

# National and International Legal Regulation for the Recovery of Smuggled Funds: Comparative Study

Haider Hussein Na'ma Al-Jaafari, Ali Youssef Al-Shukri

Department of Public Law, Faculty of Law, Islamic University in Lebanon

<sup>1</sup>Received: 05 March 2024; Accepted: 19 June 2024; Published: 20 June 2024

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## ABSTRACT

In this paper, it is discussed how recovering monies that have been smuggled is a complicated and varied subject that calls for solid legal frameworks, effective international collaboration, and strong political will. Despite the fact that great progress has been made on both the national and international levels, there are still obstacles that prevent the proper recovery of resources that have been stolen. It is vital to continue improving legal and procedural procedures, developing international collaboration, and tackling the core causes of corruption in order to make significant progress in retrieving monies that have been smuggled.

**Keywords:** *Legal Regulation; Int. Law; Smuggled Funds; solid legal*

## INTRODUCTION

Corruption and money smuggling are among the leading causes that hinder the improvement of living standards and services in developing countries. The World Bank estimates the volume of money lost due to criminal activities, corruption, and tax evasion in developing countries to be around \$500 billion annually, which represents approximately half of the external debt of these countries. Additionally, the World Bank confirms that the real cost resulting from the corruption of the ruling class is much higher because it includes the deterioration of public institutions, especially financial ones, the destruction of the investment climate, and the deterioration of essential public services such as health and education, which primarily affect the poor citizen. These damages increase with the extended rule of corrupt leaders. Corruption crimes are characterized as serious offenses, whether they are political, administrative, or economic crimes, as they are organized and transnational, making them more complex, especially when they lead to money laundering crimes and transferring funds outside the country. This necessitates the understanding of the mechanism for recovering these stolen funds, the methods and procedures for this mechanism, and the importance of international cooperation in combating corruption in general, and extraditing criminals, collecting, investigating, and recovering stolen assets in particular.

## Research Problems

The phenomenon of smuggling or laundering money outside the state is criminalized under Iraqi law. However, the problem lies in that both developed and developing societies still suffer from the inability or delay in recovering these funds. The issue of recovering smuggled funds is highly complex in terms of legislation and application due to the insufficiency of laws that regulate its procedures. Despite Iraq's accession to the United Nations Convention against Corruption, which obliges member states to take legislative measures concerning the recovery of these funds, Iraqi legislation still lacks an independent law or legal provisions within the enforceable law to regulate the procedures for recovering smuggled funds.

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<sup>1</sup> How to cite the article: Al-Jaafari H.H.N., Al-Shukri A.Y. (June 2024); National and International Legal Regulation for the Recovery of Smuggled Funds: Comparative Study; *International Journal of Development in Social Sciences and Humanities*; Vol 17, 15-21

**Research Objectives:**

The study aims to establish mechanisms to limit the phenomenon of money smuggling abroad and its impact on the state and the individual, identify its sources, and work on drying them up. It also aims to stimulate available national and international efforts to recover smuggled funds and review preventive measures necessary to support legal efforts. The study seeks to highlight the issue of recovering smuggled funds in terms of legislation and application. Recovering assets represents a modern and complex procedure in international cooperation. This study aims to contribute to answering the central and significant question raised here, which is: To what extent does the national legislative system governing the process of recovering smuggled funds align with the related international legislative system? There is a need to review the legislative system governing the mechanism for recovering smuggled funds at the local and regional levels to identify its shortcomings compared to what is stipulated in the United Nations Convention against Corruption and other related international agreements. The study also aims to highlight the main difficulties hindering the process of recovering smuggled funds at both international and national levels. Additionally, some subsidiary questions arise, such as: Has the national legislator addressed the issue of recovering smuggled funds clearly and comprehensively? From a practical standpoint, is there cooperation between the entities responsible for recovering smuggled funds and some international initiatives specifically formed for this purpose? If such cooperation exists, how effective is it?

**Research Methodology**

This research relies on the descriptive and analytical comparative method based on legal texts and national, regional, and foreign legislations, as well as international documents (international agreements) in the field of recovering smuggled funds. The study adopts the foundational approach in research by rooting the phenomenon of smuggled funds, represented in the legal frameworks at the level of national legislations and regional and international agreements to combat this phenomenon. The study also adopts the analytical method in attempting to identify the adequacy of national legislations and regional and international agreements in addressing this phenomenon and their effectiveness in recovering smuggled funds. Additionally, it examines the need for other preventive measures to support legal frameworks. The study also relies on the comparative method by reviewing the experiences of developed and developing countries in recovering smuggled funds and the legislative efforts made by each country to protect itself by pursuing those involved in smuggling their citizens' resources.

