

## TI France's proposal

(Extract from: « [LE SORT DES BIENS MAL ACQUIS ET AUTRES AVOIRS ILLICITES ISSUS DE LA GRANDE CORRUPTION : Plaidoyer pour une procédure adaptée, au service des populations victimes](#) » ; 2017)

### (1) The 5 key principles that should govern the allocation of assets derived from grand corruption

#### ❖ Transparency

- ✓ Funds derived from grand corruption should be separated from the general state budget and placed in a special account pending their allocation: as well as facilitating the traceability of the funds, this principle of special budget treatment has huge symbolic significance in that it reflects France's desire not to "appropriate to itself" the proceeds of grand corruption.
- ✓ The whole allocation process should be conducted in a transparent manner (initial consultation phase, selection of beneficiary organisation(s) of the funds, choice of projects and programmes, method of transfer of funds and their administration by the beneficiaries...), chiefly by publication of reliable and exhaustive information on a dedicated website and the issue of timely press releases.
- ✓ The funds must be administered in such a way as to ensure optimal traceability and to that end they should be subject to separate accounting treatment.

#### ❖ Solidarity

- ✓ The funds derived from grand corruption must be allocated exclusively to improving the living standards of populations and/or strengthening the rule of law and prevention of corruption in the country or countries where the underlying offences occurred, and thus contribute significantly to the achievement of the Sustainable Development Goals. The Sustainable Development Goals (SDG) are a collection of 17 goals set by the United Nations with the aim of international development. They replace the Millennium Development Goals which ended in 2015<sup>1</sup>.
- ✓ The consultation process which seeks to determine the specific ways of allocating the funds should be conducted in an inclusive manner, ensuring especially the participation of civil society so as to better respond to the needs and expectations of the victim populations.

#### ❖ Effectiveness

- ✓ The specific ways of allocation the funds, (selection of beneficiary organisation(s) of the funds, choice of projects and programmes, method of transfer of funds...) must be decided on a case by case basis having regard to the particular circumstances with the aim of ensuring, in strict compliance with the principles set out here, optimal utilisation of the funds. No transfer of funds may be made unless the specific methods for their transfer are clearly and finally determined.

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<sup>1</sup> For more information: <http://www.un.org/sustainabledevelopment/>

- ✓ Wherever appropriate, and the circumstances allow so, the French State may involve the government of the country or countries of origin – an agreement is concluded for that purpose, providing, in particular, their commitment to respect the principles set out here.

❖ **Integrity**

- ✓ The funds must be administered rigorously to prevent them being channeled back into corrupt circles or associated with any other illegal or illicit activity. Any suspicion of irregularities concerning the management of the funds would lead to the opening of an investigation and suspension of the transfer.

❖ **Accountability**

- ✓ Moral and financial reports must be prepared each year by the beneficiary organisation(s) of the funds and at the end of their mission and published in full so as to record the rigorous management of the funds and the use made of them and, if/where applicable, the benefits gained by the victim populations.
- ✓ The French State watches over the implementation of the principles set out here. It is the sole trustee of the proper utilization of the funds. It can in this capacity organize on-site visits or authorize independent audits and, if necessary, take all necessary corrective measures that may be appropriate. The costs of implementing this allocation scheme are drawn from the funds allocated subject to a percentage cap determined by law.

## **(2) The scheme for the allocation of the proceeds of grand corruption**

Transparency International France proposes a two-step process for the allocation of funds derived from grand corruption:

1. Allocation of funds to the Agency for the Recovery and Management of Seized and Confiscated Assets (AGRASC): Consultation process designed to determine the specific modalities of allocation of the funds.
2. Transfer of funds to beneficiary organisation(s) and implementation of projects or programmes.

More specifically, Transparency International France proposes inserting in Book IV of the Criminal Procedure Code (Special Procedures) a new Title XXXIV (which could be titled “Allocation of the proceeds of grand corruption) with a single article reading as follows:

*“Whenever the ownership of assets confiscated in application of article 131-21 of the Criminal Code (cf. autonomous confiscation), of the provisions relating to international cooperation for the purpose of enforcement of confiscation orders contained in the Criminal Procedure Code (cf. articles 713-32 and 713-40 of the Criminal Procedure Code) or in the United Nations Convention against Corruption (UNCAC), is devolved to the State and that said assets are related to the commission of one or more offences reflecting, on the part of foreign politically exposed persons (as defined in article L561-10 2° of the Financial and Monetary Code), a failure in their duty of probity or illicit enrichment, the sums of money recovered and the proceeds of the sale of confiscated assets, after deduction of any procedural expenses incurred up to a ceiling fixed by law, shall be allocated to the account opened in the name of the AGRASC in the deposits and consignments fund pending their allocation.*”

*The funds thus consigned shall be allocated exclusively to i) improving the living standards of populations and/or ii) strengthening the rule of law and prevention of corruption in the country or countries where the underlying offences occurred and thus, in particular, contribute to the achievement of the Sustainable Development Goals.*

