United Nations A/HRC/51/12

General Assembly

Distr.: General
27 June 2022

Original: English

Human Rights Council
Fifty-first session
12 September–7 October 2022
Agenda items 2 and 3
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Intersessional seminar on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 46/11, provides a summary of the proceedings of the intersessional seminar on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights. The seminar was held on 8 February 2022.

I. Introduction

1. In its resolution 46/11, the Human Rights Council decided to convene, before its fiftieth session, a one-day intersessional seminar on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights to discuss challenges and best practices in this regard and to make recommendations, with the participation of States, the Human Rights Council Advisory Committee and other relevant stakeholders. In the same resolution, the Council requested the High Commissioner to present a report on the seminar to the Council at its fifty-first session. The seminar was held on 8 February 2022.

2. The seminar included two panel discussions, as well as opening and closing segments. Opening remarks were made by the United Nations High Commissioner for Human Rights.

3. Chafik Ben Rouine, Office of the United Nations High Commissioner for Human Rights (OHCHR) surge initiative economist, moderated the first panel, at which the subject of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights: challenges and good practices for efficient international cooperation was discussed. The panellists were: Junior Davis, Head of the Policy Analysis and Research Branch, Division for Africa, Least Developed Countries and Special Programmes, United Nations Conference on Trade and Development (UNCTAD); Shervin Majlessi, Chief of the Conference Support Section, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime (UNODC); Mounir Chedly, Director-General of Government Litigation at the Ministry of State Domains and Land Affairs, Tunisia; and Bhumika Muchhala, Senior policy analyst on development economics, global governance and international political economy issues for the Third World Network.

4. Magdalena Sepúlveda Carmona, Executive Director of the Global Initiative for Economic, Social and Cultural Rights, moderated the second panel, at which options for a non-binding set of practical guidelines for efficient asset recovery were considered. The panellists were: Attiya Waris, Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Dheerujlall Seetulsingh, Member of the Human Rights Council Advisory Committee and rapporteur for the study on utilizing non-repatriated illicit funds with a view to supporting the achievement of the Sustainable Development Goals; Silvana Carrión Ordinola, Ad hoc prosecutor of the Public Prosecutor's Office of Peru in the "Operation Car Wash" case and other cases; and David Ugolor, Executive Director of the Africa Network for Environment and Economic Justice.

5. Presentations by speakers at each panel were followed by interactive discussions involving representatives of Member States, international organizations and non-governmental organizations (NGOs). Panellists replied to questions and comments raised from the floor and made concluding remarks. The moderators made concluding remarks after the panel discussions.

6. The seminar was webcast and recorded.[1]

II. Summary of the proceedings

A. Opening remarks

7. In her opening remarks, the High Commissioner[2] outlined the dramatic setbacks that had been triggered by the coronavirus disease (COVID-19) pandemic on the achievement of human rights commitments, including economic, social and environmental human rights, and the Sustainable Development Goals, and described rising conflicts and severe social tensions. Among the factors that have hindered corrective action by States, she emphasized the high

[1] See https://media.un.org/en/asset/k15/k15tgxvjmt, https://media.un.org/en/asset/k1q/k1qgxlyighhttps://media.un.org/en/asset/k1c/k1cfyikyke.

[2] See https://www.ohchr.org/en/statements/2022/02/combatting-corruption-and-illicit-financial-flows.

levels of capital flight and illicit financial flows, including tax evasion and tax avoidance; money-laundering; and the transfer of funds arising from bribery, corruption and criminal activities. The High Commissioner welcomed efforts to trace, freeze or seize stolen assets across borders and reported on the forthcoming issuance of an OHCHR research publication, entitled "OHCHR Recommended Principles on Human Rights and Asset Recovery".[3] The High Commissioner stressed that the publication was intended to support international cooperation in this area, detailing a human rights-based approach to the recovery and return of proceeds of corruption and covering all phases of the process of asset recovery, including the prevention and detection of corruption; the tracing of the proceeds of corruption; the preservation and confiscation of the proceeds of corruption; and the return and allocation of stolen funds.

B. Negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights: challenges and good practices for efficient international cooperation

8. During the first panel discussion, Junior Davis (UNCTAD) shared information on the magnitude of illicit financial flows that comprise illicit capital flight and tax and commercial practices, such as the misinvoicing of trade shipments, and illegal activities, such as corruption or theft. It has been estimated that, in the last decade, Africa lost at least $220 billion dollars in illicit financial flows linked to the export of extracted commodities and, on average, $89 billion dollars a year to capital flight. Illicit financial flows undermined human rights, productive capacities and Africa's prospects for achieving the Sustainable Development Goals. Curbing capital flight alone could have covered over half of the investment needed for climate change adaptation and mitigation in countries in Africa. At the international level, Mr. Davis recommended strengthened engagement with international taxation reforms and deeper international partnerships on tracking and stopping illicit financial flows. At the regional level, the fight against corruption and money-laundering could have been bolstered through intra-African coordination and cooperation, in particular among customs authorities, tax administration and enforcement agencies, financial institutions and regulatory bodies, as well as through the cross-border prosecution of crimes, some aspects of which were provided under the African Continental Free Trade Area. Scaling up data infrastructure could be another priority to improve transparency to track and detect such flows. As custodian agency of Sustainable Development Goal indicator 16.4 on illicit financial flows, UNCTAD, jointly with UNODC, had developed a definition and statistical methods to measure illicit financial flows. Regarding national policies and laws, Mr. Davis recommended strengthening the regulatory frameworks tackling illicit financial flows, implementing the Africa Mining Vision of the African Union, adhering to the Extractive Industries Transparency Initiative and devoting more resources to the recovery of stolen assets and to protection and support for civil society organizations, whistle-blowers and investigative journalists. The private sector, especially multinational enterprises, also played a critical role in eliminating practices linked to illicit financial flows.

9. Shervin Majlessi (UNODC) provided insight into the practice of cross-border repatriation of proceeds of corruption over the past 10 years from the Stolen Asset Recovery (StAR) Initiative and the mapping of efforts towards international recovery and the return of stolen assets under the United Nations Convention against Corruption. The global survey, conducted by the World Bank and UNODC, showed promising signs of progress towards the achievement of the goals on asset recovery set out in the Convention against Corruption (chap. V), including the growing number of States involved in cross-border asset recovery, a wider geographical spread of requesting and requested States, an increase in the amounts of assets returned, as well as in available legal mechanisms. He reported that close to $10 billion in corruption proceeds had been frozen, restrained, confiscated or returned since 2010, much higher than a previous estimate, although still only a fraction of the estimated proceeds of corrupt activities. The Convention against Corruption provided a legal basis for international cooperation. Mr. Majlessi stated that data collection mechanisms needed improvement and

[3] See https://www.ohchr.org/en/documents/tools-and-resources/ohchr-recommended-principles-human-rights-and-asset-recovery-2022.

that returns needed to be increased in comparison to the estimated amount taken out of countries annually. He also drew attention to the ongoing discussion on the need for transparency in the recovery and return of the proceeds of corruption and the use of returned funds.