**Research Hypothesis**

The research hypothesis is based on the inadequacy of the national legislative system in addressing the problem of Iraqi money smuggling and laundering, and the insufficiency of national mechanisms adopted to recover these funds.

**Research Plan**

To clarify all that we will address in this study, we adopted a binary division as follows:

1. Chapter One: Recovering Smuggled Funds in Light of National, Regional, and International Legislations
  - Section One: Recovering Smuggled Funds in Light of National Legislations
  - Section Two: Recovering Smuggled Funds in Light of Regional and International Agreements
2. Chapter Two: Procedural Regulation for Recovering Smuggled Funds within Preventive Measures
  - Section One: Freezing Smuggled Funds
  - Section Two: Administrative Confiscation of Smuggled Funds
  - Section Three: Travel Bans

The conclusion will include a summary of our study with the most important findings and recommendations reached.

## RECOVERING SMUGGLED FUNDS IN LIGHT OF NATIONAL, REGIONAL, AND INTERNATIONAL LEGISLATIONS

National and international efforts to stop the bleeding of smuggled funds resulting from pervasive political corruption, especially in developing countries, due to their lack of minimum transparency and democracy requirements and the perpetuation of individual rule for many years, are numerous.

At the national level, most countries have issued national legislations to combat money smuggling. However, in developing countries, legislations are often enacted by those who commit smuggling crimes, rendering these laws mere public relations tools for reading by the public. At the international level, the efforts of international regulation for the issue of recovering stolen funds have translated into the emergence of several agreements and initiatives that address corruption in general and asset recovery in particular. In 2008, the World Bank and the United Nations launched the Stolen Asset Recovery Initiative (StAR), which is considered one of the pioneering initiatives in these efforts. It aims to stop the plundering of public assets and seeks to facilitate the recovery of stolen assets by corrupt leaders from developing countries by providing assistance, advice, and capacity-building. To clarify the picture, it is necessary to review the national and international regulation for recovering stolen funds and combating smuggling, and to demonstrate their ability to contain these endemic diseases, especially in developing countries.

### Recovering Smuggled Funds in Light of National Legislations

The process of recovering the funds of repressive political regimes is highly complex and often takes many years. It requires strong political will from all concerned parties, along with expertise in tracking and recovering funds, and distinguished legal, investigative, judicial, diplomatic, and media efforts. Modern legislations are specialized in protecting funds from all forms of aggression due to their importance in the economic, social, and political life of nations. Therefore, laws enact rules to regulate and monitor this field. The law, whether governing relations between individuals or the relationship between the state and individuals, assumes that the money acquired by members of society is obtained in a legitimate and proper manner. However, things do not always proceed in this ideal direction, as much of the money obtained by individuals or groups results from crimes or using illegal methods, which is the case with laundered money whose illicit sources are numerous, yet it is presented in a legal and legitimate form. In Egypt, many laws have been issued to combat financial corruption in all its forms. Financial corruption takes many forms, but the most egregious and blatant form is smuggling money outside the state. The smuggling of money outside the state's borders is often the work of powerful and influential individuals who can transfer those funds abroad through their extensive connections with similar-level individuals in other countries. Moreover, it is a moral crime that reflects a decline in the ethics and loyalty of its perpetrators. The national legislations in Egypt aimed at combating corruption include substantive and procedural laws:

#### Substantive Laws:

Some of the important substantive laws issued to combat corruption, including smuggled funds, are:

- The Penal Code No. 58 of 1937.
- The Illicit Gain Law No. 62 of 1975.
- The Anti-Money Laundering Law and its amendments No. 80 of 2002.
- The Anti-Human Trafficking Law No. 64 of 2010.
- The Law on Protection of Competition and Prevention of Monopolistic Practices No. 3 of 2005.
- The Egyptian Commercial Law No. 17 of 1999.
- The Law on Public Tenders and Auctions No. 89 of 1998.
- The Law Regulating Foreign Exchange Transactions No. 38 of 1994.

