

Typologies Report On:

**Money Laundering  
and Corruption**

December 2017



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# **Middle East and North Africa Financial Action Task Force**

Typologies report on:

## **Money Laundering and Corruption**

**December 2017**

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## **Executive Summary**

There is no doubt that global efforts are being deployed to fight corruption around the world, however the success of these efforts depends on a comprehensive approach of the subject from its various components and surrounding aspects.

Whereas the relation between money laundering and corruption has not been tackled by any study at the regional level, it has become mandatory to study it deeply for its impact on the interests of the countries of the region. Thus, the 20<sup>th</sup> plenary of the Middle East & North Africa Financial Action Task Force (MENAFATF) held in Bahrain in November 2014 which agreed on the recommendation made by (TATWG) the technical assistance and typologies working group recommends to study of new typologies project in the field of money laundering and corruption. The plenary approved the project plan during the meetings of the Sultanate of Oman (April 2015) and urged the member states to fully cooperate in order to achieve the project through the participation in the working group due of the importance thereof. Qatar and Lebanon lead the project and the working group which is consist of experts from Saudi Arabia, Sudan, Tunisia, Morocco and a representative of the United Nations Office. Fifteen of the MENAFATF's member countries participated in the project to respond to dedicated questionnaire distributed and provided information and cases, included: UAE, Bahrain, Tunisia, Saudi Arabia, Sudan, Iraq, Oman, Palestine, Qatar, Kuwait, Lebanon, Egypt, Morocco, and Yemen.

The importance of this subject lies in the fact that it continues to be a problem in many countries around the world and it is causing significant damage to countries at various political, social and economic levels. In the same context, most of MENAFATFs member countries have joint to the United Nations Convention against Corruption, then followed by a series of legal reforms to prevent corruption practices and to punish the perpetrators, the establishment of specialized anti-corruption bodies, the development of anti-corruption national strategies, and the involvement of the civil society in those efforts.

The Financial Action Task Force (FATF) stressed on the link between corruption and money laundering and emphasized that the AML/CFT measures help in combating corruption, due to the close link between these two financial crimes.

The United Nations Convention against Corruption is binding to all States Parties. Pursuant to the provisions thereof, the Member States Parties conduct a peer review process in accordance with adopted mechanisms to assist States Parties in implementing the convention by identifying the success factors and difficulties facing these states, identifying their technical assistance needs, and identifying the best practices implemented and the challenges faces of these states.

However, the importance of this Convention reflected in its common provisions with the recommendations of the FATF revealing the complementarity between AML and anti-

corruption efforts, allowing the concerned authorities to adopt unified measures in the context of anti-money laundering and anti-corruption.

We can notice these intersections clearly as in the following points:

- *Criminalization of ML*
- *Establishment of FIU*
- *Customers Due Diligence procedures*
- *National cooperation and coordination*
- *Transfer procedures*
- *Joining to the United Nations Convention against Corruption*
- *Politically Exposed Persons (PEPs)*
- *Adoption of risk-based approach*
- *International cooperation*
- *Procedures regarding transparency, real beneficiaries and legal persons*

This report clearly highlights the issue of corruption proceeds laundering in the Middle East and North Africa region. During the preparation of this report, 56 cases of money-laundering were examined at different stages of investigation and prosecution procedures, some of which were cases presented by the working group member countries<sup>1</sup> that worked on this project while the data of the other cases were extracted from the settled cases published on the asset recovery initiative established in partnership between the World Bank and the United Nations Office on Drugs and Crime (UNODC). The purpose of the preparation of this report is to achieve the following:

- I. Better understanding of the extent and scope of the problem of corruption and laundering of its proceeds at the regional level through data collection and review of the researches and available studies.
- II. Identifying the methods and tools used in laundering the corruption proceeds and providing a range of examples and case studies ,where possible.
- III. Identifying the main challenges and problems that arise in the context of revealing corruption proceeds laundering.
- IV. Identifying a list of suspicion indicators, or any other information that may be used by the concerned authorities.
- V. Giving examples to highlight the role of AML/CFT measures in preventing or detecting corruption proceeds laundering.
- VI. A brief overview of the legal and regulatory frameworks of combating corruption, in particular the United Nations Convention against Corruption, in order to consider its requirements , to assist the member states in its implementation ,as well as to determine its interaction and complementarity with the international standards to combat ML/TF.

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<sup>1</sup> Bahrain, Egypt, Emirates, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan and Tunis.