*The specific modalities of allocation of the consigned funds, notably the selection of the projects or programmes to be funded and/or the identity of the beneficiary organisation(s) of the funds, choice of, method of transfer of funds, shall be decided on a case by case basis by the French State having regard to the consultation process described hereinafter and within a limit of 12 months from the consignment of the funds to the AGRASC.*

*The consultation process seeks to determine the most efficient way of allocating the consigned funds having regard to the particular circumstances of the case and considering the purposes defined in this article.*

*The consultation process must be conducted in a transparent and inclusive manner.*

*It must necessarily include hearing representatives of civil society including, as far as possible, those from the country or countries concerned.*

*The French State may organise a call for contributions, or seek the assistance or advice of any qualified natural or legal person.*

*Wherever it proves appropriate and the conditions lend themselves to it, the French State may also consult the government of the State or States of origin. An agreement will then be concluded notably to guarantee respect for the principles set out in this article.*

*In no case may the funds be used for purposes other than those contemplated in this article.*

*Following the consultation process, and once the decision on allocation the funds has been made, the French State shall indicate by a communiqué the project or projects or programmes to be financed and the modalities of their implementation and/or the identity of the beneficiary organisation(s) of the funds.*

*The French State will convey to the AGRASC the order or orders for transfer in accordance with the established timetable and ensure the proper utilisation of the funds.*

*The funds must be managed in a rigorous and transparent manner. Any suspicion of irregularities concerning the management of the funds will lead to the opening of an investigation and suspension of the transfer.*

*The beneficiaries of the funds must address to the French State moral and financial reports at the end of each accounting year and at the end of their mission.*

*The French State may make visits to the places where illegal activities have been undertaken or authorize independent audits and, if necessary, take all necessary corrective measures that may be appropriate.*

*Reliable and exhaustive information, allowing in particular to assess the utilisation of the funds and, if applicable, the benefits gained by the local populations, will be published on a dedicated website and the issue of timely press releases.*

*The costs arising from the application of this article shall be drawn from the funds consigned subject to a percentage cap determined by law”.*

## Commentary:

- ❖ **The proposed scheme only targets confiscated assets whose ownership was transferred to the French State** – not covered are assets susceptible of restitution or restituted in application of articles 478 and 479 of the Criminal Procedure Code; **the origin of the confiscation order, however, is indifferent:** autonomous confiscation or confiscation executed at the request of foreign jurisdictions. In the latter case, the provision covers both the assets ultimately devolved to the French State in application of the sharing rules set out in articles 713-32 and 713-40 of the Criminal Procedure Code, and the case where the said rules would not apply, thus resulting in the total transfer of ownership of the assets to the French State.<sup>2</sup>
- ❖ This scheme is **not about objecting to the principle of transfer of ownership of assets in favour of the French State but “short-circuiting” their allocation to the general budget of the State so as to facilitate, in a more transparent manner, their utilisation for the benefit of the victim populations.** The allocation rule proposed here would complement those existing already and would intervene at the same level as those envisaged for special funds (i.e. after compensation of the victims, but as a priority to finance the AGRASC).<sup>3</sup> The funds would thus be transferred to the AGRASC specially conceived to manage seized and confiscated assets with a view to their consignment.<sup>4</sup>
- ❖ **Neither is it a case of determining *a priori* the way in which the consigned funds will be used** – the choice of beneficiary organisation and more generally the specific modalities of the allocation of the funds necessarily depend on the particular circumstances of the case – **but to guarantee that in any case they benefit the victim populations.** Depending on the case, it could, for example, be a case of transferring funds to a development agency, a charity or an *ad hoc* organisation.

**The proposed scheme will make it possible to ensure that illicit assets recovered in France contribute to the development of countries which have been unjustly deprived in cases of grand corruption where the failure of the States of origin make it (legally) impossible to apply the sharing/restitution rules.** In this respect, it is fully in conformity with the provisions of article 57.3(c) of the UNCAC which expressly envisages the possibility of using the confiscated assets to “*compensate the victim*”.

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<sup>2</sup>In other words, the provision proposed here only comes into play in a subsidiary manner. It is simply a matter of completing the existing general framework of sharing and restitution of illicit assets so as not to (further) injure the populations which are victims of grand corruption wherever the failure of the States of origin prevents them from instigating and completing the relevant judicial procedures and thus the application of the said rules of sharing and restitution.

<sup>3</sup> It should be specified that France would in no way be damaged by the introduction of a scheme in that the procedural expenses incurred by French jurisdictions would be deducted from the sums to be transferred to the AGRASC (except, of course, if said expenses were deducted under a sharing agreement (cf. articles 713-32 and 713-740 of the Criminal Procedure Code) and the latter would retain the possibility of imposing fines on the persons accused – which would automatically go to the French Treasury.

<sup>4</sup> It should be clarified that the funds would be consigned to the AGRASC but would not form part of its own funds.