



**Conference of the States Parties
to the United Nations
Convention against Corruption**

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Asset recovery

**Note verbale dated 7 October 2011 from the Permanent
Mission of Egypt to the United Nations (Vienna) addressed
to the United Nations Office on Drugs and Crime,
Corruption and Economic Crime Branch**

The Permanent Mission of the Arab Republic of Egypt to the United Nations in Vienna presents its compliments to the United Nations Office on Drugs and Crime, Corruption and Economic Crime Branch, and has the honour to attach herewith a note by the Government of Egypt regarding practices in the implementation of requests for mutual legal assistance for the recovery of assets derived from crimes of corruption (see annex).

The Permanent Mission kindly requests the Secretariat to distribute the aforementioned note as a document of the fourth session of the Conference of the States Parties to the United Nations Convention against Corruption, to be held in Marrakech, Morocco, from 24 to 28 October 2011.

The Permanent Mission of the Arab Republic of Egypt avails itself of this opportunity to renew to the United Nations Office on Drugs and Crime, Corruption and Economic Crime Branch, the assurances of its highest consideration.

* CAC/COSP/2011/1.



Annex to the note verbale dated 7 October 2011 from the Permanent Mission of Egypt to the United Nations (Vienna) addressed to the United Nations Office on Drugs and Crime, Corruption and Economic Crime Branch

[Original: Arabic]

Note regarding practices in executing requests for mutual legal assistance for the recovery of the proceeds of crimes of corruption

Crimes of corruption have a wide range of harmful effects on society, threatening its stability and putting democratic institutions, justice, sustainable development and the rule of law in jeopardy.

Corruption is also closely linked to other forms of organized and economic crime, including money-laundering.

With this in mind, Egypt has put in place a legal framework against corruption that is an integrated model in this regard, and also in respect of criminalizing and punishing all forms of corruption established in accordance with the Convention, such as bribery of public officials and in the public sector as a whole, in addition to crimes associated with bribery, such as offering to give or facilitate bribes, abuse of influence, profiting from bribery, embezzlement and misappropriation of public funds, and money-laundering.

Given the importance of the fight against corruption for Egypt, it was keen to accede to the United Nations Convention against Corruption, which is aimed at establishing a legal instrument to fight corruption and return assets derived from illicit sources to countries of origin. Thus, the Arab Republic of Egypt acceded to the Convention, signed on 9 December 2003, by virtue of Presidential Decree 307 of 2004. It has also reviewed related legislation to bring it in line with the provisions of the Convention and its obligations thereunder.

The Convention has four main focuses: preventive measures, criminalization, international cooperation and asset recovery.

It calls for the promotion of all forms and mechanisms of international cooperation in the fight against corruption, such as extradition, law enforcement and mutual legal assistance.

Given the large number of cases reported to the Prosecutor-General's office in the aftermath of Egypt's 25 January 2011 revolution, the office has opened an investigation into thousands of reports against officials in the former regime for obtaining financial gain from corruption for themselves or others. A large number of those officials have been brought to stand criminal trial, notably the former Head of State, his two sons and many former ministers.

Because of the complex ties those persons had and the great power they wielded by virtue of their former prominent public functions, they were able to transfer vast sums of money gained from crimes of corruption out of the country, which impeded its development. The Prosecutor-General's office thus promptly submitted requests for mutual legal assistance to various countries of the world,

based on the provisions of the Convention, enquiring whether the said indicted persons had transferred funds and, if so, requesting the freezing and seizure of those funds and their return to Egypt.

However, many substantive and procedural difficulties have been encountered in executing those requests, inter alia, those described below.

I. Substantive difficulties

1. *Determining the location of the funds in the requested State.* In response to requests for mutual legal assistance to disclose the assets of former regime leaders and their family members who were indicted for crimes of corruption and in respect of whom judgements to seize funds have been delivered, submitted by Egyptian judicial authorities to signatories to the Convention pursuant to its provisions, some States have asked the Egyptian judicial authorities to determine the location in the requested State of the funds to be frozen, or account numbers, banks or financial institutions where those funds were deposited. And although in the requests the question was asked whether the requested State held the funds to be frozen, the latter insisted on tasking the requesting State with determining the location of the funds in the requested State's financial institutions, in violation of article 31 and article 46, paragraph 3 (g) and (j), on identifying and tracing proceeds of crime.