# **Chapter (1): Money Laundering and its association with the phenomenon of corruption**

## **1.1 Summary of related typologies reports published by the Financial Action task Force (FATF):**

The Financial Action Task Force (FATF) adopts several studies and reports at the disposal of the countries, in order to contribute in identifying how to use AML/CFT measures to fight corruption crimes. FATF published over the past six years several papers showing the firm link between money laundering crimes and corruption crimes and confirming that the mechanisms adopted by the FATF to counter the phenomenon ML which may strengthen the anti-corruption framework. In this context, we refer to some of these papers which are include the following: the best practices paper concerning “the use of the FATF Recommendations to Combat Corruption<sup>2</sup>”, FATF Report “Specific Risk in Laundering the Proceeds of Corruption” - assistance to reporting institutions<sup>3</sup>” paper, “laundering the proceeds of corruption<sup>4</sup>” paper, the FATF guidance “Politically Exposed Persons”, and the typologies project reports on ML and corruption.

### **1.1.1 The FATF report on laundering the proceeds of corruption (July 2011):**

The report treats the most commonly used methods in laundering the proceeds of corruption, which may take many different forms depending on the nature of the corruption act. The report also describes the most common acts of corruption, which include the following: receiving bribes or commissions, extortion, self-dealing and conflict of interest, as well as embezzlement through fraudulent methods.

The report provided case studies of such acts applicable to all known stages of money-laundering, which are the stages of placement, Layering and integration. It also provided an analysis of a range of methods to launder the proceeds of corruption as follows:

- Using legal arrangements and trustee funds since they facilitate hiding of the beneficiary identity, the difficulty in accessing the records and documents as well as its easy activation and deactivation in most states.
- Using Gatekeepers or persons who protect the financial system gates from potential users of the system, including money launderers, who often must resort to professional competencies to integrate crime proceeds into the financial system in smooth and unattractive ways.
- Using local FIs especially by Politically Exposed Persons (PEPs) as the report focuses on them, whom were not subject to the enhanced Due Diligence measures (before the last

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<sup>2</sup> Best Practices Paper: The use of FATF Recommendations to Combat Corruption, October 2013.

<sup>3</sup> Specific Risk Factors in the Laundering of Proceed of Corruption – Assistance to Reporting Institutions, July 2012.

<sup>4</sup> Laundering the Proceeds of Corruption, July 2011.



amendment of the FATF Recommendations in 2012), as it is the case for the foreign Politically Exposed Persons (PEPs), particularly in regard to the source of their funds deposited in local financial institutions. It was found in several cases presented in the report that these persons needed local bank accounts to finance their needs and lifestyles.

- Using free financial zones or foreign countries, as revealed by the case studies of corruption due to the use of foreign bank accounts in most of these cases, due to the privilege is thereof offered to the concerned person in terms of security, stability and confidentiality, as well as the investigation difficulty imposed on the State.
- Using trusted partners or family members to help (PEPs) in hiding and transferring the proceeds of corruption. This is a common method according to the case study conducted by the FATF.
- Using cash, which has long been considered as a way to launder the proceeds of crime by depositing it into the financial system, due to its unknown nature, which cannot be linked to a specific identity and does not leave any tangible trace making it a preferred method for a number of money launderers regardless of the type of the original crime.

On the other hand, this report tackles the weaknesses that may increase the risks of laundering the proceeds of corruption in specific regions or states. For instance, the control over a country or the control (individually or in cooperation with other illegal perpetrators) over all the authorities in a country which allows hiding any trace of an unauthorized source of funds, as well as the unrestricted transfer or use thereof. In addition, the easy preserving of financial institutions and casinos also constitute an important weakness point and therefore it must be ascertained that it is not under any illegal influence or authority, in terms of its administration or ownership. The ineffectiveness of strict care measures as well as the ineffectiveness of communication and cooperation between financial institutions and countries in general, that remain the most important weakness contributing in the creation of an appropriate environment for crime proceeds laundering and the increase in the criminal activity in general.

In this framework, the report presented a set of typologies to launder the proceeds of corruption using these techniques in addition to the case studies as examples thereof and concluded the need to strengthen the capacity of reporting institutions in verifying the relevant persons and entities and the nature and purposes of the operations, as well as to enhance the ability to detect suspicious transactions regardless of the techniques and tricks used to launder money.

