



**Submission to the Office of the United Nations High
Commissioner for Human Rights**

Call for inputs pursuant to Human Rights Council resolution 58/7 on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation



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Executive summary

Repatriating stolen assets is only half of the task that Human Rights Council resolution 58/7 sets. What happens to recovered funds after they cross the border determines whether asset recovery advances human rights or merely relocates the conditions that allowed the original diversion. This submission affirms that the use of repatriated funds is not left to a State's unfettered discretion but is already governed by Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Because the duty to devote “the maximum of its available resources” to economic, social and cultural rights (ESCR) is measured against the resources a State actually holds, it necessarily extends to resources restored through repatriation. A State that recovers illicitly acquired assets therefore does not gain a new fund, but resources already burdened by a pre-existing obligation. The returning State is bound by the parallel duty not to return assets into foreseeable misuse. Correctly framed as an obligation of conduct (the establishment of a minimum safeguards framework negotiated in parallel with recovery), this approach closes a real gap without adding to the delays that resolution 58/7 seeks to reduce.

Just Access focuses on Questions 1, 5, 6, 9, 10, 11 and 16 of the questionnaire, which concern the effective use of repatriated funds, promising practices integrating a human-rights-based approach, victims and reparation, and the monitoring role of national human rights institutions and civil society.

I. Introduction

Just Access e.V. is a human rights non-governmental organisation based in Germany, working in the field of access to justice and international law. Our work spans strategic litigation before international courts, legal research, and engagement with United Nations human rights mechanisms, with areas of focus including state responsibility, business and human rights, environmental justice, and institutional accountability. We engage regularly with UN treaty bodies and special procedures to advance the implementation of human rights standards in domestic legal orders.

Consistent with that expertise, this submission is a contribution of legal analysis. It responds to OHCHR's call for input pursuant to resolution 58/7, and concentrates on one question that the existing asset-recovery framework answers least well: once funds are returned, what legal standard governs their use? We address this as a complement to the submissions OHCHR will receive on the obstacles to recovery and return, and not as a suggestion that end-use is the primary problem.

UNCTAD estimates that Africa alone loses some US\$88.6 billion each year to illicit financial flows,¹ at a time when development financing is contracting. Resolution 58/7 was adopted against a visible North-South divide. Several requested States voted against it, arguing that asset recovery is a technical question best handled in Vienna under the UN Convention against Corruption (UNCAC).² That divide is the reason why anchoring the use of repatriated funds in a State's treaty obligations (rather than in conditions imposed by returning States) is legally sounder and politically more durable.

II. Corruption, human rights, and the effective use of recovered resources

Addresses Questions 1 and 11.

¹ <https://uncaccoalition.org/civil-society-perspectives-on-asset-repatriation-and-its-use-for-the-realization-of-human-rights-reflections-from-the-ohchr-expert-meeting>

² <https://uncaccoalition.org/from-repatriation-to-reparation-promoting-social-justice-through-the-recovery-of-stolen-assets/>

To ensure the effective use of repatriated funds, corruption is best understood through a human rights lens. It is widely recognised that high levels of corruption correlate with a diminished capacity to protect and fulfil human rights.³ The diversion of public revenues reduces the resources available to the State and constrains investment in sectors such as health, education and housing. Corruption also undermines civil and political rights and access to justice, compromising the State's ability to meet its human rights obligations.

Scholarship has shown that conceptualising corruption itself as a human rights violation triggering international State responsibility raises genuine conceptual difficulties, even as the human rights approach conveys added value that, on balance, outweighs its drawbacks.⁴ We do not claim that every corrupt act is, as such, an internationally wrongful violation. We claim something narrower, namely that resources within a State's control are subject to Article 2(1) ICESCR whatever their provenance, and that this has implications for how recovered assets must be used.

III. The legal gap: what happens after the return

Addresses Questions 1 and 16.

Repatriation alone does not guarantee the proper use of returned assets. Where recovered funds are absorbed directly into the general budget without dedication to a defined purpose and without adequate oversight, the risk of renewed diversion is significant. The returns of Abacha-era assets to Nigeria illustrate the problem.

