Convention¹⁷⁹.

Apart from due diligence's codification with regard to approaching and serving outstanding state officers, Article 52(4) of the UN Convention against corruption requires State Parties to embrace effective preventive measures to curtail banks from being established in jurisdictions that they do not have a physical presence in territories that are not affiliated to the financial group¹⁸⁰. The Convention further requires State Parties to have considerations for the possibility of defying the establishment or interruption of "correspondent banking"¹⁸¹ relations with institutions operating outside jurisdictions that they do not have a physical presence¹⁸². Finally, the UN Convention requires all State Parties to consider establishing compulsory systems that are effective towards disclosure of financial information that is

¹⁷⁴ Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation. (2015)

¹⁷⁵ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹⁷⁶ Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.

¹⁷⁷ Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.

¹⁷⁸ Ibid [note 77]

¹⁷⁹ Ibid [note 74]

¹⁸⁰ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

¹⁸¹ This term is better defined in Recommendation 7 of the Financial Action Task Force

¹⁸² Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.

related to public officials as well as offer sanctions to those that fail to comply, in accordance with domestic laws for such disclosure policies¹⁸³. Such financial intermediaries should further allow the sharing of that information with relevant, competent authorities in the requesting State Parties to facilitate investigations of claims of corruption proceeds being expatriated to the foreign country through their banks as well as establish recovery mechanisms in accordance with Article 51(5) of the UN Convention against corruption¹⁸⁴. This aspect illustrates how the UN Convention attempts to prevent the expatriation of proceeds of corruption to foreign destinations by suitably managing financial intermediaries. Overall, adopting these tools coupled with the application of criminal law as well as a wider deterrent approach facilitates effective reduction of incidents of corruption internationally¹⁸⁵. Cooperation can then be fostered and eased by having a financial intelligence unit in place to aid in receiving, analyzing as well as disseminating suspicious financial activities reports to responsible authorities as enshrined in Article 58 of the UN Convention Against Corruption¹⁸⁶. According to the Article, each State Party can have considerations of establishing a new unit, create a special financial centre branch to aid in travaux préparatoires, and this has to be interpreted in compliance with Article 14(b)'s provisions in relation to cooperation coupled with informational exchange to curtail money laundering¹⁸⁷. Likewise, Borlini and Nessi indicate that the creation of financial intelligence unit within each State Party can offer special remedies in curtailing instances of money laundering¹⁸⁸. The same authors detail that in the 1990s, these units were few; however, in recent times, these discrepant units have formally united under the Egmont Group, which constitutes 101 structures that facilitate information sharing as well as contribute towards the integration of competencies of anti-graft organizations, globally¹⁸⁹. In addition to the articles discussed above, Article 43 outlines the measures of executing direct recovery of assets. In other words, the Article outlines the civil tools that can be applied

¹⁸³ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). Doi. 10.1108/JMLC-09-2020-0107

¹⁸⁴ Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention against Corruption: A Commentary*, 2019.

¹⁸⁵ *Ibid*

¹⁸⁶ *Ibid*

¹⁸⁷ Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention against Corruption: A Commentary*, 2019.

¹⁸⁸ *Ibid* [note 95]

¹⁸⁹ Borlini, L. S., & Nessi, G. *International Asset Recovery*: previous reference

to foster the return of assets originating from crime¹⁹⁰. In that regard, Article 53(a) indicates that each State Party can, in accordance with its local laws, embrace measures that are necessary to allow another State Party to take legal actions in its courts to find out illegal ownership of assets acquired through the commitment of corruption offences¹⁹¹. Moreover, Article 53(b) outlines that in accordance with the State Parties' local laws, the State Party of interest can embrace appropriate measures to allow courts to compel the offers to pay compensation to another State Party that has suffered damages in accordance with the UN Convention Against Corruption¹⁹². This provision offers an effective measure of tackling corruption since the corruption proceeds will not only be repatriated but also the parties entitled to damages suffered in the event of such corrupt practices¹⁹³. In that regard, the provision indicates that causality must be the consequence of compensating for damages to the parties that suffered detriments, as it is explicitly outlined in Article 35 of the UN Convention Against Corruption¹⁹⁴. However, with regard to annulment requests, the provision identifies clearly that implementing corruption transactions implies a simultaneous commission of crime, hence affecting the validity of contracts agreed as a consequence of corruption¹⁹⁵. This aspect is highlighted in Article 53(2) of the UN Convention Against Corruption, with regard to State Parties requesting for payment of damages for the detriments suffered¹⁹⁶. Indeed, Article 34 of the UN Convention highlights that contracts entered into through corrupt practices can potentially be annulled; however, the Article does not explicitly point out whether state parties can claim this prior to the other State Parties' courts establishing the same¹⁹⁷. Finally, according to Article 53(3) of the UN Convention Against Corruption, coupled with corresponding domestic laws of State Parties, appropriate measures must be implemented to allow competent jurisdictions or national courts to decide confiscation of the allegedly stolen funds and acknowledge the claim of the other State Party as validly legitimate¹⁹⁸. In addition to the Articles discussed herein, subsequent efforts of the UN in easing the process of repatriation and recovery of corruption proceeds

¹⁹⁰ Monteith, C., & Dornbierer, A. Tracking and Tracing Stolen Assets in Foreign Jurisdictions. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance

¹⁹¹ Ibid

¹⁹² Ibid [note 98]

¹⁹³ Ibid [note 98]

¹⁹⁴ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.

¹⁹⁵ Ibid [note 98]

¹⁹⁶ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.

¹⁹⁷ Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.

¹⁹⁸ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713 p. 24

saw the holding of the Conference of State Parties (COSP) to address some of the issues that were raised by composite regulation regarding the system of asset recovery¹⁹⁹. COSP was held in five sessions to provide an evolved State Parties attitude towards the recovery of illegally acquired assets. Under the first session, which was held in 2006, Borlini and Nessi report that State Parties to the UN Convention Against Corruption agreed to establish an interim intergovernmental working group that was based on the tenet openness with regard to the Convention's Article 63(4) coupled with the conference's procedural rule 2(2)²⁰⁰. This working group has been extensively executing its mandate towards ensuring effective recovery of illegally acquired assets. Moreover, some of COSP's recent declarations with regard to asset recovery stipulate the various cooperative measures and obligations that State Parties have in facilitating effective actions of asset recovery²⁰¹. Specifically, COSP's resolution 5/3 that was made during the fifth session stipulate that State Parties must facilitate international asset recovery, hence providing a pathway through which international corruption can be detected, and the assets in question recovered²⁰². Therefore, the Articles presented in the discussion in this chapter point out how internal cooperation mechanisms are enhanced to foster an effective pathway of preventing, detection and recovery of the proceeds of corruption internationally.

3.1.3. Criminal Proceeds Recoveries through Legal Means

Asset restitution can be pursued through a variety of legal means²⁰³. The following mechanisms are among them: seizure and domestic criminal prosecution, backed by request from the MLA to impose orders in other countries; confiscation of NCBs, accompanied by an MLA petition or different kinds of global cooperation to implement orders in other countries; legal actions brought by private individuals, involving formal insolvency proceedings; a foreign jurisdiction initiates criminal proceedings and NCB confiscation or confiscation (needs jurisdiction over a crime and support from the jurisdictions that have been harmed by corruption offenses); and restitution at the administrative level.²⁰⁴ Criminal seizure is a potential measure of remedy when officials trying to restore seized wealth choose to initiate criminal

¹⁹⁹ Ibid [note 107] p. 25

²⁰⁰ Ibid [note 107] p. 25

²⁰¹ Ibid [note 107] p. 26

²⁰² Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713. p. 26

²⁰³ UNCAC, art. 54(1) (a) and 54(2) (b).

²⁰⁴ Ibid.

action. Proof must be gathered, criminal proceeds must be traced and secured, a prosecution versus a suspect or legal organization must be conducted, and a judgment must be obtained. The judiciary can impose confiscation if a conviction has been received. The bar of evidence for restitution will be lower in specific regimes, notably common law areas of law, than the burden needed for achieving a conviction.²⁰⁵ For instance, the seizure will need a "balance of probability," whereas judgment will need "beyond a reasonable doubt." Other regimes hold both assessment and restitution to the same level. In essence, unless expanded confiscation rules exist, seizure legislation will enable for the seizure of instrumentalities and proceeds that can be traced back to the offense, direct or indirect. Throughout the procedure, international collaboration, particularly informal help and demands for MLA, will be employed to locate and recover criminal proceeds in foreign jurisdictions and execute the confiscation judgment.²⁰⁶ The societal awareness of the criminal element of corruption and the offender's responsibility is an advantage of confiscation and criminal prosecution. Penalties such as incarceration, fines, and confiscation also help to discourage future criminals.²⁰⁷

Furthermore, criminal investigators have direct exposure to information from financial intelligence units (FIUs) and law enforcement officials as well as the utilization of coercive investigative techniques and provisional measures (such as searches, evaluation of financial records, electronic surveillance, or connect directly to documents retained by third actors). In most countries, MLA is only available in the context of crime investigations. However, there may be considerable obstacles to achieving a criminal prosecution and seizure, including insufficient facts, a lack of political will or capacity, or the suspect's death, immunity, or flight.²⁰⁸ Moreover, the activity that prompted the request may not even be illegal in the location where the remedy is requested.