### **1.1.2 The FATF Report on the specific risk factors related to laundering the corruption proceeds (June 2012)**

This report aims to assist financial and non-financial institutions, under the FATF recommendations, to report suspicious transactions as they are committed to apply due diligence in ML/TF measures, to better examine and understand the risk factors that may enable them in identifying cases of corruption crimes related to money laundering crimes. The report therefore relied on analyzing previously reported cases in order to determine the common

points between them, as well as studying the published papers related to the subject by non-governmental organizations, academics and other experts in order to identify the type of cases representing real risks of corruption proceeds laundering.

As for the above-mentioned risks factors, they were classified into three categories; the first of which is related to clients, the second is related to the state and geographical factors, the third category is related to products, services, operations and distribution channel:

### **Risks factors related to customers:**

address Three different types of clients, as follows:

1. **Politically Exposed Persons (PEPs) and other public officials:** the reporting institution takes into consideration two key factors that make these persons different, at the degree of risk to which they are exposed: the nature of their job, the nature of the account or the business relationship and the purpose thereof.
2. **Legal persons and legal arrangements:** such as companies, institutions and fiduciary funds that do not indicate by being established or participating in a particular business as relation of a high risk; whereas some factors related for instance to the nature of the relationship between the client and the type of transaction that may indicate the existence of ML risks through the use of the concerned legal person or legal arrangement to access the financial system while hiding the identity of the BO. The reporting institution is required to reveal the identity of the real person controlling the legal person or the legal arrangement and to explain the true purpose of the business relation and transactions.
3. **Relevant economic sector:** the nature of the economic sector in which a client is active or of a particular transaction also affects the level of risks. The phenomenon of corruption may occur in any sector anywhere in the world, however detailed case studies on corruption crimes proved that some sectors remain more vulnerable than other sectors to this phenomenon.

### **Risks factors associated with the country and the geographical factors:**

The degree of risks of ML and corruption varies from one country to another and thus the geographical factor has a paramount importance when evaluating risks related to the laundering of proceeds of corruption.

The reporting institutions can take a number of factors into account to determine whether a state belongs to the high-risk category. We mention below the following factors:

- **The country's comprehension of the global anti-corruption framework:** Through the ratification of relevant conventions and the integration thereof into the anti-corruption and anti-money laundering internal systems. For example, the provisions of the Convention against Corruption generally represent the general framework of anti-corruption policies, as well as these provisions are significant importance to any effective anti-money laundering and counter-terrorism financing system. The ratification of the convention and

its full implementation is one of the requirements provided for in recommendation no (36) of the FATF recommendations. The anti-corruption convention requires institutions to implement asset recovery provisions by “verifying the identity of clients, taking adequate measures to identify the identity of the BO of funds deposited in high value accounts, carrying out serious examination of accounts owned or to be owned by persons in their own capacity or on behalf of others, when entrusted with important public functions, and getting to know their partners and family members”. There is no doubt that this commitment is clearly in line with the FATF requirements provided for in recommendation no (12) regarding to Politically Exposed Persons (PEPs) even if the scope of commitment in the convention is broader.

- ***Adopting specific anti-corruption measures:*** As in addition to the general anti-corruption system there are specific measures, which are very important to the reporting institutions when evaluating the risks of corruption to a state. These measures include the financial disclosure or properties declaration by public officials, which facilitates the detection of unjustified wealth or illicit enrichment, as well as revealing the public contracts. The assessment of funds of a close confidential contract with a government entity should receive significant attention than funds resulting from a transparent transaction, as contracting with a government entity remains a source of risk, especially if it is not subject to scrutiny by other authorities.
- ***Implementation of internationally adopted money-laundering standards:*** Referring to the FATF forty recommendations, constituting a main reference in the risk assessment of laundering the proceeds of corruption, as the country that considers the compatibility between its national system and these standards is less vulnerable to money laundering risks in general and corruption proceeds laundering risks in particular. Furthermore, the FATF relies on two mechanisms to assess the adequacy between the internal systems and the forty recommendations. In addition to the mutual assessment process imposed on the regional FATF member states, the countries included in the category of high-risk countries are subjected to a follow-up by the International Cooperation Review Group (ICRG) of the FATF, to be monitored according to the level of identified risk. The publication of the results of these two mechanisms constitutes a source of information to the reporting institutions, which help them understand and determine the level of risk of a state.
- ***Accreditation of corruption indicators:*** A set of indicators has been developed to measure corruption, some of which measure the perception of corruption in a country, and others measure specific factors that must exist (or are absent) in a less corrupt state. Among these indicators, is the Corruption Perceptions Index (CPI) published annually by the international transparency organization<sup>5</sup> and is used widely and cited as a reference in the

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<sup>5</sup> [www.transparency.org](http://www.transparency.org)

framework of the FATF mutual assessment. There are as well the governance international indicators of the World Bank (Worldwide Governance Indicators (WGI<sup>6</sup>)), aiming at measuring the quality of a country's governance, for its positive impact on the risks of corruption. In addition, thereto, there is another type of indicators not based on perception, but rather on information and standards relating to corruption areas. For instance, we mention the anti-corruption business gate<sup>7</sup>, which aims at supporting small and medium sized projects operating in emerging markets or developing countries by providing them with easy and practical tools, as well as information on international and regional anti-corruption conventions and initiatives.