10. Mounir Chedly (Tunisia) presented the experience of Tunisia in international cooperation with other countries, including anticipated restitution by Switzerland and mechanisms for data collection to identify illicit assets by France. However, despite efforts made by requesting and requested countries, international judicial cooperation had had limited success, due, inter alia, to banking confidentiality, which prevented relevant parties from obtaining an overview of frozen or seized assets, as well as to the lack of experience in the use of innovative confiscation mechanisms. In order for international cooperation to be more effective, he stressed the need for informal information exchanges with counterparts in other countries to better target mutual international legal assistance. He also noted the importance of harmonizing the existing legal frameworks for seizure, confiscation and recovery to ensure a reciprocity of mechanisms. Mr. Chedly observed that, in the Middle East and North Africa region, assets could not be confiscated until after a final judgement. Therefore, it was important to be able to confiscate assets of an equivalent value of the proceeds and instrumentalities of a crime. When the proceeds of a crime could not be identified, other assets, including those of lawful origin, should be subject to confiscation. He also identified other legal and practical difficulties, including the identification of assets; the valuation of the proceeds of crime; the costs related to the management of frozen or confiscated assets; and the need for specialization in assets recovery, which should be based on an institutional framework that allowed for coordination of all actors at the national and international levels. He welcomed efforts made since 2011 by the Human Rights Council in its adoption of multiple resolutions dedicated to the negative impact of the non-repatriation of funds of illicit origin on the enjoyment of human rights and to the importance of international cooperation in this regard, in particular assistance from requested States for capacity-building to better facilitate cooperation.

11. Bhumika Muchhala (Third World Network) discussed how the current crises resulting from the COVID-19 pandemic required the scaling up of public financial resources, which entailed addressing illicit financial flows through the principles of the right to development and global governance. Illicit financial flows constrained the mobilization of the public financial resources required for sustainable development and exacerbated inequalities between and within countries. The loss of potential public funds also reduced the capacity of States to invest in social sectors vital to the achievement of the Sustainable Development Goals. She further observed that the global tax competition had significantly reduced tax revenues in developing countries, challenging their sovereignty and policy space. The regressive tax measures and retrenched public services implemented in response to the pandemic had narrowed the tax base and reduced revenue, resulting in raised prices for basic goods and the elimination of essential services, affecting the poorest households, particularly women and girls. Global tax cooperation would require the implementation of innovative national and international policies, ranging from the automatic exchange of information on taxes and beneficial ownership to gender-sensitive tax policies and human rights-impact assessments. Ms. Muchhala stated that a global tax convention elaborated within the United Nations would promote universal membership and comply with the one-nation, one-vote decision-making process, based on sovereign equality, and recommended gender-sensitive transparency efforts to ensure the free, active and meaningful participation of women and women’s rights organizations in policymaking, including tax policies.

1. Interactive discussion

12. During the interactive discussion, delegations from the following States delivered statements: Algeria, Angola, China, Cuba, Egypt, Kenya, speaking on behalf of the Group of African States, Pakistan, the Russian Federation and Tunisia. NGOs addressing the panel

during the interactive dialogue included: the Maat for Peace, Development and Human Rights Association, the International Human Rights Council and Fundación Abba Colombia.[4]

13. Most participants highlighted the urgent need to repatriate funds of illicit origin to countries of origin, noting with concern the small portion of funds of illicit origin that had been repatriated to countries of origin. They emphasized that the flow of funds of illicit origin and the non-repatriation of those funds had deprived countries of origin of resources required to realize human rights, including economic, social and cultural rights, and the right to development, which in turn threatened stability and sustainable development and undermined the values of democracy and the rule of law. Many delegations noted that the flow of funds of illicit origin posed significant obstacles to the mobilization of domestic resources to finance the Sustainable Development Goals and that the situation had been aggravated by the COVID-19 pandemic. Many States faced critical budget shortfalls, weakening their ability to respond to and mitigate the effects of the pandemic. One delegation recalled Sustainable Development Goal target 16.4, which called on the international community to significantly reduce illicit financial flows, strengthen recovery and return of stolen assets and combat all forms of organized crime by 2030.

14. Some delegations noted the disproportionate impact of the non-repatriation of funds of illicit origin on many African countries, least developed countries and countries in transition. In the last 50 years, the amount of funds lost by countries in Africa was equivalent to all of the official development financial assistance received over the same period, and the repatriation of those funds remained low, despite the almost universal ratification of the Convention against Corruption. They regretted the lack of political will of destination countries and expressed their concern over numerous legal, technical and practical challenges to the repatriation of illicit funds.