Concealment without a conviction, or "NCB confiscation," is another sort of confiscation that favours the world. NCB restitution has one thing connected with criminal seizure: the seizure and restitution of illegal proceeds and instruments.²⁰⁹ Other societal benefits gained by NCB seizure include deterrence and stripping unscrupulous authorities of their ill-gotten riches. The technique utilized to seize assets in NCB confiscation varies from that employed in criminal forfeiture.²¹⁰ The expropriation

²⁰⁵ UNCAC, art. 54(1) (a) and 54(2) (b).

²⁰⁶ UNCAC, art. 54(1) (c).

²⁰⁷ *Ibid.*

²⁰⁸ UNCAC, art. 53(b) and (c).

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

of criminal proceeds necessitates criminal prosecution and punishment, followed by restitution procedure; NCB confiscation necessitates simply confiscation proceedings and does not necessitate a conviction or trial. NCB seizure can be based on a lesser level of proof (for instance, the “equilibrium of likelihoods” or “predominance of the proof”) in several jurisdictions, which makes it easier for authorities. Other (mostly civil law) countries require a higher threshold of proof—exactly the same as a criminal conviction.²¹¹ Since NCB confiscation is impossible in all countries, practitioners may have difficulty obtaining MLA to assist with examinations and the implementation of NCB confiscation orders.²¹²

Authorities trying to retrieve criminal proceeds can file a civil lawsuit in a foreign or local court to protect and reclaim the property and seek compensation for torts, illicit enrichment, or violation of the contract.²¹³ Suppose the accused is an individual (business entity or individual) living or integrated into the authority (personal jurisdiction). In that case, the criminal proceeds are in or have transferred the jurisdiction (jurisdiction over a specific subject), or an operation of money laundering or corruption was engaged inside the jurisdiction, the abroad jurisdiction's courts could be proficient.²¹⁴ Authorities desiring remedy might retain lawyers to investigate possible claims and solutions as a private litigant (Contractual breaches, ownership of plundered assets, tort, and disgorgement of illicit earnings).²¹⁵ Proof of embezzlement or obligations founded on tort damages or contractual will be collected as part of the civil case. Evidence acquired amid a criminal proceeding is often admissible in civil proceedings. Before initiating an action, you can also gather proof with the help of the court.²¹⁶

3.2. The mechanisms for restitution of criminal proceeds

Any jurisdiction that aspires to offer a complete range of tools for collecting the profits of corruption and money laundering must have an asset confiscation system. The UNCAC and the Financial Action Task Force 40+9 Recommendations advocate non-conviction-based (NCB) confiscation.²¹⁷ Thus, it is becoming more popular as states extend their restitution programs. Under their local regime, prosecutors may have access to a range of confiscation techniques. They should endeavour to maintain all of them open, especially in instances where objections to the forfeiture are

²¹¹ UNCAC, art. 54(1)(b) and 54(2)(b)

²¹² *Ibid.*

²¹³ *Ibid.*

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ UNCAC, art. 55 and 57.

quite probable and where changing circumstances may render one way obsolete.²¹⁸ For example, if the prosecution fails due to insufficient proof or the death of the accused, the possibility of confiscation is preserved by the presence of a concurrent NCB application.²¹⁹ Numerous choices may also allow authorities to take or limit assets using one approach and later confiscate using a different method. In general, three confiscation mechanisms are employed to reconstitute the money and instruments of corruption: NCB confiscation, criminal confiscation, and administrative confiscation in specific jurisdictions.²²⁰

3.2.1 Criminal Confiscation

Criminal confiscation necessitates an accused's conviction after a court hearing or a guilty verdict. After a sentence, the jury can issue a final ruling of restitution, which is generally included in the imprisonment. In some countries, confiscation is an obligatory order; in others, it is up to the court (or jury) to decide.²²¹ Value-based or Property-based criminal confiscation schemes exist. Various standards of evidence may be imposed in the two stages of the lawsuit in some countries that is, while the conviction is being adjudicated and the confiscation proceedings are being carried out. The prosecutor's primary job in sentencing is to convict the defendant of the crime at the required criminal burden of evidence, whether "intimate conviction" or "above a reasonable doubt." The level of proof must be reached before a seizure can be imposed. Throughout the court's contemplation of confiscation, further or secondary obligations may be applied. In some countries, the secondary responsibility is based on the lesser "balance of likelihoods" level of proof; in others, a similar level in criminal trials is applied. Due to the requirement of a conviction, it may be difficult to use this procedure to confiscate assets if the criminal has died, left the jurisdiction, or is absent. Absconding laws have been implemented in certain jurisdictions, which proclaim the perpetrator "convicted" for the sake of seizure if it is shown that they have left the country.²²²

3.2.2.NCB (National Commercial Bank) Confiscation

NCB confiscation, often known as "objective confiscation," allows for the seizure of criminal proceeds without the need for a conviction. Since NCB confiscation is commonly a property-based proceeding against the item itself rather than the individual in ownership or possession, evidence that the

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ UNODC, Technical Guide to the United Nations Convention against Corruption (Vienna, 2009), pp. 207–208

²²² UNCAC, art. 55 and 57.

property is the instrument of offense or proceeds is usually required.²²³ Furthermore, NCB confiscation is unrelated to getting a conviction. The kind of seizure is generally carried out in one of two directions: The initial is confiscation, which takes place in the framework of criminal trials but does not require a definitive conviction or judgment of guilt.²²⁴ In comparable circumstances, NCB confiscation legislation is included into existing penal statutes, anti-money laundering legislation, or other penal legislation. They are treated as “criminal” processes subject to criminal procedural regulations. The second method is confiscation via a standalone act that establishes a distinct process that can run concurrently or separately of linked criminal proceedings and is generally governed by civil procedural rules (in place of criminal procedural laws).²²⁵ In nations that use civil procedure, a lower standard of evidence (“preponderance of the evidence” or balance of probability) is necessary for confiscation, lowering the prosecution's burden. Most jurisdictions only seek NCB confiscation after exhausting or failing criminal processes.²²⁶ The NCB confiscation proceedings have been delayed in various jurisdictions unless the criminal investigation is finished.²²⁷ When criminal restitution is unfeasible or unobtainable, such as because once (1) fled the jurisdiction, the defendant has died, or is immune to prosecution; (2) a criminal proceeding is discovered with no recognized owner; or (3) court prosecutions have done result in an acquittal, or there is inadequate proof to pursue a criminal conviction, NCB confiscation can be used (applicable in jurisdictions where the threshold of proof is lower). This method of confiscation could also be effective in massive and complicated instances when a criminal investigation is ongoing and criminal proceeds must be restrained and confiscated before the filing of a formalized criminal charge.²²⁸ Criminal seizure is not meant to be replaced by NCB confiscation mechanisms. When it is possible to accuse and convict someone, the guilty verdict should be gained, and prosecutors should have access to powerful and reasonably inexpensive criminal confiscation.²²⁹

3.2.3 Administrative Confiscation

Administrative seizures are carried out without the need for a judicial warrant. When a requisition is not disputed, and specific conditions are met, it is frequently utilized to confiscate

²²³ UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Corruption*, 2nd revised ed. (Vienna, 2012), para. 752

²²⁴ *Ibid.*

²²⁵ UNCAC, art. 56.

²²⁶ UNODC, *Technical Guide to the United Nations Convention against Corruption* (Vienna, 2009), pp. 207–208.