### **Risk factors related to products, services, operations or distribution channels:**

The FATF affirms in the explanatory memorandum of the tenth recommendation that the risks of corruption are considered a high risk of ML. It was shown in this context that the perpetrators of corruption crimes use the same money laundering techniques of other organized crimes in order to concealment the proceeds of corruption. Many examples include private bank services anonymous transactions that may include cash transactions, non-face-to-face business relationships or transactions and payments from anonymous or unconcerned third parties.

### **1.2 Relation between the fight against ML and corruption and the role of FATF recommendations in the fight against corruption:**

#### **1.2.1 Relation between combating ML and fighting Corruption:**

AML is considered a cornerstone in fighting organized crimes or crimes resulting in financial proceeds, whereas the implementation of AML measures prevents the criminals from illicit proceeds of their criminal acts as well as detect the identity of the persons providing assistance in order to launder these proceeds.

The crime of corruption does not constitute an exception in this context, since corruption crimes such as bribery, embezzlement, exploitation of power and exploitation of public and private sector jobs are also committed for personal gains. Therefore, the perpetrators of these crimes do not spare an effort to concealment their identities or the source of the funds through entering them into the financial or non-financial system without revealing or raising any doubts, as adding the legitimacy aspect thereto enables them to enjoy and to use these funds without any fear.

It should be noted that levels of ML and corruption are rising in parallel to each other, according to the Global Corruption Reports of the Transparency International Organization, especially in countries lacking accountability and transparency systems.

The link between the crime of ML and corruption crimes also appears requirements provided for in the relevant international standards relating thereto, which are directed towards the same

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<sup>6</sup> [www.govindicators.org](http://www.govindicators.org)

<sup>7</sup> Anti-corruption Gate is formed of the companies of the public and private sectors between a group country such as Austria, Denmark and Germany, as well as a private consultation company specialized in combatting corruption and fraud and developing the business [www.business-anticorruption.org](http://www.business-anticorruption.org)

purpose in terms of the nature of the procedures taken to combat or prevent them. In view of the wide extent of the relationship between the two crimes, international conventions have included corruption among the original ML crimes including the United Nations Convention against Transnational Organized Crime (Palermo, 2000). The United Nations Convention against Corruption (October 2003) included Money Laundering among corruption related offences and devoted a part of its provisions to the role of the Financial Information Unit (FIU).

### **1.2.2 Role of Financial Action Task Force FATF anti-corruption recommendations:**

The Financial Action Task Force FATF gives high importance to the fight against the crime of corruption due to the significant damages to the economic development and the global financial system. In addition to the fact that corruption contributes in the increase of these crimes proceeds laundering, it also contributes in facilitating the laundering of the proceeds of other predicate offenses due to the negative impact of corruption on the national AML system in general. The scope of corruption within the legislative institutions and judicial institutions leads to the disruption of the laws and thus to facilitate the work of money launderers. In addition to the aforementioned, the increase in the level of corruption in the private sector negatively affects the performance of persons committed to due diligence and reporting procedures, thus influencing the effectiveness of the fight against ML within the country, which encourages the people to commit other crimes and launder the proceeds thereof easily. In this context and based on the, the Group of Twenty (G-20) requested from the FATF to address this phenomenon within its role in fighting ML/TF due to the impact of the FATF recommendations in combatting corruption and its effectiveness in combating corruption proceeds laundering. The objectives pursued by countries in the fight against corruption intersect with their efforts deployed to combat ML, whereas the most important of these objectives can be summarized as follows:

- Maintaining the integrity of the public sector and the private sector.
- Protecting public and private sector institutions from any exploitation by criminals.
- Increasing the transparency of the financial sector and the economic system in general.
- Linking responsibility with accountability.
- Facilitating the detection, investigation and judicial prosecution in cases of corruption, ML and the recovery of funds and stolen assets.
- Encouraging any reporting of corruption operations through the witness and whistle-blowers protection program.
- Combating predicate offenses, including corruption, through anti-money laundering measures.