There were also cases where States required that they be given the numbers of accounts held in their financial institutions belonging to indicted persons whose funds were to be frozen, despite the fact that the requests submitted to them clearly entrusted them precisely with that task, and that it was impossible for the Egyptian judicial authorities to conduct such an investigation, not only because of bank secrecy, but also because of the fact that those bank accounts are held in another State, i.e. the State requested to investigate the matter. That is in violation of article 46, paragraph 1, of the Convention, which stipulates that "States Parties shall afford one another the widest measure of mutual legal assistance".

2. *The need to establish a link between misappropriated and requested funds.* Egypt was requested by some States to prove the unlawful origin of alleged proceeds of crime, which is extremely problematic given the complex nature of the crimes and the difficulty of tracing funds starting from embezzlement to deposit in the requested State's financial institution, especially at a time when the Prosecutor-General's office in Egypt is investigating thousands of crimes of corruption committed during the former regime's rule. This is also in violation of article 46, paragraph 3 (c), of the Convention, which stipulates that "Mutual legal assistance ... may be requested for ... executing ... seizures, and freezing", whether for proceeds of crime or not. In fact, article 46, paragraph 3 (g), allows for assistance to be sought for "identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes", thus differentiating between freezing and seizure requests in general and requests for identifying proceeds of crime in particular.

3. *Non-disclosure of suspect funds detected by the requested State.* Some requested States require more updates and information from Egyptian judicial authorities when they detect funds belonging to an indicted person whose funds are to be frozen, without disclosing the amounts of the detected funds, which may undermine the Prosecutor-General's ability to determine how significant those

requests for information are. This is in violation of article 46, paragraph 8, of the Convention, which reads, “States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.”

4. *Investigation of money-laundering crimes without notification to Egyptian judicial authorities.* The major impediment facing Egyptian judicial authorities is the fact that requested States investigate, in case of detected funds, money-laundering crimes committed in their territory without notifying those authorities. Indeed, we are asked to provide more evidence and clarifications as to the charges concerned. And even after we provide supporting and overwhelming evidence and documents, they are used in the domestic prosecution of the person charged with money-laundering, instead of executing our request for information and letters rogatory. Again, this violates article 46, paragraph 26, which obligates the requested State party to consult with the requesting State party to consider whether to postpone the execution of or decline the request and whether assistance may be granted subject to such terms and conditions as the requested State deems necessary.

5. *Sluggish asset disclosure proceedings.* Some requested States choose to start by investigating the assets to be frozen, before their competent authorities enquire about the validity of the evidence, judicial process and prosecution of the persons listed in the request for mutual legal assistance. Then they submit application forms to tribunals for asset freeze, which means that precious time is wasted and seizure proceedings do not move fast enough to prevent the transfer of funds from the State concerned.

The European Union, on the other hand, fast-tracked a request we submitted to it and took a political decision to freeze assets, immediately followed by an investigation into the matter.

6. *Different jurisdictions within States and the need to deal with them all on a case-by-case basis.*

II. Procedural difficulties

1. *Spelling variations of the names of indicted persons whose assets are to be frozen.* As asset freeze and confiscation requests include a large number of Arabic names — 138, to be precise — of indicted persons and their family members, the spelling of names has been particularly problematic, because family names come before first names in the official documents of some States. We were therefore asked to conform to the way names are spelled in the legal systems concerned.

Some States also insisted that we correct what they considered misspellings, because of possible multiple transliterations of Arabic names — although they are basically the same — into five other main languages, namely, Chinese, English, French, German and Spanish.

2. *Rearranging request applications and annexes.* Some States asked us to rearrange request application annexes, claiming that they were not in order when received and that they could not possibly rearrange them.

3. *Translation of requests.* Some States insist on translating requests into their local language, rather than into English, French, German or Spanish.

4. *No response received.* Sometimes, no positive or negative responses are received from States, in violation of article 51 of the Convention, which states that States parties should afford one another the widest measure of cooperation and assistance in asset recovery, and article 46, paragraph 23, whereby States parties are obligated to give the reasons for any refusal of mutual legal assistance.
 5. *Delay in processing requests.* In some cases request applications for legal assistance are returned long after their submission on the ground of failure to index and place them on file.
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