In 2005, following a decision of the Swiss Federal Supreme Court, Switzerland and Nigeria agreed on the return of approximately US\$458 million stolen under the military ruler General Sani Abacha. The World Bank's involvement took the form of a Public Expenditure

³ <https://academic.oup.com/icon/article/22/2/538/7739112>

⁴ *ibid.*

Management and Financial Accountability Review.⁵ These funds (part of roughly US\$723 million returned from Switzerland across 1999-2005) were programmed into the national budget, and monitoring was arranged only a posteriori, under pressure from Swiss and Nigerian civil society.⁶

What followed is contested. Transparency International reported that a significant portion of the 2005-06 returns remained unaccounted for.⁷ The World Bank, for its part, has stated that its ex-post review at no point suggested that a substantial part of the funds had been missing or misused.⁸ The point common to both accounts is that a framework that leaves it unknowable, two decades later, whether recovered public resources reached the population from whom they were stolen, has failed on its own terms. In the absence of binding end-use safeguards, repatriation risks reproducing the very conditions that enabled the original misuse.

IV. Article 2(1) ICESCR as an independent legal basis governing the use of repatriated funds

Addresses Questions 1, 11 and 16.

IV.A The receiving State: recovered assets fall within “maximum available resources”

Article 2(1) ICESCR requires each State party to take steps, to the maximum of its available resources, with a view to achieving progressively the full realisation of ESCR. The Committee on Economic, Social and Cultural Rights has confirmed that “the maximum of its available resources” refers both to resources existing within the State and to those available through

⁵ <https://www.worldbank.org/en/news/press-release/2005/09/27/nigeria-switzerland-world-bank-underline-importance-fighting-international-corruption-repatriation-looted-funds>

⁶ https://www.swissinfo.ch/eng/politics/nigeria-switzerland_ngos-demand-guarantees-over-return-of-abacha-millions/42006176

⁷ <https://www.transparency.org/en/news/returning-nigerians-stolen-millions>

⁸ <https://www.worldbank.org/en/news/factsheet/2017/12/04/world-bank-monitoring-of-repatriated-abacha-funds>

international cooperation.⁹ Because that standard is measured against the resources a State actually holds, its scope necessarily extends to resources restored to the State through repatriation.

A State that recovers illicitly acquired assets does not obtain a new and discretionary fund. Instead, it regains resources that were always subject to its pre-existing Article 2(1) obligation, and that must therefore be directed toward realising the very rights the underlying corruption undermined. On this analysis, earmarking recovered funds to ESCR-relevant purposes is the content of an obligation the recovering State assumed when it ratified the Covenant. Therefore, grounding the duty in Article 2(1) locates the obligation in the recovering State's own commitments, not in the leverage of returning States.

IV.B The parallel duty of returning State

The returning State is bound by a parallel but distinct duty not to repatriate assets into their foreseeable misuse. That duty rests on three overlapping bases. First, Article 2(1) itself frames the ESCR obligation as one to be discharged “individually and through international assistance and cooperation”, a limb the Committee reads as integral to the provision.¹⁰ Second, the Maastricht Principles on Extraterritorial Obligations (which restate existing law) require States to avoid conduct that brings about foreseeable impairment of ESCR abroad and to cooperate in their realisation.¹¹ Third, UNCAC Article 57(5) expressly permits States to conclude case-by-case agreements for the final disposal of confiscated property,¹² providing the treaty vehicle through which a returning State can and should give effect to that duty.

⁹ <https://hrlibrary.umn.edu/gencomm/epcomm3.htm>, para. 13.

¹⁰ *ibid.*

¹¹ <https://www.etoconsortium.org/en/the-maastricht-principles/>; <https://www.icj.org/wp-content/uploads/2012/12/HRQMaastricht-Maastricht-Principles-on-ETO.pdf>

¹² <https://eucrim.eu/articles/asset-recovery-uncac-convention-possibilities-and-limitations/>

These create what may be called a dual obligation: the recovering State must devote recovered resources to ESCR realisation, and the returning State must not complete a return without a framework reasonably designed to secure that outcome.

IV.C Situating the duty within UNCAC Chapter V and the GFAR Principles

This analysis supplies the human rights content of the asset-recovery regime. Chapter V of UNCAC makes the return of assets a “fundamental principle” (Article 51) and governs return and disposal (Article 57), including (for offences other than straightforward embezzlement) priority to prior legitimate owners or the compensation of victims (Article 57(3)(c)). The relationship we propose is that UNCAC Article 57(5) permits the disposal arrangement, and Article 2(1) ICESCR determines its content.

