

Public Prosecution and National Committee Showcase Effective Efforts

Mechanism for Recovering Corruption Funds



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The world has witnessed a tremendous revolution in the realm of communications and information technology, accompanied by the evolution of criminal methods. Crime has transcended national borders, with suspects and convicts seeking to internationalize their actions by fleeing or transferring the proceeds of their crimes abroad to obscure their origins and disguise their nature. Consequently, activating mechanisms for international judicial cooperation has become a practical and realistic necessity for combating transnational criminal phenomena and internationalizing judicial pursuits. These mechanisms include extradition of criminals, transfer of convicts, mutual judicial assistance, and recovery of funds from abroad.

The mechanism for recovering proceeds from corruption or organized crime—funds derived from corruption or organized crimes—serves as a cornerstone of international judicial cooperation in combating corruption and organized crime and prosecuting perpetrators for three key reasons:

Depriving perpetrators of the fruits of their criminal projects and stripping them of acquired properties is the most deterrent and painful punishment.

Recovering these proceeds or funds from the country to which they have been transferred or invested back to the country from which they were looted is the real test of the existence of practical international judicial cooperation.

Recovering proceeds or funds from corruption crimes also combats the phenomenon of illicit money laundering, a highly dangerous criminal activity in itself.

The importance of the issue of recovering criminal assets or proceeds and confiscation prompted the United Nations to establish model agreements aimed at providing countries with guidelines for bilateral or collective cooperation in the recovery or sharing of criminal proceeds, as well as encouraging bilateral and collective cooperation. The United Nations has developed two model agreements:

The model bilateral agreement on the sharing of confiscated criminal proceeds or properties.

The model treaty for mutual assistance in criminal matters.

Definition of Criminal Proceeds and Confiscation:

The first model agreement outlines the definitions of criminal proceeds, confiscation, and properties as per the definition in the United Nations Convention against Transnational Organized Crime, which implies that “the term ‘property’ means assets of any kind, whether tangible or intangible, movable or immovable, corporeal or incorporeal, and legal documents or instruments evidencing title to or interest in such assets.”

Criminal proceeds are defined as any property derived or obtained, directly or indirectly, from the commission of a crime.

The agreement explains how international cooperation can be achieved for purposes such as freezing, seizure, investigation, or confiscation and describes the ways to handle criminal proceeds or confiscated properties, which are:

The state party confiscating criminal proceeds or properties must dispose of these proceeds or properties according to its domestic law and administrative procedures.

When a State Party takes action based on a request from another State Party, it should, to the extent permitted by its domestic law, give priority consideration to returning the confiscated criminal proceeds or properties to the requesting State Party.

A State Party, when taking action based on a request from another State Party, may give special consideration to concluding agreements or arrangements regarding: a.

Donating the value of such criminal proceeds or properties, or the funds derived from the sale of such criminal proceeds or properties, or a portion thereof, to international governmental bodies specializing in combating organized crime. b. Sharing such criminal proceeds or properties, or the funds derived from the sale of such criminal proceeds or properties, in accordance with its domestic law or administrative procedures, with other State Parties on a regular or case-by-case basis.

Asset Recovery and Confiscation in the United Nations Convention Against Corruption:

The United Nations Convention Against Corruption is based on fundamental measures:

Prevention: Implementing strict measures to prevent corruption in both the public and private sectors.

Criminalization: Enacting legislation to criminalize bribery of national or international public officials, and the embezzlement of public funds. Other acts such as obstructing justice and money laundering should also be criminalized.

International Cooperation: Member states are obligated to assist each other with transnational crimes. According to the convention, focus can be placed on the existence of criminalization or the validity of procedures in the state where the seizure or search actions are conducted to ensure the legality of these actions.

Asset Recovery: One of the core principles introduced by the convention is the possibility of recovering embezzled public funds. The principle of asset recovery is mentioned in several parts of the convention, with Chapter V dedicated to asset recovery, making it one of the most attractive aspects of the convention.

The experience of the Egyptian Public Prosecution in recovering funds from abroad reflects the efforts made and the challenges faced in international cooperation in this field. Following the January 2011 revolution, the International Cooperation Department studied Law No. 28 of 2015 regarding the establishment of the National Committee for the Recovery of Funds, Assets, and Properties Abroad, as well as other legislative amendments to the Criminal Procedure Law and the Illicit Gains Law, with the aim of unifying efforts to recover embezzled funds.



Judge: Mohamed Shawky - The Public Prosecutor

Recovery Mechanisms:

The United Nations Convention Against Corruption addresses the scenario of having assets or properties in a state derived from corruption crimes committed in another state. The importance of asset and property recovery mechanisms lies in their role as a key element of international judicial cooperation and the most effective deterrent measure against criminals by depriving them of the proceeds of their criminal activities.