15. Participants called for strengthening international cooperation and doubling efforts by all countries to repatriate funds of illicit origin. Many delegations called for the immediate and unconditional repatriation of funds of illicit origin. One delegation noted that unilateral coercive measures represented a major obstacle to the repatriation of funds. Delegations also stressed the importance of fighting against corruption at all levels, including cross-border corruption. Some delegations welcomed the request for a study on a proposed non-binding set of practical guidelines for efficient asset recovery, aimed at curbing the illicit transfer of funds and mitigating its negative effects on the enjoyment of human rights, and noted the need for such a study to be conducted in close cooperation with the States concerned and specialized United Nations structures, including UNODC. One delegation recommended the development of a multilateral international legal instrument on the identification, freezing, confiscation and repatriation of illicit assets under the auspices of the United Nations. Such an instrument would eliminate existing legal uncertainties and differences and supplement the norms contained in the Convention against Corruption and the United Nations Convention against Transnational Organized Crime. Other recommendations included strengthening public governance institutions, developing financial and accounting systems that contributed to transparency and accountability, collecting information on the funds and properties of former senior State officials abroad and promoting the role of NGOs in ensuring transparency in the mobilization of efforts to recover funds of illicit origin.

16. One delegation asked panellists to discuss available options to operationalizing some of the recommendations by the High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda from a human-rights perspective, and what sorts of mechanisms could be envisaged within the Human Rights Council to counter the negative impacts of the non-repatriation of funds of illicit origin.

2. Concluding remarks

17. In her concluding remarks, Ms. Muchhala highlighted the importance of multilateral tax cooperation, supported by the political will of all countries to work together across asymmetries in power and resources, as called for in human rights principles and as set out

[4] All statements are available at https://www.ohchr.org/en/hr-bodies/hrc/negative-impact-non-repatriation-of-funds.

on multiple occasions by the High-level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, the Group of 77 and the General Assembly. She stated that more momentum was still needed to implement the recommendations of the High-level Panel. Ms. Muchhala also referred to the opinion of the Global Alliance for Tax Justice, according to which the recent Organisation for Economic Co-operation and Development (OECD) two-pillar solution to address the tax challenges arising from the digitalization of the economy had not addressed the root causes of current business practices and rules that incentivized profit shifting and that it facilitated tax-dodging with impunity. The proposal therefore would not benefit most developing countries as it disregarded the recommendations and reservations of many developing countries over the years. Pillar one of the OECD solution would not ensure the taxing rights of developing countries since it limited the right to tax of source countries to a small proportion of the profits of multinational corporations and entrenched taxing rights over global profits to headquarters countries. Furthermore, the 15 per cent global minimum corporate tax rate under OECD pillar two was closer to the 12.5 per cent proposed by low-tax or no-tax jurisdictions and far lower than the global corporate income tax average of about 25 per cent.

18. Mr. Chedly appreciated the assistance of European countries in the identification of financial and asset information and in the management of frozen assets pending confiscation. He emphasized the role of information gathering, which facilitated the recovery of stolen assets. He reiterated the importance of the informal exchange of information, including through central banks and other networks such as the Egmont Group of Financial Intelligence Units. He concluded by cautioning against conditionality for restitution imposed by some requested States as it would violate the sovereignty of requesting States.

19. Mr. Majlessi explained that legal proceedings for asset recovery entailed an important component of international cooperation, requiring both requesting and requested States to conduct investigations and build evidence. While the Convention against Corruption provided a strong legal framework, increased efforts would be needed for its full implementation. He noted that many countries had not had experience with or had not dedicated resources towards, the effective recovery of proceeds of corruption, although this was gradually shifting. The StAR Initiative aimed at bringing requesting and requested States together to establish a common understanding and to work on the challenges they faced in returning assets. The Global Operational Network of Anti-Corruption Law Enforcement Authorities, launched in 2021, was also intended to facilitate informal cooperation. Mr. Majlessi reiterated the importance of data collection in advocating for evidence-based policy changes, regretted that 115 countries had not responded to the global survey on asset recovery, conducted under the StAR Initiative and underscored the potential to expand the scope of work on victims’ compensation, as required under the Convention against Corruption. He suggested that countries adopt victims compensation acts in the area of corruption or expand civil proceedings to allow countries, entities or individuals to seek compensation.