²²⁷ *Ibid.*

²²⁸ UNODC, *Technical Guide to the United Nations Convention against Corruption* (Vienna, 2009), pp. 207–208

²²⁹ *Ibid.*

possessions (notice to participants and publication, for instance; no objections are raised.). Furthermore, an administrative seizure may be subject to statutory limitations, including a maximum property value or a restriction on the sorts of criminal proceeds that can be taken.²³⁰ Administrative confiscation laws frequently demand that judgments be subject to later court confirmation. Administrative seizure is frequently associated with the enforcement of customs regulations, regulations against drug trafficking, and mandating the registration of cross-border financial transfer, and it frequently develops from these laws.²³¹ Moreover, it could be utilized, for instance, to seize a vehicle used to convey unlawful products or cash discovered in possession of a courier. In such circumstances, customs personnel and police are usually given legislative authority. This procedure can lead to the confiscation of such property in a timely and cost-effective manner.²³²

3.2.4. Criminal Proceeds Return

When a restitution order is enforced in the desired jurisdiction, the seized criminal proceed are frequently remitted to the preferred jurisdiction's confiscation fund or general treasury (not delivered to the jurisdiction that requested it).²³³ As a consequence, another procedure to organize for the repatriation of the criminal proceeds will be required. When UNCAC is in effect, the asked entity will be required to return seized criminal proceeds to the seeking party per article 57 in situations of laundering of government funds and embezzlement or when the asking party can demonstrate prior ownership. If the UNCAC is not relevant, local legislation, other international treaties, Warsaw convention, MLA conventions, or unique accords will govern the restoration or distribution of confiscated criminal proceed (Asset-sharing arrangements, for instance).²³⁴ The overall restitution may be lowered in all situations to reimburse the desired jurisdiction for its costs of restraining, keeping, and dealing of the recovered criminal proceed, as well as the plaintiff's legal and daily expenses.²³⁵ Through a judicial order, assets can also be restored straight to victims and in a foreign court (known as "direct

²³⁰ Kevin M. Stephenson and others, *Barriers to Asset Recovery an Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C., World Bank, 2011), pp. 66–67.

²³¹ Theodore S. Greenberg and others, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, D.C., World Bank, 2009), p. 15.

²³² *Ibid.*

²³³ Stolen Asset Recovery (StAR) Initiative Secretariat, "Management of Confiscated Assets" (Washington, DC, 2009), <http://www.worldbank.org/star>

²³⁴ Stolen Asset Recovery (StAR) Initiative Secretariat, "Management of Confiscated Assets" (Washington, DC, 2009),

²³⁵ *Ibid.*

recovery").²³⁶ A court may mandate direct restitution or penalties to a foreign jurisdiction in a private legal action. In an NCB or criminal proceeding, a judiciary may also award restitution or reimbursement to a foreign country.²³⁷ Lastly, while determining the seizure, some jurisdictions have the authority to accept a foreign state or territory assertion as the legal property owner²³⁸. Formal bankruptcy processes may aid in the restitution procedure if the unlawful act's culprit is bankrupt (or the firms employed by the culprit are bankrupt).²³⁹ Attempts to retrieve criminal proceeds in scandals are expected to raise a series of policy challenges. Requested countries may be afraid that the monies will be skimmed off again in the asking jurisdictions due to ongoing or repeated corruption, mainly if the corrupt individual is already in authority or has a strong influence.²⁴⁰ Furthermore, asking jurisdictions may raise objections to a requested nation's attempts to impose restrictions or other viewpoints on how the seized criminal proceeds should be utilized. International agencies like the civil society organizations and World Bank have been employed to help with the repatriation and supervision of seized monies in some circumstances.²⁴¹

What if the state that has the proceeds from corruption crimes refuses to hand them over to the requesting state?

According to the text of Article 66 of the United Nations Convention, the requesting state has the right to seize the funds of a person - the subject of a criminal trial for corruption crimes - deposited with another state, in case the latter refuses, to take measures to seize those funds in preparation for their confiscation in favor of the state requesting the reservation, to resort first to negotiate with it. If the negotiation does not yield anything or the negotiation cannot be completed, international arbitration may be resorted to, provided that it ends within six months. If this is also impossible, it is permissible to

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Article 53(a) of the UNCAC requires states parties to allow another state party to file a civil action in national courts.

²³⁹ Ibid.

²⁴⁰ See UNCAC, art. 53(1) (c) and recommendation 3 of the Financial Action Task Force 40+9 Recommendations.

²⁴¹ Ibid.

resort to the International Court of Justice to refer the dispute to it by a request submitted in accordance with the Statute of the Court.

3.3. Obstacles towards the Restitution of Corruption Proceeds

Despite the international legal framework established to aid in identifying crimes of expatriation of illegally acquired proceeds of foreign countries, there are various bottlenecks that hamper the efficiency of the operation of this legal mechanism. These challenges can be classified as general barriers emanating from the political processes and operational and legal barriers, stemming from the legal loopholes of the international frameworks. In this sub-section, the researcher discusses these challenges:

3.3.1 General obstacles

Firstly, various scholars indicate that a lack of political will is the main impediment towards the identification, recovery and restitution of corruption proceeds to their original State Parties. For instance, Borlini and Nessi indicate that the lack of political support in the efforts of recovery of expatriated corruption proceeds is an institutional barrier, and it can be attributed to the deficiency of a comprehensive, sustained as well as concerted policy to aid in the restitution of corruption proceeds²⁴².

Secondly, there is a general barrier stemming from a lack of compliance with the measures of anti-money laundering. Borlini and Nessi indicate that this impediment prevents states from executing relevant measures against crimes of corruption and recover the proceeds²⁴³. According to StAR, it is imperative that they coordinate their anti-money laundering measures to comply their actions efficiently with anti-money laundering efforts as well as integrate responsible agencies and bodies into teams that execute the cases specifically or work as multi-agency teams in permanent structures²⁴⁴. In addition, at policy levels, it is important that states develop guidance on the assessment of risks of sources of corruption proceeds as well as integrate anti-money laundering as well as corruption issues in their

²⁴² Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

²⁴³ Ibid [note 108]

²⁴⁴ StAR, Barriers to Asset Recovery. An Analysis of the Key Barriers and Recommendations for Action, Washington, DC: World Bank, (2011). Available at: <http://star.worldbank.org/star/publication/barriers-asset-recovery>.

assistance programs for development²⁴⁵. With regard to the latter, there is a need for the international community to offer appropriate supervision.

In addition, there is an aspect of inadequate monitoring of individuals that are politically exposed. This challenge hampers effective recovery efforts geared at such individuals due to their privileged position coupled with their high propensity to engage in corruption crimes²⁴⁶. In that regard, therefore, recovery efforts should be geared towards having special attention directed to politically exposed persons by relevant financial institutions as well as their supervisors²⁴⁷. According to StAR, the international standards on politically exposed individuals should be fostered to offer a strategic pathway that better addresses the risk of such individuals engaging in corrupt practices as well as prevent them from gain illicit gains from the financial market²⁴⁸. In addition, there is also a lack of a system of asset and income disclosure for public servants, which makes them opaquely misappropriate public resources, and expatriate corruption gains to other countries. According to Olujobi, disclosure of assets and incomes could become pivotal as an anti-corruption tool since individuals who are charged with public responsibilities can be screened to ascertain their wealth increment when suspicion arises that they might have been engaged in dubious deals²⁴⁹. Additionally, such systems should provide ethical guidelines as well as preferred behaviors of public officers in order to foster a climate of integrity within public administration as well as minimize the potential of conflicts of interest occurring²⁵⁰. Therefore, currently, there is a loophole since such provisions or efforts are not in place, which implies that public officials can squander public coffers without being detected. StAR establishes that there is a lack of a single solution that suits all scenarios among State Parties since the available guidelines are expressively descriptive instead of being normative. Therefore, the effectiveness of the anti-corruption systems instituted by each State Party relies on the questions being posited and addressed at every moment²⁵¹.

²⁴⁵ Ibid [note 108]

²⁴⁶ Ibid [note 108]

²⁴⁷ Kim-Kwang Raymond, C., (2008). Politically exposed persons (PEPs): risks and mitigation. *Journal of Money Laundering Control*. 11. 371-387. 10.1108/13685200810910439.

²⁴⁸ StAR (2010), *Politically Exposed Persons: Preventive Measures for the Banking Sector*, Washington, DC: World Bank, available at: <http://star.worldbank.org/star/publication/politically-exposed-persons>.

²⁴⁹ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). Doi. 10.1108/JMLC-09-2020-0107

²⁵⁰ Ibid [note 114].

²⁵¹ StAR. *Public Office, Private Interests. Accountability through Income and Asset Disclosure*, Washington, DC: World Bank, (2012) Available at:

Overall, these general barriers impede the effectiveness of asset recovery efforts for international cases involving expatriation of proceeds of corruption. In the following section, the specific bottlenecks within the legal framework are explored.

3.3.2 Legal obstacles

Legal obstacles against anti-corruption efforts are the factors that derail the recovery of assets involving expatriation of corruption proceeds to one or more State Parties. According to Borlini & Nessi, the requirement established under the United Nations Convention Against Corruption, there should be mutual legal assistance and aid offered to State Parties to facilitate investigations and recovery of criminal proceeds²⁵². The various provisions under the law that requires mutual aid include aspects of banking secrecy and details regarding the financial transactions of public officials²⁵³. However, these aspects face procedural and evidentiary bottlenecks, which are overly burdensome²⁵⁴. In addition, in some State Parties, the confiscation procedure is rather cumbersome since it is not based on conviction²⁵⁵. In addition, there is a lack of transparency in settling bribery cases involving foreign parties. This legal barrier is a detriment to the restitution of proceeds of bribe, whereby most of the foreign cases are terminated through settlement, hence hampering the legal mechanism from taking its full course. According to StAR's empirical observation that involved an inquiry into 395 settlements that took place between 1999 and 2012, although there was almost \$6 billion worth of monetary sanctions imposed by the foreign country that funds were expatriated to, only 3% of such funds have been repatriated to their countries of origin²⁵⁶. This scenario, therefore, depicts the problematic legal impediment that prevents effective restitution of corruption proceeds as most of such funds are not returned to their rightful owners. Although it is plausible to recognize the efforts employed in recovering a proportion of the repatriated money, there is still more to be done to ensure that the state that suffers in the case of corruption that is expatriated to foreign countries is offered judicial remedy and justice.