The convention includes three mechanisms for the recovery of assets derived from corruption through international cooperation in confiscation:

Authorities in the state where the corruption-derived assets and properties are located implement confiscation decisions issued by the courts of another state.

Authorities in the state itself confiscate foreign-origin assets or properties based on a judicial decision regarding money laundering or any other crime within its jurisdiction.

Authorities in the state conduct administrative confiscation of these assets or properties without a criminal conviction in cases where prosecuting the offender is not possible due to death, escape, or absence.

It should be noted that the aforementioned recovery mechanisms are not limited to corruption crimes stipulated in the convention but also apply to any other crime related to these offenses.

Adopting Precautionary Measures Regarding Corruption Proceeds:

The process of recovering proceeds from corruption crimes can sometimes take a long time due to the complexity of these procedures, especially given their transnational nature

The National Committee for the Recovery of Funds succeeded in recovering approximately nine billion Egyptian pounds and the equivalent of 650 million US dollars through settlement procedures with the accused. These procedures included the payment of cash and in-kind assets, as well as the recovery of their assets located in a foreign country through negotiations with those countries.

and the involvement of authorities from different countries. Therefore, in order to seize proceeds of corruption with the aim of recovering them, it is necessary to allow for some precautionary or temporary measures while awaiting the conclusion of confiscation procedures. This is to prevent the transfer, conversion, concealment, or disposal of these funds.

Mechanism for Confiscation:

These procedures begin when a state receives a request from another state with jurisdiction over one of the corruption crimes covered by the convention to confiscate the proceeds or properties derived from these crimes. The requested state then takes measures to identify, trace, freeze, or seize the criminal proceeds, properties, equipment, or other tools with the aim of eventually confiscating them by an order issued either by the requesting state or the requested state. The confiscation order must be finalized by the courts of the requesting state.

Legal Procedures in Egypt for Asset Recovery:

First: The National Committee for Asset Recovery
The National Committee for Asset Recovery was established



The headquarters of the Public Prosecution in New Cairo

by Presidential Decree No. 28 of 2015 on June 23, 2015, following previous national committees. The most notable of these was the National Coordinating Working Group for the recovery of smuggled Egyptian assets and properties abroad, established by Prime Minister's Decree No. 620 of 2012 on June 7, 2012. This group was chaired by the Prime Minister or his delegate and included members from the Anti-Money Laundering Unit, Ministries of Justice, Foreign Affairs, Interior, the Central Bank of Egypt, the National Security Authority, and the Judicial Committee for Asset Recovery, along with the Public Prosecution. This group was restructured in 2014, culminating in the issuance of Presidential Decree No. 28 of 2015, which transferred the functions and responsibilities of the previous committees to the National Committee for Asset Recovery.

Composition of the National Committee for Asset Recovery: The National Committee for Asset Recovery is chaired by the Attorney General and includes the following members: Assistant Minister of Justice for the Illicit Gains Authority and

The procedures for recovering the proceeds of corruption crimes can sometimes require a long time due to the complexity of these procedures, especially given their transnational nature and the involvement of authorities from different countries. Therefore, it has been necessary in the field of seizing the proceeds of corruption, with the aim of recovering them, to allow the implementation of some precautionary or temporary measures until the confiscation procedures are completed. This is to prevent the transfer, conversion, concealment, or disposal of these funds.

Anti-Money Laundering (Vice Chairman of the Committee)
Assistant Minister of Justice for International and Cultural Cooperation

Head of the Money Laundering and Terrorist Financing Combating Unit

A Deputy of the State Litigation Authority chosen by the Supreme Council of the State Litigation Authority

A representative from the Ministry of Foreign Affairs

A representative from the Central Bank of Egypt

A representative from the Ministry of Finance

A representative from the General Intelligence Service

Deputy Head of the Administrative Control Authority

A representative from the National Security Sector of the Ministry of Interior

A representative from the General Administration of Public Funds Investigations of the Ministry of Interior

Director of the International and Arab Criminal Police Department (Interpol)

Duties of the Committee as per its Establishment Law:

Representing the state before relevant authorities in other countries and international organizations regarding the recovery of assets and funds abroad, as well as before foreign courts and international arbitration bodies.

Developing a national strategy for the recovery of assets and funds smuggled abroad, implementing mechanisms for this strategy, and monitoring its execution.

Taking necessary legal and administrative actions and submitting requests on behalf of the Egyptian state to relevant authorities in foreign countries and international and regional organizations, to uncover, trace, freeze, and establish the state's entitlement to recover assets, and to monitor progress in these matters.