20. Mr. Davis explained that differences in legal frameworks across jurisdictions had created grey areas within which international cooperation occurred and that addressing the negative impact of the non-repatriation of funds of illicit origin required more accurate and precise statistics and measurements. He commended various regional initiatives in Africa to curb illicit financial flows, including anti-money-laundering and counter-financing-of-terrorism initiatives under the African Continental Free Trade Area, the Intergovernmental Action Group against Money Laundering in West Africa and the Asset Recovery Inter-Agency Network of Southern Africa. He called attention to the existing but often overlooked African Peer Review Mechanism, which could be used to devise legally binding tools to address corruption and money laundering. As most of the illicit financial flows came through extractive sectors, he recommended that countries implement the Africa Mining Vision, which aims at better management of natural resources and making resource extraction more sustainable, which would contribute to reducing the generation of illicit financial flows in those sectors.

21. Mr. Ben Rouine summarized the discussions and highlighted the need, given the complexity of the current situation, to reinforce coordination at the national level between tax administrations, custom authorities, financial intelligence units and anti-corruption

agencies in order to prevent illicit financial flows. He also noted that while laws leading to administrative freezes had been adopted by a number of States, they did not set out the steps for the return of illicit assets or for their use. States should allocate returned assets in an accountable, transparent and participatory manner and use recovered assets in a manner that contributes to the realization of human rights, in line with the human rights obligation to take steps, to the maximum of their available resources, with a view to progressively achieving the full realization of economic, social and cultural rights.

C. Options for a non-binding set of practical guidelines for efficient asset recovery

22. The second panel discussion was opened by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Attiya Waris, who spoke about the ongoing preparation of her study on a proposed non-binding set of practical guidelines for efficient asset recovery aiming at curbing the illicit transfer of funds and mitigating its negative effects on the enjoyment of human rights. The study was aimed at helping requesting and requested States to strengthen their cooperation on asset recovery, as requested by the Council in its resolution 46/11. The Independent Expert explained that she would be holding consultations in the near future and that her work would build upon the work done by previous mandate holders, the Advisory Committee and other entities of OHCHR. Owing to the non-binding nature of the proposed practical guidelines, the open and willing engagement by all States across regions would be critical. She noted other relevant work under her mandate, specifically an upcoming report on the cumulative impacts of debt servicing and illicit financial flows on human rights, including vulnerability to climate change and emergencies, and another report on reforming the international tax and fiscal systems through an institutional approach. Two key issues for a reformed tax system included the need for information on corporate tax rates for all countries and all companies, creating an inclusive space for the engagement of all States.

23. Dheerujlall Seetulsingh (Human Rights Council Advisory Committee) discussed the work of the Committee on the possible use of illicit funds pending repatriation to support the achievement of the Sustainable Development Goals. He outlined the many challenges to the repatriation of illicit funds, including: the lack of political will; the use of illicit funds to develop construction and finance-related industries and markets in some destination countries; the difficulty of establishing definitive links between illicit funds and crimes; and the difficulty of proving beneficial ownership. Mr. Seetulsingh reported that a group of experts had developed draft guidelines for the efficient recovery of stolen assets, which contained nine principles: (a) States have a duty to protect and fulfil human rights by adopting and enforcing laws and policies on the prevention of corruption and money-laundering; (b) State laws and policies for the prevention of corruption must reflect the principles of accountability, transparency and participation; (c) States have a duty to protect the human rights of persons who report corruption and money-laundering; (d) States have a duty to ensure the progressive realization of economic, social and cultural rights by providing international assistance and cooperation in the context of asset recovery; (e) States must respect the human rights of persons under investigation for, accused of or convicted of corruption and money-laundering offences; (f) persons whose human rights have been violated as a result of corruption have a right to an effective remedy; (g) States have a duty to allocate returned assets in an accountable, transparent and participatory manner; (h) receiving States have a duty to use recovered assets in a manner that contributes to the realization of human rights; and (i) requested States have an obligation to return embezzled public funds to requesting States. Mr. Seethulsingh proposed the following tenth principle: requested States must devise schemes to respond to reasonable demands from States where illicit funds originate to utilize those funds pending their repatriation for the benefit of the requesting States.