The soft law framework already points the same way. The 2017 GFAR Principles for the Disposition and Transfer of Confiscated Stolen Assets call for transparency and accountability (Principle 4), for returned assets to benefit the people harmed by corruption and to advance development goals (Principles 5-6), for the use of Article 57(5) agreements (Principle 8), and for the inclusion of non-governmental stakeholders (Principle 10), while expressly disclaiming any intention to infringe national sovereignty.¹³ Our submission gives these considerations a firmer legal anchor than their current hortatory status provides.

V. A conduct-based standard to close the gap without adding delay

Addresses Question 1.

The most common objection to any end-use requirement is that conditionality slows returns, and delay is itself among the adverse effects that resolution 58/7 targets. The objection is answered by the structure of the obligation. General Comment No. 3 distinguishes, following

¹³ <https://star.worldbank.org/sites/default/files/2020-10/the-gfar-principles.pdf>

the International Law Commission, between obligations of conduct and obligations of result.¹⁴ The end-use duty must be framed as the former, not the latter.

An obligation of result (that is, a guarantee that returned funds will in fact be spent correctly) would be impossible to satisfy in advance and would licence indefinite withholding. An obligation of conduct requires only that the parties act with due diligence to establish an agreed framework of minimum safeguards: earmarking to defined ESCR-relevant programmes, monitoring of disbursement, and pre-agreed consequences for misuse. Such a framework can be negotiated in parallel with the recovery and confiscation proceedings, so that it adds no time to a process that already takes years. The delays in the Abacha returns were driven by litigation and settlement disputes, not by the negotiation of end-use safeguards.

VI. The 2017 tripartite arrangement as a promising practice

Addresses Question 5.

The 2017 return of Abacha-linked assets shows that a conduct-based framework is workable. On 4 December 2017, at the first Global Forum on Asset Recovery, Nigeria, the Swiss Federal Council and the World Bank signed a Memorandum of Understanding on the repatriation and monitoring of US\$321 million,¹⁵ following a December 2014 Swiss court order that the funds be repatriated on condition that the World Bank monitor their use. That court order is itself a judicial precedent for the returning-State duty we describe.

Three features of the arrangement matter. First, the funds were earmarked (for targeted cash transfers to poor and vulnerable Nigerians under the National Social Safety Net Project) at

¹⁴ <https://www.refworld.org/legal/general/cescr/1990/129827>

¹⁵ <https://www.worldbank.org/en/news/press-release/2017/12/04/nigeria-world-bank-to-help-monitor-repatriated-abacha-funds>; <https://uncaccoalition.org/learn-more/asset-recovery/>

Nigeria's own request.¹⁶ Second, independent civil society monitoring was built in from the outset, with Nigerian organisations under the Network on Asset Recovery mandated to report on the use of funds. Third, the arrangement was concluded at a multilateral forum alongside the GFAR Principles, illustrating the trust-building role that such forums can play.¹⁷

We present the 2017 model as instructive. Civil society actors, such as Transparency International's Nigerian chapter (CISLAC), criticised the absence of parliamentary and public approval of the distribution scheme and warned that civil society oversight remained dependent on external funding rather than being institutionalised in domestic law.¹⁸ That critique reinforces our point that minimum safeguards should be a standing legal obligation with a domestic institutional home. The trajectory from the 2005 failures, through Switzerland's 2016 Foreign Illicit Assets Act, to the 2017 framework, is the evolution this submission urges the report to consolidate into a norm.

VII. Victims and reparation: directing funds to those harmed

Addresses Questions 6 and 11.

Framing recovered assets as ESCR resources also answers the questionnaire's concern with victims. Where corruption diverts resources from health, education, housing or infrastructure, the populations deprived of those services are the victims of the underlying offence, and the non-discrimination and minimum-core dimensions of ICESCR require that recovered resources reach them as a matter of priority. UNCAC Article 57(3)(c) already contemplates the compensation of victims and the restoration of assets to their legitimate owners, and the GFAR Principles direct that returned assets benefit the people of the nations harmed by the corrupt conduct.

¹⁶ <https://www.worldbank.org/en/news/press-release/2017/12/04/nigeria-world-bank-to-help-monitor-repatriated-abacha-funds>

¹⁷ <https://uncaccoalition.org/learn-more/asset-recovery/>

¹⁸ <https://www.transparency.org/en/news/returning-nigerians-stolen-millions>

The OHCHR expert meeting of June 2026 captures the same idea: the test of effective return is whether recovered assets advance rights, reach affected communities and support remedy.¹⁹ A human-rights-based approach thus supplies both the obligation to prioritise affected populations and the metric against which allocation can be assessed.