Exchanging criminal and financial investigations and judicial information with relevant authorities in the countries from which recovery is sought.

Requesting information and clarifications from all relevant authorities regarding the suspects and crimes for which recovery requests are made.

Receiving settlement requests from suspects listed on the external freeze lists or their authorized representatives at any stage of the criminal proceedings.

Receiving requests to remove names from external freeze lists and terminate judicial assistance for suspects or their authorized representatives who have been acquitted by final court rulings or decisions of no grounds for criminal proceedings, or decisions or rulings that the criminal case is terminated by settlement or suspension of the sentence for this reason, as specified in Article 18 (b) bis of the Criminal Procedure Code. In such cases, the committee must, after verifying the validity of the request, take necessary actions to communicate with foreign countries to remove these names and terminate the judicial assistance requests related to them.

Taking action with foreign countries regarding the recovery of assets and funds in accordance with the laws and rules applicable in those countries.

The committee may form specialized sub-committees or assign one of its members to study any of the topics within its jurisdiction.

The committee's jurisdiction extends to all offenses punishable under the Penal Code or any penal provisions in other laws, limiting the role of any other entity in performing any of these functions that are legally transferred to the committee.

How to Receive Settlement Requests:

Regarding the role of the committee in receiving settlement requests in these cases, the aforementioned law states that one of the committee's competencies is to receive settlement requests from defendants listed on external freeze lists or their authorized representatives at any stage of the criminal proceedings. Accepting the settlement request results in the termination of the criminal case or the suspension of the enforcement of imposed penalties, depending on the circumstances, for the crimes subject to the request.

It is worth noting that there is no conflict between the work of this committee and the work of the committee formed by the Prime Minister's decision based on the amendment of Article 18 (b) bis of the Criminal Procedure Code. The latter committee is responsible for considering settlement requests from all defendants in crimes stipulated in Chapter Four of the Penal Code, except those listed on external freeze lists, which are under the jurisdiction of the National Committee for Asset Recovery abroad.

The committee has a technical secretariat formed by a decision of its chair, consisting of the executive director of the technical secretariat and representatives from the Illicit Gains Authority, the International and Cultural Cooperation Sector of the Ministry of Justice, the Administrative Control Authority, and members of the International Cooperation Office in the Attorney General's Office.

Second: International Cooperation and Enforcement of Judgments and Prisoners' Welfare Department in the Attorney General's Office

The International Cooperation and Enforcement of Judgments and Prisoners' Welfare Department in the Attorney General's Office was established on October 19, 1999, by