<http://star.worldbank.org/star/publication/public-office-private-interests>.

²⁵² Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713

²⁵³ Ekwueme, Ejike, and Mahmood Bagheri. "The intersection of commercial corruption and money laundering: a look at international responses and the adequacy of regulations". *Amicus Curiae*. 2013 (p. 95).

²⁵⁴ *Ibid* [note 119]

²⁵⁵ Zhaobin, Pei. "Overview of Recovery of Illegal Proceeds of Corruption Crime Stipulated in "The United Nations Convention against Corruption". *US-China Law Review*. 11 (6), p. 697. (2014).

²⁵⁶ StAR. *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*, Washington, DC: World Bank, (2013). P. 1; available at: <https://star.worldbank.org/star/publication/left-out-bargain-settlements-foreign-bribery-casesand-implications-asset-recovery>

Especially, StAR calls for developing countries to take spirited efforts to investigate and prosecute foreigners that engage in corrupt dealings as well as pursue legal proceedings devoid of settlements that could have occurred elsewhere²⁵⁷.

3.3.3. Operational Barriers

Although general barriers and legal barriers constitute the fundamental challenges that hamper the efficient application of the legal framework, operational barriers also present significant bottlenecks with regard to cooperation among state parties to ensure efficient litigation, determination and recovery of the proceeds of corruption. According to StAR, it is worth noting that part of the challenge rests on some of the operational bottlenecks among State Parties, including a lack of proper and timely communication as well as the prevalence of opaque systems that deter informational exchange²⁵⁸. Likewise, Borlini & Nessi agree with the assertion above on the existence of operational barriers that basically stem from poor communication among state parties to launch appropriate legal measures that can help expedite the determination and recovery of illegally acquired assets²⁵⁹. The latter authors further envisage that these barriers are practical and that they fundamentally hinder the likelihood of States' cooperation towards the repatriation of the proceeds of corruption. In that regard, StAR suggests four measures that can help alleviate these operational bottlenecks, including identifying the focal points for offering requests of legal assistance, establishing a network of contracts that could help coordinate the procedure of asset recovery, timely timing in order to obtain relevant information that is required to provide mutual legal assistance and overcome inherent problems in drafting the mutual legal assistance requests²⁶⁰.

3.3.4 The knowledge base

When it comes to the deterrent impact of restitution, there is a widespread view that eliminating the economic motivation to conduct acquisitive crime will lower crime²⁶¹. Furthermore, a structure that allowed criminals to keep the proceeds of their offense would convey an unwelcome signal to future

²⁵⁷ Ibid [note 122]

²⁵⁸ Ibid [note 122]

²⁵⁹ Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014) doi:10.2139/ssrn.2391713. p. 37

²⁶⁰ StAR, Barriers to Asset Recovery. An Analysis of the Key Barriers and Recommendations for Action, Washington, DC: World Bank, (2011). Available at: <https://elibrary.worldbank.org/doi/10.1596/978-0-8213-8660-6>. P. 3

²⁶¹ Theodore S. Greenberg and others, Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture (Washington, D.C., World Bank, 2009), pp. 149–150.

offenders and the general public. Nevertheless, despite its intuitive strength, there appears to be reasonably little concrete data about the actual impacts of wealth confiscation on criminal behaviour, not just in terms of deterrence. As such, there lacks have much information on how successful appropriation is at avoiding subsequent wrongdoing or attaining the therapeutic goal (i.e., what percentage of illegally acquired riches is confiscated?).²⁶² In terms of effectiveness in achieving a rehabilitative goal, one approach to evaluate the efficacy, or lack thereof, of confiscation programs is to compute the alterations in the quantity of illicit wealth as a consequence of the present restitution measures being used. That is the proportion of assets recovered to overall criminal wealth.²⁶³ The purported small size of the confiscated property is frequently used to justify the inadequacy of current laws. According to a recent UN strategy paper, barely 1.1 % of the UN's illicit funds in transit are confiscated.²⁶⁴ However, despite their popularity as a barometer of confiscation regime effectiveness, methodological flaws, raising questions about their validity, can plague such analyses. Primarily, this type of evaluation necessitates determining the value of the confiscated property.²⁶⁵ Despite this should be doable in theory, it appears that it is not often a simple task. Trying to figure out how much illicit wealth there is can be (much more) challenging. Because reliable data is challenging to come by, estimations will be based on various assumptions, such as the size of the illicit money flow and associated revenue margin.²⁶⁶ As a result, estimates of criminal turnover can readily become hypothetical and potentially, if not definitely, overstated. The evaluation can be hampered even much further by the fact that offense and confiscation are frequently global. In specific, when it comes to preventive seizure, Naylor persuasively argues that before assessing the efficiency, or lack thereof, of a confiscation rule, a contrast of the growth rate of criminal earnings comparative to legal earnings should be created to see if the portion carried out of unlawful income is influencing the capacity of the illiterate²⁶⁷ although this computation, on the other hand, maybe challenging to complete.

²⁶² For a balancing model on the legitimacy of extended appropriation schemes, see Se Boucht (2017, pp. 141-231).

²⁶³ Theodore S. Greenberg and others, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, D.C., World Bank, 2009), pp. 149–150.

²⁶⁴ See e.g. COM (2016) 819 final, p. 2.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ Naylor, R.T. (1999), “Wash-out: a critique of follow-the-Money methods in crime control policy”, *Crime, Law and Social Change*, Vol. 32 No. 1, p. 3.

3.3.5 Principled concerns

Even though the increased focus on illicit proceeds and the development of more efficient confiscation legislation is a desirable trend, it does not come without problems. These criminal law requirements were placed in position for a purpose notably to prevent persons from being falsely charged with an offense due to the difficulty that sentencing entails, as well as the stigmatization that a criminal record carries.²⁶⁸ Furthermore, there is a current trend to highlight the distinction between fundamental property prerequisite and establishing criminal guilt, with the former requiring fewer precautions. Therefore, in the sphere of asset confiscation, the classic Blackstonian criteria of acquitting ten illegal people instead of mistakenly convicting one blameless individual do not appropriate, at certainly not with equal force.²⁶⁹ As a result, an essential policy concern is considered the proper allocation of mistakes in confiscation procedures. There is a conflict of interest between the parties concerned.²⁷⁰ With its complicated transnational crime, economic (cyber) crime, terrorism, and other forms of corruption, modern civilization necessitates the implementation of new types of crime prevention methods.²⁷¹ Similarly, it is also evident that there's a philosophical distinction between procedures to establish criminal liability and those aimed at supposedly unlawful assets.²⁷² Even if such a distinction is recognized, and even if it is acknowledged that the dispersion of error does not have to be similar to that of fundamental criminal law obligation, given the possible far-reaching repercussions of these initiatives, it must be intelligently examined how much further such assertions can be legitimately utilized in trying to justify the dispersion of procedural protection in criminal proceeds restitution proceedings. One aspect of criminal punishment is that it imposes some hardship, whether in a limitation on one's right to access mobility or a monetary penalty.²⁷³ The goal is to put the offender in a harsher situation than before the sentence was imposed. One key question is if a confiscation metric should be restricted to restoring the status quo ante or should instead enforce more far-reaching hindrance on the restitution subject than is essential to achieve a therapeutic goal, putting the defendant in a miserable

²⁶⁸ Bowles, R., Faure, M. and Garoupa, N. (2000), "Economic analysis of the removal of illegal gains", *International Review of Law and Economics*, Vol. 20 No. 4, pg. 537

²⁶⁹ Kevin M. Stephenson and others, *Barriers to Asset Recovery an Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C., World Bank, 2011), p. 73

²⁷⁰ *Ibid.*

²⁷¹ Kevin M. Stephenson and others, *Barriers to Asset Recovery an Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C., World Bank, 2011), p. 73

²⁷² *Ibid.*

²⁷³ Rui, J.P. and Sieber, U. (Eds) (2015), *Bringing the picture together*", *Non-Conviction-Based Confiscation in Europe. Possibilities and Limitations on Rules Enabling Confiscation without a Criminal Conviction*, Duncker and Humblot, NN, pg.7

economic situation than they had before participating in the illegal behaviour.²⁷⁴ When a policy is restorative, it simply removes away what the responder does not have a right to have, and it cannot be regarded as punishing in any way. There are compelling reasons to claim that restitution is punitive when it is not restricted to real gain, and the subject thus risks more significant far-reaching disadvantage as a consequence of the forfeiture order than they were subjected to at the moment of perpetrating the offenses for which they were punished.²⁷⁵

²⁷⁴ Ibid.