**Procedural Laws:**

Procedural laws are the cornerstone of the claim to recover smuggled funds as they outline the mechanisms for detecting smuggled assets, following them up, freezing and seizing these assets, and eventually how to confiscate and dispose of them. The importance of procedural laws lies in defining the mechanisms for legal and judicial international cooperation in terms of its forms and provisions from both substantive and procedural perspectives. The significance of procedural laws also lies in addressing many legal issues that are considered challenges in recovering smuggled assets, such as bank secrecy and the extent to which it can be revealed during investigations, especially to foreign authorities. They also address the possibility of recognizing foreign seizure and confiscation orders and the legal and judicial procedures required to implement them in the requested country. Among the procedural laws issued to combat corruption, including smuggled funds, are:

- The Criminal Procedures Law No. 150 of 1950.
- The Civil Procedures Law No. 13 of 1968.

By applying these laws in the recovery of smuggled funds, Egypt has taken many practical measures to combat corruption. Since 1980, the country has implemented procedures for the seizure and confiscation of funds through the Administrative Control Authority and formed the National Coordination Committee for Combating Corruption in 2007, which formulated a comprehensive strategy for combating corruption that includes recovery of smuggled funds.

However, the national legislations in Egypt remain insufficient and face many challenges that hinder the process of recovering smuggled funds. These challenges include the lack of political will, the inability to enforce laws effectively, and the limited international cooperation due to bureaucratic obstacles.

**Recovering Smuggled Funds in Light of Regional and International Agreements**

International efforts to recover smuggled funds are focused on strengthening international cooperation, enhancing legal frameworks, and providing technical assistance to countries. Several international conventions and initiatives play a significant role in this regard:

**United Nations Convention against Corruption (UNCAC)**

The UNCAC is one of the most comprehensive international conventions that addresses corruption and provides a framework for the prevention, criminalization, international cooperation, and asset recovery. The convention emphasizes the importance of international cooperation in investigating and recovering assets and requires member states to take measures to enhance transparency and accountability.

**The Stolen Asset Recovery Initiative (StAR)**

Launched by the World Bank and the United Nations Office on Drugs and Crime (UNODC), the StAR initiative aims to facilitate the return of stolen assets to developing countries. The initiative provides technical assistance, legal advice, and capacity-building to support countries in their efforts to recover assets.

**Regional Agreements and Initiatives**

Several regional agreements and initiatives also contribute to the recovery of smuggled funds. These include:

- The African Union Convention on Preventing and Combating Corruption.
- The Arab Convention to Combat Corruption.
- The European Union's anti-money laundering directives and initiatives.

These regional agreements aim to strengthen cooperation among member states, harmonize legal frameworks, and enhance the effectiveness of measures to combat corruption and recover smuggled funds.

Despite the existence of these international and regional frameworks, the process of recovering smuggled funds remains complex and faces numerous challenges, including differences in legal systems, lack of cooperation, and the difficulty of tracing and identifying assets.

## **PROCEDURAL REGULATION FOR RECOVERING SMUGGLED FUNDS WITHIN PREVENTIVE MEASURES**

### **Freezing Smuggled Funds**

Freezing smuggled funds is one of the key measures in the process of recovering stolen assets. It involves the temporary restriction of access to assets suspected of being proceeds of crime to prevent their dissipation. Freezing can be carried out through judicial or administrative orders and is a crucial step in the asset recovery process.

### **Administrative Confiscation of Smuggled Funds**

Administrative confiscation refers to the process of permanently depriving individuals of assets derived from criminal activities without the need for a criminal conviction. This measure is particularly useful in cases where obtaining a criminal conviction is challenging due to various reasons, such as the absence of the accused or lack of sufficient evidence for a criminal trial.

### **Travel Bans**

Travel bans are preventive measures that restrict the movement of individuals suspected of involvement in corruption or smuggling activities. By preventing these individuals from traveling, authorities can reduce the risk of them fleeing the country and facilitate ongoing investigations and asset recovery efforts.

## **CONCLUSION**

In conclusion, the recovery of smuggled funds is a complex and multifaceted issue that requires robust legal frameworks, effective international cooperation, and strong political will. While significant progress has been made at both national and international levels, challenges remain that hinder the successful recovery of stolen assets. It is essential to continue enhancing legal and procedural measures, fostering international collaboration, and addressing the root causes of corruption to achieve meaningful progress in recovering smuggled funds.