VIII. Monitoring and the role of national human rights institutions and civil society

Addresses Questions 9 and 10.

Independent monitoring by national human rights institutions (NHRIs) and civil society organisations (CSOs) is essential to the safeguards framework described above. The importance of societal participation in combating corruption is already recognised in Article 13 UNCAC, which requires States to take appropriate measures to enable such participation, and the GFAR Principles call specifically for the inclusion of non-governmental stakeholders in the disposition of returned assets.

At the return stage, CSOs and NHRIs add value that institutional oversight alone cannot. As independent actors they provide an additional monitoring layer that helps ensure returned funds are directed toward ESCR realisation. They can flag emerging misuse before funds are lost again and, by informing public debate on how recovered funds should be allocated to benefit those most affected by the original corruption, they build public trust in the process and strengthen transparency and accountability. The 2017 arrangement's reliance on Nigerian civil society under the Network on Asset Recovery is a concrete example of this contribution.

Yet the effectiveness of such monitoring depends on conditions that are frequently absent. Meaningful oversight requires that monitors be able to operate freely and safely. Where that is not guaranteed, individuals and organisations face intimidation and retaliation. Monitors also

¹⁹ <https://uncaccoalition.org/civil-society-perspectives-on-asset-repatriation-and-its-use-for-the-realization-of-human-rights-reflections-from-the-ohchr-expert-meeting>

encounter state-imposed restrictions and limited access to information, and they struggle to secure the long-term funding that sustained monitoring requires. These are structural obstacles, which is why the GFAR Principles' call for transparency, accountability and stakeholder inclusion needs to be given binding effect.

IX. Integrating the human-rights-based approach into cooperation frameworks

Addresses Questions 1 and, in part, 3.

Finally, the analysis above should be reflected in the cooperation frameworks that resolution 58/7 seeks to strengthen. Asset recovery and return are recognised in Sustainable Development Goal target 16.4, but recovery instruments and human rights obligations are too often treated as separate legal orders. Future repatriation agreements should reference the applicable human rights obligations explicitly, so that the UNCAC disposal mechanism and the ICESCR end-use obligation operate together. OHCHR is well placed to bridge these regimes, for instance through its cooperation with regional human rights mechanisms such as the African Commission on Human and Peoples' Rights under the Addis Ababa Roadmap, which is of particular relevance given the resolution's specific focus on Africa.

X. Recommendations

Just Access respectfully submits that OHCHR's report to the Human Rights Council should:

1. recognise that Article 2(1) ICESCR constitutes an independent legal basis governing the use of repatriated funds, since the maximum-available-resources standard extends to assets restored to the State through repatriation;
2. recommend that receiving States earmark repatriated funds to programmes relevant to ESCR (prioritising sectors demonstrably affected by the original diversion, such as health, education, housing and infrastructure) rather than absorbing them into general budget revenue;
3. recommend that the extraterritorial duty of returning States be articulated as a conduct-based obligation: the establishment, in parallel with recovery proceedings, of a minimum safeguards framework (earmarking, monitoring of disbursement, and pre-

agreed consequences for misuse) so as to preserve the speed of repatriation while closing the end-use gap;

4. recommend that States give priority in the allocation of repatriated funds to the populations directly affected by the underlying corruption, consistent with UNCAC Article 57(3)(c) and the ICESCR non-discrimination framework;
5. recommend that independent civil society and NHRI monitoring be a standing element of repatriation agreements (complementing institutional oversight) supported by guaranteed access to disbursement records and enforceable protection against intimidation and retaliation;
6. recommend that future repatriation agreements make express reference to applicable human rights obligations, and that UNCAC Article 57(5) disposal arrangements be used as the vehicle giving effect to the Article 2(1) end-use obligation, so that cooperation mechanisms and end-use obligations cease to be treated as unconnected legal frameworks; and
7. consider how OHCHR can support States, asset-recovery institutions, NHRIs and civil society in integrating a human-rights-based approach into the recovery, return and use of illicit funds.

Just Access e.V. remains available to provide further information or to engage in dialogue with OHCHR. We thank OHCHR for the opportunity to contribute to this important thematic report.