²⁷⁵ Ibid.

Chapter Four : Conclusion and Legal Recommendations

4.1 Conclusion

This study aimed to examine the international legal framework for the restitution of proceeds of corruption. The researcher embraced doctrinal research methodology that examined the application of the United Nations Convention against Corruption and its various provisions with regard to State Parties' cooperate in order to ensure that the loopholes of cross border corruption are closed and discourage public officials from engaging in bribery and swindling of public coffers. The study set out to achieve several research objectives; including examining the legal framework on the restitution of the proceeds of corruption at the international level; to examine the phenomenon of internal cooperation as a pathway to asset recovery of proceeds of corruption, and offering policy recommendations to help unify and effectively administer justice while confiscating proceeds of corruption. Consequently, the study reveals that various legislations under the UN Convention 2003 have been posited to ease cooperation among member states and facilitate restitution and recovery of proceeds of corruption. However, the study points to the availability of general, legal and operational barriers that hamper the efficiency of the recovery process.

The research established that the UN Convention Against Corruption, 2003 has established various legislations that provide judicial means through which international state bodies cooperate to access the financial statements of a suspected state official and institute investigations that can help determine whether they engaged in illegal acquisition and repatriation of the proceeds of corruption. Such provisions have also been incorporated in State Parties national laws in order to ease the process of cooperation and determination of such illicitly acquired funds. Once such funds are ascertained to have originated from sources that are linked to corruption, the foreign country that received such funds initiates the process of returning the funds to their country of origin. However, even though the legal framework provides a clear framework for the restitution of corruption proceeds, this study established the prevalence of legal, general as well as operational bottlenecks that curtail the efficient application of the legal provisions and ensuring the corruption perpetrators are charged for the damages caused. In that regard, the general bottlenecks established in this study included the lack of a political will, which comprised some of the institutional barriers since privileged individuals within State Parties would want to protect and cover their corrupt dealings. In addition, the study pointed out that the failure of State

Parties to comply with the measures of preventing and detecting money laundering is a general barrier to the effective implementation of the UN Convention against Corruption. Consequently, amidst these general barriers, this study suggested that coordination amongst state parties is needed in order to establish multi-agency teams that can work expeditiously to identify, contain and recover any illicitly acquired funds and return them to their rightful owners. Moreover, the study suggested that at policy formulation levels, the State Parties should develop robust guidelines on how sources of proceeds of corruption should be assessed for risk ascertainment and integrate anti-money laundering measures as well as develop assistance programs on corruption. In addition, the prevalence of inadequate systems for monitoring politically exposed persons create a legal loophole, which public officials take advantage of to swindle and illegally acquire assets. Furthermore, the study pointed out the existence of operational barriers stemming from a lack of proper and timely communication among State Parties in order to ensure that proceeds of corruption are identified and detected at their primary stage of occurrence. In addition, the legal barriers identified in this study included the prevalence of opaque systems for asset disclosure among state parties, especially for public officials, lack of transparency in the settlement of bribery cases in foreign jurisdictions. Other various policy recommendations are also provided in order to strengthen international cooperation with regard to the restitution of the proceeds of corruption.

The cultural and legal differences in some of the states are hindrances to restitution of corruption crime proceeds considering that suspects indicted with corruption charges seek refuge in such countries or transfer crime proceeds to such countries to frustrate legal efforts for restitution. Discourses of Lule regarding the challenges of combating international crime, especially on the restitution of crime proceeds, further illuminated the apertures noted above²⁷⁶. According to Lule, criminals use the legal systems set to combat these crimes to their advantage owing to the differences in various state legislations on the restitution of crime proceeds, noting that cross-border movement of the proceeds was a common tactic used²⁷⁷. Regarding this, policies dealing with restitution of crime proceeds face implementation challenges where indicted suspects move their proceeds to countries with weak financial transparency, and transactions are distributed in a convoluted manner to conceal their source and

²⁷⁶ Lule S, 'International Cooperation Combating Financial Proceeds of Crime' (2021) p. 4 European Journal of Marketing and Economics <https://journals.euser.org/files/articles/ejme_v4_i1_21/Lule.pdf> accessed 4 September 2021

²⁷⁷ Ibid (note 1290)

ownership. Consequently, successful prosecution, conviction, and restitution of such proceeds become formidable, especially when foreign entities are at the core of the transnational crime nexus.

4.2 Legal Recommendations

Generally, the arrangements for international cooperation of states through mutual legal assistance are termed as a formal cooperation where information on asset recovery is exchanged within networks of institutions within the various jurisdictions. The main networks of this nature encompass the Interpol's network of National Central Bureau, the resultant secure and supporting communication system and the Egmont Group of FIUs.²⁷⁸ These networks provide additional communication channels for national authorities concerned especially during the early stages of asset recovery such as the investigation processes.²⁷⁹ The information provides through these networks can be relied upon by states who face constraints during the asset recovery system.

However this research study proposes that there is need to further promote the international cooperation of states since the current mechanisms have proved insufficient. Research suggests that the proactive reliance on the informal channels and the networks mentioned above can compliment and replace the formal MLA procedures especially with regard to the early stages of assets recovery that encompass investigations.²⁸⁰ Therefore most of the request for assistance by states in the criminal proceeds restitution process can be managed not only through the formal systems but also the informal ones so long as they are international cooperation.²⁸¹ This is due to the fact that the effectiveness of the informal systems largely depends on the mutual trust, mutual respect and informal cooperation between states. Support of these informal systems at the international level would remedy the constraints experienced in the process of restitution of the criminal proceeds of corruption by states.

²⁷⁸ MENAFATF, 'Egypt: Mutual Evaluation Report Money Laundering and Combating the Financing of Terrorism', (2009), Bahrain: MENAFATF.

²⁷⁹ Ibid

²⁸⁰ Greenberg, Samuel, Grant and Gray, 'A Good Practices Guide to Non-Conviction Based Forfeiture' (2009), Washington: Stolen Asset Recovery Initiative

²⁸¹ MENAFATF, 'Egypt: Mutual Evaluation Report Money Laundering and Combating the Financing of Terrorism', (2009), Bahrain: MENAFATF.

Owing to the complexity of the transnational corruption crime nexus, policies on extradition and restitution of crime proceeds need to be revisited to seal all the legal loopholes, especially on the optional or non-extradition clauses in some states. Countries that have optional extradition or non-extradition legal systems water down the efforts of other states in promoting recovery and restitution of corruption crime proceeds, considering that they offer a haven for indicted suspects to hide crime proceeds. Such national legal systems frustrate international cooperation efforts on the restitution of corruption crime proceeds. Therefore, the UN needs to revisit its treaties on international cooperation for combating international crime with a core aim of streamlining for uniformity through introducing mandatory extradition for indicted corruption suspects and proceeds of corruption crimes upon conviction. Regarding this, Lule added that the Warsaw Convention policies faced challenges in promoting the restitution of crime proceeds emanating from the rapid evolution of technology and globalization²⁸².

E-commerce, e-money, and the advancement of sophisticated modern technology-based money laundering techniques such as cryptocurrencies present daunting challenges to the restitution of crime proceeds because they offer serpentine solutions for hiding crime proceeds targeting at frustrating search efforts. Arguably, the convention needs periodical review in light of the rapid changes in technology and flow of illicit financial gains from corruption and other international crimes. The periodical auditing of the Warsaw Convention policies will capture loopholes emerging due to the technological and tactical changes in money laundering and concealment of crime proceeds²⁸³. Therefore, appropriate amendments to the legal provisions of the convention can be introduced on a need basis when such challenges transpire.

Although international standards and legal provisions concur on the adoption of the ‘neutral ground’ approach in choosing the prosecuting states in global crime, peripheral policies supporting these legislations have flaws that affect their effectiveness in extradition and restitution of crime proceeds²⁸⁴. Le-Nguyen recommended international cooperation in choosing prosecuting nations whereby involved states follow not only the ‘centre of gravity’ principle but also the resource availability and legal capacity principles. The policy recommendation above ensures that prosecuting nations have the legal

²⁸² Ibid (note 129)

²⁸³ Ibid (note 129)

²⁸⁴ Le-Nguyen C, 'National Criminal Jurisdiction Over Transnational Financial Crimes' (2020) p. 27 Journal of Financial Crime

and resource capacity to successfully prosecute and extradite criminals and proceeds after conviction²⁸⁵.