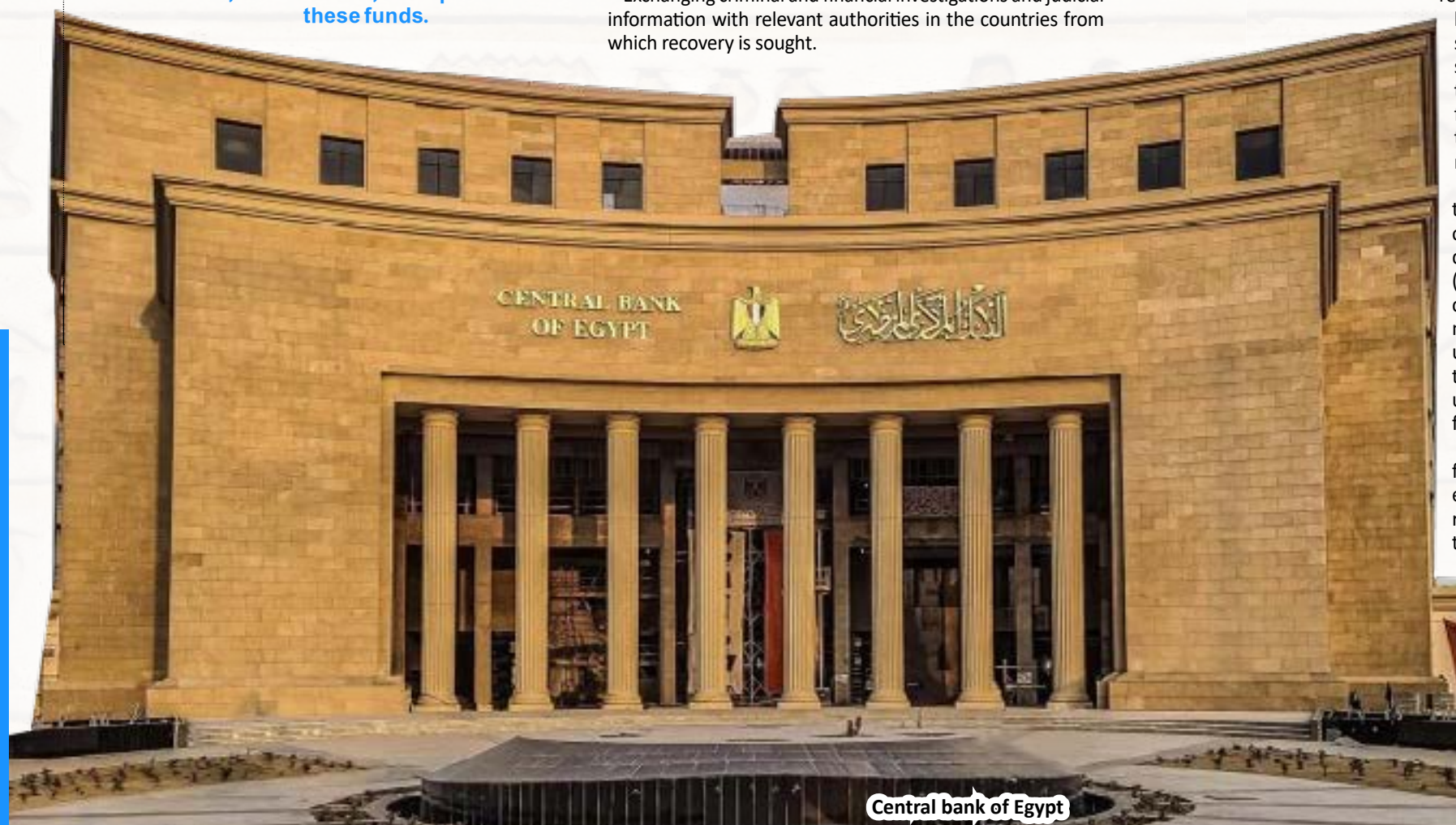
The United Nations Convention against Corruption addresses the situation where funds or properties obtained from corruption crimes in one country are located in another country, highlighting the importance of mechanisms for recovering these assets. The convention includes three mechanisms for recovering assets obtained from corruption through international cooperation.

Attorney General's Decision No. 1848 of 1999. On May 30, 2020, Attorney General's Decision No. 975 of 2020 was issued, defining the competencies of the International Cooperation and Enforcement of Judgments and Prisoners' Welfare Department in the Attorney General's Office. This included refining these competencies to keep pace with the developments in legal and judicial thought and practical reality in matters of international cooperation, prisoners' welfare, and enforcement of criminal judgments. This was in light of the importance of preparing requests related to international judicial cooperation for asset recovery from abroad and exchanging information with foreign entities concerned with this matter, including following up on investigations conducted by the Public Prosecution in this regard.

The experience of the Egyptian Public Prosecution in recovering funds from abroad reflects the efforts and challenges of international cooperation in this field. Following the January 2011 revolution, the International Cooperation Department studied Law No. 28 of 2015 regarding the establishment of the National Committee for Asset Recovery abroad and other legislative amendments to the Criminal Procedure Code and the Illicit Gains Law, aiming to unify efforts to recover embezzled funds. The technical secretariat of the National Committee for Asset Recovery abroad was formed from members of the International Cooperation Department, which played a significant role in preparing for its meetings, implementing its decisions, examining settlement requests from defendants, negotiating with them as per the committee's decisions, and drafting settlement agreements for reconciliation. In this role, the International Cooperation Department, as the technical secretariat of the committee, handled communication and coordination with the International Criminal Police Organization (Interpol), financial intelligence units, and Europol to trace, investigate, seize, freeze, and prevent the disposal of funds, ultimately leading to their recovery.

The National Committee for Asset Recovery abroad, chaired by the Public Prosecution and with the participation of the Anti-Money Laundering and Terrorist Financing Unit, succeeded in recovering all funds involved in criminal cases under its jurisdiction. It recovered approximately nine billion Egyptian pounds and the equivalent of 650 million US dollars through settlement procedures with defendants, which included cash and in-kind payments as well as the recovery of their assets located in a foreign country through negotiations with those countries.

Moreover, the department represents the Public Prosecution in the National Committee for Recovered Antiquities, chaired by the Minister of Tourism and Antiquities. It cooperates and coordinates with relevant national authorities to take all necessary measures to trace, investigate, seize, freeze, and prevent the disposal or public display of Egyptian antiquities abroad in violation of the law. This includes recovering these antiquities and coordinating with relevant authorities in this regard, as well as following up on investigations conducted by the Public Prosecution concerning these matters. Through persistent efforts, the department succeeded in recovering numerous antiquities from several foreign countries.



Central bank of Egypt