24. Silvana Carrión Ordinola (Peru) discussed the “Operation Car Wash” case in Peru, its broad transnational implications and its impact on the enjoyment of human rights by the Peruvian people. Corruption was linked to large-scale infrastructure projects that

compromised, inter alia, the construction of roads, hospitals, hydroelectric plants and water irrigation plants. Corruption had bred mistrust in institutions and the Government and has created economic losses due to inefficiency. Ms. Carrión Ordinola described the main strategies used to recover the assets, including: the use of interim measures to secure civil damages through the judiciary, involving companies as third parties with civil responsibilities; effective collaboration agreements with companies and individuals to secure compensation for damages done to the State; and the use of trusts to manage civil damage payments established in effective collaboration agreements. International cooperation and legal assistance in investigations had proved to be essential, both through institutional and informal channels with other countries, in order to adopt the best strategies for requesting repatriation after civil confiscation without criminal conviction executed by the foreign State, within the framework of the chapter on asset recovery in the Convention against Corruption.

25. David Ugolor (Africa Network for Environment and Economic Justice) shared his perspective on the role of civil society in the context of asset recovery, using the example of the repatriation of assets from Switzerland to Nigeria. The Africa Network had participated throughout both the negotiation and implementation processes, monitoring the transfer of funds to Nigeria to increase transparency and accountability. Mr. Ugolor stressed that the involvement of civil society had made the process more efficient compared the previous phase of asset recovery. Early engagement had allowed representatives of civil society to understand the negotiations, share their perspectives and raise awareness throughout Nigeria, which, in turn, had increased the credibility of the process. Civil society was best placed to raise important questions during negotiation processes, including on the use and monitoring of returned assets and questions related to victims of corruption. Mr. Ugolor also summarized other good practices that had emerged from the experience of Nigeria, including a legal framework providing clear criteria for disbursement of funds by key government agencies to beneficiaries, a formalized process for the participation of civil society organizations and a feedback mechanism on the use of assets.

1. Interactive discussion

26. Delegations of the following States delivered statements during the interactive discussion: Egypt, Libya and Peru. The representative of one NGO, the International Human Rights Council, took the floor.

27. Participants regretted the slow advancement of asset recovery processes and their adverse impacts on development and the exercise of economic and social rights, especially in developing countries as recovered funds could have been used to advance sustainable development and provide responses to the impact of the pandemic in countries of origin. They urged all States and non-State actors to cooperate on measures for the effective and timely return of assets and the development of measures to combat corruption. One delegation noted that corruption within key State institutions undermined civil and political rights and stressed the importance of preventing corruption and remedying its effects. Another delegation shared national good practices, which included: amendment of the legal framework to prosecute corruption-related cases and facilitate settlements for the return of assets; establishment of a national committee to coordinate efforts and develop a strategy to improve mechanisms for asset recovery; cooperation with international organizations and networks to trace assets and improve and tailor formal cooperation requests; and bilateral cooperation with other countries through memorandums of understanding. The same delegation also called upon requested States to respond to mutual legal-assistance requests based on human rights-evaluations specific to the situations of defendants rather than on general evaluations of the situation of requesting States.