International cooperation is cardinal for effective prosecution, conviction, and restitution of crime proceeds, especially in circumstances where the search for the alleged crime proceeds is deeply embedded in legal loopholes noted in the discourses above. Lack of uniform legal policies on extradition impairs the effectiveness of enacted international legislation in combating global corruption and financial crimes, thus, necessitating the adoption of pathways to seal the loopholes. Such pathways can be supported by the incorporation of appropriate policies into the UN Convention to allow increased cooperation and information sharing among state parties and litigation of corruption suspects to ascertain whether their funds are proceeds of corruption and consequently recover and repatriate them²⁸⁶. As established from chapters 1 and 2 above, a lack of coordination among state parties was a significant bottleneck towards the recovery operations.

Although information sharing is hailed as the pinnacle of international cooperation in combating international crime and restitution of crime proceeds, it faces innumerable hurdles through lack of mutual assistance in search, recognition, recovery, and extradition of crime proceeds and indicted suspects²⁸⁷. Mutual assistance among institutions, mainly through data exchange to recognize potential laundering, the origin of the proceedings, freezing and sequestration of the illicit gains, is paramount in successful restitution of corruption crime proceeds. Although UNCAC is the sole globally accepted legislation on corruption, numerous institutions under the UN and regional partnerships bodies offer supplementary legislation on the recovery of crime proceeds. However, the legislations encounter a challenge of producing counter-productive outcomes such as contradicting legal provisions and operational frameworks of different institutions affecting the operational of UNCAC. For instance, UNCAC policies have been scrutinized deeply for possible infringement of human rights^{288 289}. Such

²⁸⁵ Ibid (note 132)

²⁸⁶ Olujobi, O.J. "Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?", *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). P. 13 Doi. 10.1108/JMLC-09-2020-0107.

²⁸⁷ Ibid (note 126)

²⁸⁸ European Parliament, and Zamfil I, *Fighting Corruption Globally: The Link With Human Rights* (European Parliamentary Research Service 2021)

<[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS_ATA\(2021\)690625_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS_ATA(2021)690625_EN.pdf)> accessed 4 September 2021

challenges call for policies to be harmonized to ensure that no policies interact to have counter-productive outcomes such as human rights infringements.

Additionally, there are challenges in finding competent and qualified entities to execute inquiries relating to corruption crimes as well as prevent them²⁹⁰. Although there are institutions mandated with asset recovery to support restitution of corruption crime proceeds, most lack capacity and resources to effectively recognize, search, and recover proceeds of crime²⁹¹. The institutions often lack adequate information and access to financial databases. Moreover, there are institutional and legal hurdles that impair sequestration to prevent dissipation or re-routing of funds before they are frozen. Policy amendment to increase the effectiveness of existing legislation and institutions on confiscation and restitution of corruption crime proceeds should not only look into capacity empowerment but also broaden approaches to obtain fast-tracked information and restraint orders.

The policy recommendation above is based on the observation that most indicted corruption suspects often result in devious tactics such as hiding the money in countries with no mandatory extradition policies. Other serpentine tactics used in hiding proceeds of crime that frustrate recovery efforts include hiding in legitimate humanitarian projects and organizations, re-routing the money through untraceable transactions and laundering the money through numerous shell companies. Therefore, policies for international cooperation on the exchange of information, human and financial resources are paramount in the timely seizure of crime proceeds before suspects move them across various crime syndicates and countries to avoid detection or recovery by the prosecuting states. Agencies charged with the mandate to recover and oversee restitution crime proceeds should have the capacity to conduct joint investigations, enact retaining actions to prevent evasion tactics of the suspects, and obtain information using coercive means where circumstances justify the use of such measures²⁹². Therefore, the UN, through its UNCAC agency, work with specific states that have weak legal and institutional frameworks to increase their prosecuting, recovery, and restitution capacity. Such policies will seal some of the loopholes exploited by corrupt criminals.

²⁸⁹ Peters A, 'Corruption as A Violation of International Human Rights' (2018) p. 29 *European Journal of International Law*

²⁹⁰ Boersma, M. *Corruption: A Violation of Human Rights and a Crime Under International Law?* Cambridge: Intersentia, 2012. P. 3

²⁹¹ UNODC, *Manual on International Cooperation for The Purposes of Confiscation of Proceeds of Crime* (English, Publishing and Library Section, United Nations Office at Vienna 2012)

<https://www.un.org/ruleoflaw/files/Confiscation_Manual_Ebook_E.pdf> accessed 4 September 2021

²⁹² *Ibid* (note 139)

The UN can enhance the frameworks of fighting corruption not only internationally but also at the state level, considering this is the level presenting the most loopholes. Policies for capacity building are critical especially through integrated efforts between the UN, other international institutions, and the respective state governments²⁹³. These programs can fundamentally contribute towards the alleviation or reduction of potentialities of public officers engaging in corrupt dealings. Additionally, there is a need for the introduction of civil procedures to guide the seizure of corruption proceeds. Such procedures should be introduced with the aid of relevant bills to ensure that it has legal grounding to be justified in its application to international aspects.

The domestic authorities ought to provide documentation of their successful endeavours in asset recovery to other jurisdictions not only encompassing the challenges of the process but also the benefit of asset recovery to the national governments. Further international cooperation for the recovery of proceeds of crime among states can also be achieved through reviewing the asset recovery process and obtaining feedback from various jurisdictions.²⁹⁴ The international bodies can adopt mechanisms to further facilitate the assets recovery process especially from the proceeds of crime. Further these mechanisms will aid the international bodies in assessing the regulatory measures available at the domestic level so as to be able to identify and resolve any constraints in the assets recovery procedure.²⁹⁵ According to the report provided by World Bank and the United Nations Office of Drugs and Crimes (UNODC), the assets recovery process can also be enhanced through review of progress where the restitution cases that have been initiated or completed are sampled and reviewed. This would enable the international bodies to identify any potential risks and provide experience or reference for future restitution cases.²⁹⁶

Practical recommendations towards international cooperation are essentially in terms of reforming and developing the legal framework present for the recovery of criminal proceeds of

²⁹³Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. SSRN Electronic Journal. (2014), p. 138 doi:10.2139/ssrn.2391713

²⁹⁴ IMF, 'AML/CFT Methodology with FATF+9, Interpretative Notes and Best Practices' (2008), Washington DC

²⁹⁵ Larsson, 'International police co-operation: a Norwegian perspective' (2006) *Journal of Financial Crime*, 13(4), pp.456-466

²⁹⁶ Santangelo, Stein, and Jacobs, 'The Foreign Corrupt Practices Act: recent cases and enforcement trends' (2007, 8 (3), *Journal of Investment Compliance*, pp. 31-55

corruption crimes.²⁹⁷ In this regard therefore this study recommends that national governments ought to reform their legislations and regulatory systems so as to provide a wide range of legal redress to enhance the assets recovery process. Further considerable attention should be directed towards the process of criminal forfeiture in relation to proceeds of corruption. The international community can actualize this process by adopting expert groups to deal with any constraints and difficulties that may arise.²⁹⁸ The expert groups can also be formed to facilitate the exchange of experience among practitioners, policy makers and legislators of the various jurisdictions.

The study further recommends that National authorities ought to assemble and adopt multi-agency asset recovery teams in line with the needs and requirements of the independent domestic institutions.²⁹⁹ Further, the international discourse can also enhance the asset recovery process through ensuring exchange of information and experiences between these multi-agency asset recovery teams. In line with promoting international cooperation states ought to support the efforts by Interpol to avail operational support with regard to anti-corruption activities).³⁰⁰

Further, this study recommends that to achieve international cooperation states should facilitate and expedite the process of exchanging information and mutual legal assistance among them with regard to the restitution of criminal proceeds of corruption. This can be achieved through the adoption guidance and tools on asset recovery, indicating or giving directions to states on the prescribed procedures to be implemented in the various jurisdictions.³⁰¹ In addition states can advocate for the sign posting of the appropriate methods of attaining formal international cooperation.³⁰² The same can be achieved for instance through the creation and accessing of web portals for this purpose. Another practical recommendation that this study proposes is for states to develop guides on the reliance of informal cooperation by state practioners both at the national as well as the international level. Lastly since the mutual legal assistance regime proposes the adoption of various treaties and conventions, the formation of a joint working group under the United Nations is recommended. The joint working group

²⁹⁷ Gully-Hart, 'International asset recovery of corruption-related assets: Switzerland. In M. Pieth, *Recovering Stolen Assets*' (2007) Bern: Peter Lang pp. 165-185

²⁹⁸ Heimann, Dell, 'Progress Report 2009: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' (2009), Transparency International

²⁹⁹ Santangelo, Stein, and Jacobs, 'The Foreign Corrupt Practices Act: recent cases and enforcement trends' (2007, 8 (3), *Journal of Investment Compliance*, pp. 31-55

³⁰⁰ IMF, 'AML/CFT Methodology with FATF+9, Interpretative Notes and Best Practices' (2008), Washington DC

³⁰¹ *Ibid*

³⁰² Larsson, 'International police co-operation: a Norwegian perspective' (2006) *Journal of Financial Crime*, 13(4), pp.456-466

will be in a position to promote the international cooperation of states and provide guidance or tools for the national institutions.