## **FINDINGS AND RECOMMENDATIONS**

The study's findings highlight the insufficiency of national legislations and the need for comprehensive legal frameworks to address the issue of smuggled funds effectively. Recommendations include strengthening national and international cooperation, enhancing legal and procedural measures, and promoting transparency and accountability to prevent and combat corruption and recover stolen assets.

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14. Agreements, whether regional or international, are always preceded by several initiatives that lay the groundwork for the principles of the intended agreement. In the field of combating corruption, significant efforts were made before the conclusion of anti-corruption agreements, manifested in several initiatives, including:
  - Initiatives of the United Nations Office on Drugs and Crime.
  - Initiatives of the Group of Eight Countries.
  - Initiatives of the Organization for Economic Cooperation and Development.
  - The Commonwealth Secretariat Initiative 2003.
  - Initiatives of the World Bank Group.
  - Initiatives of the Arab League, which included the establishment of the Arab Network to Promote Integrity and Combat Corruption.
    - The StAR Initiative for Asset Recovery.
    - Interpol and Europol Initiative.
    - The International Asset Recovery Center Initiative, Basel Institute on Governance.
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18. This agreement was written in Arabic in Cairo, Egypt on 15/1/1432 AH, corresponding to 21/12/2010, in one original copy deposited with the General Secretariat of the Arab League (Technical Secretariat of the Council of Arab Justice Ministers), and an identical copy was delivered to the General Secretariat of the Council of Arab Interior Ministers, and an identical copy was also delivered to each of the member states.
19. Article 1 of the agreement defines:



- Criminal proceeds: any property derived from or obtained, directly or indirectly, through the commission of any of the acts of corruption criminalized under this agreement.

- Freezing or seizing: temporarily prohibiting the transfer, conversion, disposition, or movement of property, or temporarily assuming custody or control of property based on an order issued by a court or other competent authority.

- Confiscation: the permanent deprivation of property by order of a court or other competent authority.

Refer to the details of the agreement on combating corruption in the Judicial Magazine - Issue 4 - Rajab 1433 AH, pp. 320-366. The preamble of the agreement expresses the determination of the Arab countries and their insistence on combating corruption and integrating into international agreements by stating that the signing Arab countries, convinced that corruption is a multifaceted criminal phenomenon with negative impacts on moral values, political life, and economic and social aspects... and affirming the necessity of Arab cooperation to prevent and combat corruption as it is a cross-border phenomenon, and committing to the noble religious and moral principles derived from the heavenly religions, including Islamic Sharia, and to the goals and principles of the Charter of the Arab League and the United Nations Charter, and the Arab, regional, and international agreements and treaties in the field of legal, judicial, and security cooperation to prevent and combat crime related to corruption to which the Arab countries are parties, including the United Nations Convention against Corruption. The preamble of the agreement is affirmed by its articles 27, 28, 29, and 30, which addressed the topic of asset recovery, freezing, and confiscation in detail.

20. Jeffrey Cole, during his speech at the Initiative of Good Governance to Serve Development in Arab Countries GD, p. 4.
21. Article (1) of the agreement defines "confiscation" as any penalty or measure resulting in the permanent deprivation of property or proceeds or means based on a legal court order after completing the trial procedures regarding a criminal act or acts related to corruption. The agreement clarifies its philosophy and action plan in combating corruption through its preamble, expressing concern about the severe consequences of corruption and impunity on political, economic, social, and cultural stability in African countries, and its devastating effects on the economic and social development of African peoples.
22. The agreement clarifies its philosophy and action plan in combating corruption through its preamble, stressing that corruption poses a threat to the rule of law, democracy, and human rights, undermines principles of good governance, equity, and social justice, breaches competition, impedes economic development, and jeopardizes the stability of democratic institutions and the moral foundations of society. The agreement believes that effective anti-corruption measures require enhancing and expediting international criminal cooperation and aligning it with criminal law, welcoming recent developments that have improved awareness and cooperation at the international level in combating corruption, including measures taken by the United Nations, the World Bank, the International Monetary Fund, the World Trade Organization, the Organization of American States, the Organization for Economic Cooperation and Development, and the European Union... See the Criminal Law Convention on Corruption.
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