2. Concluding remarks

28. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights highlighted the core elements of governance that underpinned how recovered assets should be used by States: accountability; transparency; responsibility; efficiency and effectiveness of the use of resources; and fairness and justice. She stated that asset recovery should be founded on fiscal legitimacy and that development

expenditures could guarantee wide benefits to society instead of targeted groups. She recommended that Governments actively engage with non-State actors, including bankers, lawyers and accountants, to efficiently address issues transparency and accountability and to resolve conflicts of interests. To improve international cooperation, she proposed: enhancing global access to information beyond the usual bilateral level; creating an international platform for better communication across States and jurisdictions; raising awareness on the issue of inclusive ethics and principles in banking, accounting, as well as global citizenship; improving technical and procedural accessibility of the international legal environment and the policy framework on asset recovery; and ensuring fiscal legitimacy.

29. Mr. Seetulsingh discussed the tension between the need for a timely recovery of assets and the extended criminal and civil proceedings engendered by the right to a fair trial of those accused of having transferred illicit funds. He noted exceptional cases of non-conviction-based returns of illicit funds by requested States when there were clear indicators of embezzlement by former dictators of requesting States. The study by the Advisory Committee also raised the possibility of shifting the burden of proof for explaining unjust enrichment to those accused of holding illicit funds abroad. Mr. Seetulsingh noted good examples to facilitate repatriation of funds, including requirements by the Financial Action Task Force on the disclosure of politically exposed individuals, pro-repatriation laws and training and technical assistance, such as that provided by UNODC. He stressed the need for strong international cooperation, especially from receiving States.

30. Ms. Carrión Ordinola provided a further explanation of the negative impact of corruption on human rights in Peru. She gave examples of companies giving bribes and winning contracts without fulfilling their contractual obligations, resulting in inferior or unfinished infrastructure, including roads to hospitals and public gas supplies. Without access the hospitals or gas for daily activities, citizens had been deprived of their rights. To enhance international cooperation, both requesting and requested States needed to strengthen their capacity to use already existing international instruments. She also recommended joint protocols to enable communication between different governmental branches of requesting and requested States, as well as the enhancement of informal channels of cooperation to facilitate the decision-making processes.

31. Mr. Ugolor reiterated the importance of having a framework that stipulated the participation of representatives of civil society from the beginning of the asset-recovery process, including the negotiation of memorandums of understanding between requesting and requested States, highlighting that the principles for disposition and transfer of confiscated stolen assets in corruption cases welcomed at the Global Forum for Asset Recovery[5] provided a good basis for such a framework. Requested States should engage with Governments, civil society and other stakeholders to build consensus and legitimacy. He also recommended increased international cooperation to strengthen the capacity of requesting countries to carry out financial investigations and execute their responsibilities in the issuance of mutual legal assistance requests. International cooperation would also be required to arrive at an agreement between requesting and requested States on how to use returned assets and avoid potential issues related to conditionality, thereby optimizing recovery processes.

32. Ms. Sepúlveda Carmona summarized the discussion, highlighting that the recovery and return of assets constituted a means of financing for development, which played a key role in domestic resource mobilization, enabling States to comply with their obligations to use their maximum available resources for economic, social and cultural rights and to fulfil their commitments under the 2030 Agenda.

D. Closing remarks

33. The President of the Human Rights Council delivered closing remarks, highlighting that the intersessional seminar had provided a road map for States on how to cooperate in identifying their maximum available resources in order to guarantee the progressive realization of the rights of their citizens, in particular their social, economic and cultural

[5] See the-gfar-principles.pdf (worldbank.org).

rights. The discussion also contributed to the work of the Human Rights Council on developing norms and standards for the promotion and protection of human rights in the context of the repatriation of funds of illicit origin to the countries of origin.