Recommendations for Further Studies

This study has explored the aspect of international legal frameworks for the restitution of corruption proceeds and contributed substantially to current discourses examining efforts of curtailing and preventing the occurrence of corruption and expatriating illicit incomes to foreign countries. However, there are still literature gaps that future studies can contribute to, including examining the various ways through which forfeiture laws can be made and incorporated into the already existing legal mechanisms and facilitate efficient recovery of stolen funds. In addition, future research should examine the available tools that can be utilized to overcome the operational barriers among state parties towards fostering a corruption-free society. In addition, aspects of international cooperation among state parties should be examined to establish a common ground of acknowledging corruption suspects and culprits and reporting them to the relevant authorities.

References:

Legislation/

1. United Nations (2010). Report of the Monitoring Group on Somalia Pursuant to Security Council
2. United Nations Convention against Corruption (UNCAC), art 54(1)(a) and 54(2)(a)
3. United Nations Office on Drugs and Crime (UNODC), State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation, 2nd ed. (Vienna, 2017), pp. 57–58 and pp. 129–130.
4. UNODC, Legislative Guide for the Implementation of the United Nations Convention against Corruption, 2nd revised ed. (Vienna, 2012), para. 752
5. UNODC, Technical Guide to the United Nations Convention against Corruption (Vienna, 2009), pp. 207–208
6. Warsaw Convention

Books/Journals/Articles

1. Allen, F., Qian, J. in Shen, L. (2015). Corruption and Competition. Obtained from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685219
2. Alloway, Gerald. Corruption, Contracts and Common Law Illegality (2018). *Victoria University of Wellington Legal Research Paper. SSRN.*
3. Aronowitz, A. A. (2014). & Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It", *European Journal on Criminal Policy and Research*, 9 (2): 163–195, p. 171.
4. Ayoade, M.A. “Evaluating the legal architecture on corruption in Nigeria, the ”, *Nigerian Journal of Contemporary Law*, Vol. 18 No. 1, p. 51. (2012).

5. Blackburn, K.;Forgues-Puccio, G. F. Why is corruption less harmful in some countries than in others? *Journal of Economic Behavior & Organization*, 72(3), 2014.
6. Boersma, M. *Corruption: A Violation of Human Rights and a Crime Under International Law?* Cambridge: Intersentia, 2012.
7. Boister, N., & Currie, R. J. (Eds.). (2014). *Routledge handbook of transnational criminal law*. Routledge.
8. Borlini, L. S., & Nessi, G. International Asset Recovery: Origins, Evolution and Current Challenges. *SSRN Electronic Journal*. (2014) doi:10.2139/ssrn.2391713
9. Boucher, R., Sandage, J. B., & Devan, J. *The legal framework for the treatment of proceeds of active bribery*. 15-27. (2012).
10. Bowles, R., Faure, M. and Garoupa, N. (2000), “Economic analysis of the removal of illegal gains”, *International Review of Law and Economics*, Vol. 20 No. 4, pg. 537
11. Carling, J. (2016). *Migration, Human Smuggling and Trafficking from Nigeria to Europe*, IOM Migration Research Series No. 23. Geneva: IOM
12. Cassella, S. D. (2014). Bulk cash smuggling and the globalization of crime: Overcoming constitutional challenges to forfeiture under 31 USC 5332. *Berkeley J. Intl’ L.*, 22, 98.
13. Cheloukhine, S., & Haberfeld, M. R. *Russian organized corruption networks and their international trajectories*. Springer Science & Business Media, 2011
14. Chêne, M., & Jancsics, J. S. D. (2018). *Corruption at borders*. U4 Helpdesk.pg. 15
15. Chong, A., & Lopez-De-Silanes, F. (2015). Money laundering and its regulation. *Economics & Politics*, 27(1)
16. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*. The UNESCO Convention of 14 November 1970 came into force on the 24 April 1972.
17. Cooke, S. (2019). *UNDERSTANDING CORRUPTION: WHY CORRUPTION EXISTS AND THE INSTITUTIONAL REFORMS NEEDED TO LESSEN ITS PRESENCE IN GOVERNMENT* (Doctoral dissertation, Johns Hopkins University).
18. Dakhllallah, D. *Where the Action Is: A Conceptual and Experimental Evaluation of*

19. Dakhllallah, D. Where the action Is: A Conceptual and Experimental Evaluation of Measurement, Dynamics, and Reputational Incentives in Corrupt Transactions. Stanford University. (2018).
20. Dandurand, Y. (2017). Human trafficking and police governance. *Police Practice and Research*, 18(3), pg. 325.
21. Dimant, E. (2014). The Antecedents and Effects of Corruption-A Reassessment of Current (Empirical) Findings. Pridobljeno na: https://mpra.ub.uni-muenchen.de/60947/1/MPRA_60974.pdf
22. Ekwueme, Ejike, and Mahmood Bagheri. 2015. "The intersection of commercial corruption and money laundering: a look at international responses and the adequacy of regulations". *Amicus Curiae*. (2015).
23. European Paliarment, and Zamfil I, *Fighting Corruption Globally: The Link With Human Rights* (European Parliamentary Research Service 2021)
<[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS_ATA\(2021\)690625_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/690625/EPRS_ATA(2021)690625_EN.pdf)> accessed 4 September 2021
24. Gallant, M. M. Money laundering consequences: Recovering wealth, piercing secrecy, disrupting tax havens and distorting international law. *Journal of Money Laundering Control*, 2004.
25. George Mousourakis, *Comparative Law and Legal Traditions* (Oxford University Press, 2019) pp 169-196
26. Greenberg T, 'Money Laundering and Corruption: In J. E. Campos, & S. Pradhan, *The Many Faces of Corruption: Tracking Vulnerabilities at the Sector Level*' (2007) Washington DC: World Bank pp. 381-426
27. Greenberg, Samuel, Grant and Gray, 'A Good Practices Guide to Non-Conviction Based Forfeiture' (2009), Washington: Stolen Asset Recovery Initiative
28. Gully-Hart, 'International asset recovery of corruption-related assets: Switzerland. In M. Pieth, *Recovering Stolen Assets*' (2007) Bern: Peter Lang pp. 165-185
29. Hartmann, J.M. *Government by Thieves: Revealing the Monsters Behind the Kleptocratic Masks*, *Syracuse Journal of International Law and Commerce*, 24 (1997).

30. Heimann, Dell, 'Progress Report 2009: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions' (2009), Transparency International
31. Hillman, A. L. (2004). Corruption and public finance: an IMF perspective. *European Journal of Political Economy*, 20(4)
32. IMF, 'AML/CFT Methodology with FATF+9, Interpretative Notes and Best Practices' (2008), Washington DC
33. James, H. S. (2002). When is a bribe a bribe? Teaching a workable definition of bribery. *Teaching Business Ethics*, 6(2), pg. 201.
34. Jancsics, D. (2019). Border corruption. *Public Integrity*, 21(4), pg. 413.
35. Jean-Pierre Brun and others, *Asset Recovery Handbook: A Guide for Practitioners* (Washington, D.C., 2011)
36. Jean-Pierre, B. Gray, L. Stephenson, K. Scott, C. and Gidwaney, N. (2011), "*Asset recovery handbook: a guide for practitioners*", available at: www.unodc.org/documents/corruption/publications/star/star_publication_-_asset_recovery_handbook.pdf (09 August 2021).
37. Kevin M. Stephenson and others, *Barriers to Asset Recovery an Analysis of the Key Barriers and Recommendations for Action* (Washington, D.C., World Bank, 2011)
38. Kharel, Amrit. (2018). Doctrinal Legal Research. *SSRN Electronic Journal*. 10.2139/ssrn.3130525.
39. Kim-Kwang Raymond, C., (2008). Politically exposed persons (PEPs): risks and mitigation. *Journal of Money Laundering Control*. 11. 371-387. 10.1108/13685200810910439.
40. Larsson, 'International police co-operation: a Norwegian perspective' (2006) *Journal of Financial Crime*, 13(4), pp.456-466
41. Laryea, E. *Paperless trade: Opportunities, challenges and solutions* (Vol. 1). *Kluwer Law International BV*. (2002).
42. Le-Nguyen C, 'National Criminal Jurisdiction Over Transnational Financial Crimes' 27 *Journal of Financial Crime*. (2020).

43. Loo W, 'Trends in Mutual Legal Assistance and Asset Recovery in Asia and the Pacific. In ADB/OECD, *Asset Recovery and Mutual Legal Assistance in Asia and Pacific: Proceedings of the 6th Regional Seminar on Making International Anti-Corruption Standards Operational*', (2007) Asian Development Bank pp.42-48
44. Lule S, 'International Cooperation Combating Financial Proceeds of Crime' 4 *European Journal of Marketing and Economics*. (2021).
<https://journals.euser.org/files/articles/ejme_v4_i1_21/Lule.pdf> accessed 4 September 2021
45. Mark Van Hoecke, 'Methodology of Comparative Legal Research' (2015) *Law and Method*,
46. Markovska, A., & Adams, N. (2015). Political corruption and money laundering: lessons from Nigeria. *Journal of Money Laundering Control*.
47. *Measurement, Dynamics, and Reputational Incentives in Corrupt Transactions*. Stanford University, 2018
48. MENAFATF, 'Egypt: Mutual Evaluation Report Money Laundering and Combating the Financing of Terrorism', (2009), Bahrain: MENAFATF.
49. Modern Language Association (MLA); 'grease-the-wheels'. *The Dictionary of American Slang*, 2015
50. Monteith, C., & Dornbierer, A. *Tracking and Tracing Stolen Assets in Foreign Jurisdictions*. In: Vol. Working Paper Series No. 15 (pp. 1-22). (2013). Basel: Basel Institute on Governance.
51. Mugarura, N. (2016). Uncoupling the relationship between corruption and money laundering crimes. *Journal of Financial Regulation and Compliance*.
52. Munyai, A., & Agbor A., A. Delineating the role of foreign governments in the fight against corruption in Africa, *Cogent Social Sciences*, 6:1, 1778988. (2020).
53. Nainappan S, *International Cooperation In Asset Recovery* (Basel Institute of Governance 2019)
<https://baselgovernance.org/sites/default/files/2019-12/191023-quickguides_prod-11_g09.pdf>
accessed 4 September 2021
54. National Audit Office, 'The Assets Recovery Agency: Report by the Comptroller and Auditor General' (2007), London: The Stationery Office
55. Naylor, R.T. (1999), "Wash-out: a critique of follow-the-Money methods in crime control policy", *Crime, Law and Social Change*, Vol. 32 No. 1, p. 3.

56. OECD (2018), Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia
57. OECD and The World Bank (2012), Identification and Quantification of the Proceeds of Bribery: Revised edition, February 2012, OECD Publishing, pg. 18.
58. Olujobi, O.J. “Recouping proceeds of corruption: is there any need to reverse extant trends by enacting civil forfeiture legal regime in Nigeria?”, *Journal of Money Laundering Control*, Vol. ahead-of-print No. ahead-of-print. (2021). Doi. 10.1108/JMLC-09-2020-0107.
59. Open Society Justice Initiative. Repatriating Stolen Assets: Potential Funding for Sustainable Development. New York, NY: Open Society Foundation. (2015)
60. Organization for Economic Co-operation and Development, *OVERCOMING INTERNATIONAL CO-OPERATION CHALLENGES IN CORRUPTION CASES-Perspectives From The “Beijing Workshop” Of April 2016* (OECD 2016) <<https://www.oecd.org/corruption/International-Cooperation-Corruption-Beijing-2016.pdf>> accessed 4 September 2021
61. Palmer, D., Fricska, S., Wehrmann, B., & Augustinus, C. Towards improved land governance. Food and, 2014.
62. Patrick Glenn, ‘The aims of comparative law’, in: J.M.Smits (ed.), (2006) Elgar Encyclopedia of Comparative Law, Cheltenham: Edward Elgar, pp. 57-65.
63. Peters A, ‘Corruption As A Violation Of International Human Rights’ (2018) 29 European Journal of International Law
64. Pope, J. *Confronting corruption: the elements of a national integrity system*. (2010).
65. Pope, Joachm. *Confronting corruption: the elements of a national integrity system*. Transparency International. 2010. Available from: <http://www.transparency.org.nz/docs/2000/Elements-of-aNational-Integrity-System.pdf>
66. Revised Draft United Nations Convention against Corruption. Vienna: UN, 2003.
67. Reydam, (2004). ‘*Universal Jurisdiction: international and municipal legal perspectives*’ Oxford: Monographs in International Law

68. Reydams, 'Universal Jurisdiction: international and municipal legal perspectives' (2004), Oxford: Monographs in International Law
69. Rose, Cecily, Michael Kubiciel, and Oliver Landwehr. *The United Nations Convention against Corruption: A Commentary*, 2019.
70. Rui, J.P. and Sieber, U. (Eds) (2015), 'Bringing the picture together', Non-Conviction-Based Confiscation in Europe. Possibilities and Limitations on Rules Enabling Confiscation without a Criminal Conviction, Duncker and Humblot, NN, pg.7
71. Salvo, M. Corruption and Money Laundering as a Threat to Financial Stability: 'Lava Jato' Case Study. *SSRN Electronic Journal*. (2016). 10.2139/ssrn.2788735.
72. Santangelo, Stein, and Jacobs, 'The Foreign Corrupt Practices Act: recent cases and enforcement trends' (2007, 8 (3), *Journal of Investment Compliance*, pp. 31-55
73. Sardžoska, E. G., & Tang, T. L. P. (2016). Testing a model of behavioral intentions in the Republic of Macedonia: Differences between the private and the public sectors. *Journal of Business Ethics*, 87(4)
74. Schabas W, *An Introduction to the International Criminal Court*, (Cambridge: Cambridge University Press 2007)
sentenced-to-30-years-in-immigrant-smuggling-case?lite
75. Simonato, M. Directive 2014/42/EU and Non-Conviction Based Confiscation: A Step Forward on Asset Recovery?. *New Journal of European Criminal Law*, 6(2), 2015
76. StAR, *Barriers to Asset Recovery. An Analysis of the Key Barriers and Recommendations for Action*, Washington, DC: World Bank, (2011). Available at:
<https://elibrary.worldbank.org/doi/10.1596/978-0-8213-8660-6>.
77. StAR. *Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery*, Washington, DC: World Bank, (2013). available at: <https://star.worldbank.org/star/publication/left-out-bargain-settlements-foreign-bribery-casesand-implications-asset-recovery>
78. StAR. *Politically Exposed Persons: Preventive Measures for the Banking Sector*, Washington, DC: World Bank, (2010). available at: <http://star.worldbank.org/star/publication/politically-exposed-persons>.

79. StAR., *Public Office, Private Interests. Accountability through Income and Asset Disclosure*, Washington, DC: World Bank. (2012). available at:
<http://star.worldbank.org/star/publication/public-office-private-interests>.
80. Stolen Asset Recovery (StAR) Initiative Secretariat, “Management of Confiscated Assets” (Washington, DC, 2009), <http://www.worldbank.org/star>
81. Šumah, Š. (2018). Corruption, causes and consequences. In *Trade and Global Market*. IntechOpen.
82. Šumah, Š., Šumah, A., Borošak, M. Political corruption. *International journal of business*. (2020).
83. Svensson, J. (2015). Eight questions about corruption. *The Journal of Economic Perspectives*,19(3)
84. Teichmann, F. M. J. (2017). Twelve methods of money laundering. *Journal of money laundering control*.
85. Theodore S. Greenberg and others, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (Washington, D.C., World Bank, 2009)
86. Twining W, 'Diffusion of Law: A Global Perspective' (2004) 36 *the Journal of Legal Pluralism and Unofficial Law*
87. UNODC (2015). *Migrant Smuggling in Asia – A Thematic Review of the Literature*. Bangkok: UNODC.
88. UNODC, *Manual On International Cooperation For The Purposes Of Confiscation Of Proceeds Of Crime* (English, Publishing and Library Section, United Nations Office at Vienna 2012)
 <https://www.un.org/ruleoflaw/files/Confiscation_Manual_Ebook_E.pdf> accessed 4 September 2021
89. UNODC, *UNODC Standards: Part B-International Cooperation* (UNODC 2016)
 <<https://www.unodc.org/pdf/crime/uncjin/standards/Compendium/pt1b.pdf>> accessed 4 September 2021
90. Verdugo Yepes, C. (2011). *Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis*.

91. Watson, J. (2013, June 21). Former border patrol agents sentenced to 30 years in immigrant smuggling case. NBC News. Retrieved from http://usnews.nbcnews.com/_news/2013/06/21/19081188-formerborder-patrol-agents-
92. World Bank, Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan (Washington, DC, 2007), 9.
93. Yusuf, Y.M “Nigerian perspectives on the recovery and repatriation of assets”, in Ayoade, M.A. and Igbinedion, S.A., Legal Perspectives to Corruption, Money Laundering and Assets Recovery in Nigeria, 313. (2015).
94. Zhang, S. X. and S. L. Pineda (2014) “Corruption as a Causal Factor in Human Trafficking”, in Organized Crime, Culture and Policies, New York: Springer.
95. Zhaobin, Pei. “Overview of Recovery of Illegal Proceeds of Corruption Crime Stipulated in “The United Nations Convention against Corruption”. US-China Law Review. 11 (6): 696-700. (2014).