III. Conclusions and recommendations

34. **The non-repatriation of funds of illicit origin deprives countries of the critical resources required to progressively realize human rights and to implement the 2030 Agenda for Sustainable Development. The impact of the loss of such funds is especially severe in developing countries and countries with economies in transition and is further aggravated in the context of the COVID-19 pandemic. Good governance, including the prevention and eradication of corruption, plays a central role in inhibiting the generation and transfer of funds of illicit origin. While the United Nations Convention against Corruption provides a strong legal framework, its potential in terms of the repatriation of funds of illicit origin has not yet been fully realized. Its provisions should be read in conjunction with international human rights law, in particular the duty to provide international assistance and cooperation, with a view to achieving progressively the full realization of economic, social and cultural rights. Human rights law provides a useful framework in this area for both requesting and requested countries and complements the legal framework contained in the United Nations Convention against Corruption.**

35. **The following recommendations were made by participants at the seminar to reduce the flow of funds of illicit origin, alleviate their negative impact on the enjoyment of human rights in the countries of origin and facilitate the repatriation of such funds:**

(a) **Domestic legal and regulatory frameworks should be strengthened to increase the accountability and transparency of public institutions at all levels, prevent and combat corruption and the transfer of funds of illicit origin and allow victims of corruption to seek an effective remedy;**

(b) **States should protect and support civil society organizations, whistle-blowers and investigative journalists;**

(c) **States should strengthen communication, including the sharing of information through informal channels and professional networks, to optimize the processes of requesting legal assistance and responding to such requests;**

(d) **Requesting States should increase their investments in the development of national strategies, coordinate national actors, carry out financial investigations and execute their responsibilities through mutual legal assistance requests: requested States should provide assistance and cooperation to build the capacity of requesting States;**

(e) **States should agree on memorandums of understanding, based on the principle of reciprocity, to facilitate international cooperation;**

(f) **States should engage actively and constructively in efforts to reform the global tax system;**

(g) **Recovered funds should be used to realize human rights and advance sustainable development in countries of origin;**

(h) **States should use repatriated funds by adhering to good governance principles: accountability; transparency; participation; effectiveness and efficiency in the use of resources; and fairness and justice;**

(i) **States should engage with civil society in the process of asset recovery, including on the return and use of recovered assets: processes for civil society participation should be formalized;**

(j) **States should actively engage with the private sector, including bankers, lawyers and accountants, to address the issues transparency and accountability and should eliminate practices linked to illicit financial flows;**

(k) **States should improve data collection mechanisms to track flows of funds of illicit origin and their repatriation or lack thereof and should use this evidence to advocate for policy changes.**

Annex

List of participants

States members of the Human Rights Council

Cameroon, China, Côte d’Ivoire, Cuba, Indonesia, Libya, Luxembourg, Mauritania, Namibia, Pakistan, Poland, Qatar, Russian Federation, Senegal, Venezuela (Bolivarian Republic of).

States Members of the United Nations

Albania, Algeria, Angola, Armenia, Bahamas, Belgium, Bolivia (Plurinational State of), Burkina Faso, Burundi, Chile, Colombia, Egypt, Eswatini, Greece, Guyana, Haiti, Iraq, Jamaica, Kenya, Madagascar, Morocco, Myanmar, Nicaragua, Nigeria, Panama, Peru, Romania, Rwanda, Saudi Arabia, Syrian Arab Republic, Tunisia, United Republic of Tanzania, Zambia.

United Nations

Office of the United Nations High Commissioner for Human Rights, United Nations Conference on Trade and Development.

Intergovernmental organizations

European Union, International Development Law Organization, Organization of Islamic Cooperation.

Non-governmental organizations in consultative status with the Economic and Social Council

Afri-health Optonet Association, All Win Network, American Foundation of Savoy Orders, Association canadienne pour le droit et la vérité, Anti-Corruption Organization (AWTAD), Carlsron Initiative for Peace and Human Rights, Concile mondial de congrès diplomatiques des aumôniers pour la paix universelle des droits humains et juridiques, Hamraah Foundation, Human Rights Solidarity, International Communities Organisation, International Human Rights Council, Maat for Peace, Development and Human Rights Association, Organisation mondiale des associations pour l’éducation prénatale, US Committee for Human Rights in North Korea.