## **1.3 The United Nations Convention against Corruption and listed crimes therein:**

### **1.3.1 Measures to prevent ML (arts. 14, 52)**

Article 14 of UNCAC sets out a series of measures to ensure that States have in place legal and administrative regimes to prevent and detect money-laundering. These provisions must be implemented in the context of each State's regulatory and supervisory regime against money-laundering, in which customer identification, record-keeping and reporting requirements are

addressed (art. 14(1)(a)). The overall objective is to establish a comprehensive regime that facilitates the identification of AML activities and promotes information exchange at the national and international levels (art. 14(1)(b)), building on the AML initiatives of other regional, interregional and multilateral organizations (art. 14(4)).

More specifically, States must consider adopting measures to monitor the cross-border movement of cash and other monetary instruments (art. 14(2)), and to require financial institutions to collect information on originators of electronic fund transfers, maintain information on the entire payment chain and scrutinize fund transfers with incomplete information on the originator (art. 14(3)).

Article 52 builds on the prevention measures of chapter II, especially article 14, and specifies a number of measures States must put in place to prevent and detect the transfer of “proceeds of crime”, defined as any property derived from or obtained, directly or indirectly, through the commission of an offence (art. 2(e)). Paragraphs 1 and 2 of article 52 address the cooperation and interaction between national authorities and financial institutions. The commitments imposed on financial institutions may be applied and implemented with due regard to the risks of money-laundering<sup>8</sup>.

Article 52(3) sets out the record-keeping commitments of financial institutions, while paragraph 4 requires States to implement effective measures to prevent the establishment of banks that have no physical presence and that are not affiliated with any regulated financial group (“shell banks”).

Paragraphs 5 and 6 of article 52 require that States consider adopting, in accordance with their domestic law, financial disclosure commitments on the part of public officials and establish appropriate sanctions against violations. Paragraph 5 further requires that States consider adopting measures to permit their competent authorities to share financial disclosure information with their foreign counterparts. The commitment to consider adopting reporting requirements for public officials having an interest in or signature or other authority over a financial account in a foreign country, as well as related record keeping requirements, are contained in paragraph 6.

### **1.3.2 Criminalization (arts. 23)**

Despite the wide scope of the offence and its complex nature, there is considerable uniformity among States regarding the criminalization of money-laundering in the anti-corruption context. As evidenced by the UNCAC country reviews, national AML frameworks have developed on the basis of the principles in other international instruments, including—in addition to the UNCAC—the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized of 2000. The important role of mechanisms, such as the and similar bodies, in

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<sup>8</sup> UNCAC Interpretative note, A/58/422/Add.1

harmonizing the national legislation is also evidenced by the country reviews (see also art. 14(4)). Below is a summary of the main issues encountered in implementing these provisions, focusing on variations among MENA-FATF countries where applicable:

- **Criminalization** – Article 23 of UNCAC requires States to establish four offences related to the laundering of proceeds of crime:
  - (i) Conversion or transfer of ownership knowing that its proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or helping persons involved in the commission of the predicate offence to evade the legal consequences of their action;
  - (ii) Concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds of crime;
  - (iii) Acquisition, possession or use of proceeds, subject to the basic concepts of the legal system; and
  - (iv) Participatory acts to ML (including those committed outside the jurisdiction (art. 42(2)(c)), subject to the basic concepts of the legal system<sup>9</sup>.

Almost all countries have taken measures to establish the ML offences prescribed under article 23. The most common challenges relate to the scope of predicate offences committed within and outside the jurisdiction, the application to offences under the Convention, as well as the coverage of specific acts of laundering and participatory acts. Overall, there is little variation in the implementation of the measures among MENAFATF countries and the rest of the world (see Table 1 below).

- **Predicate offences** – Countries must apply the AML offence to the widest possible range of predicate crimes<sup>10</sup>, and at a minimum to all UNCAC offences. A prior conviction on the predicate offence is not necessary to establish the illicit nature or origin of laundered assets<sup>11</sup>. In this respect, most countries parties have adopted an “all-crimes approach” that does not restrict application of the AML offence to specific predicate offences or categories of predicate offences. On the other hand, some countries (including MENAFATF countries) follow either a threshold approach, applying the law only to “serious” or “socially dangerous” predicate crimes or felonies, as defined in the national legislation, or apply a list of enumerated offences; both approaches often fall short of covering all UNCAC offences.

Regarding predicate offences committed outside the jurisdiction, most countries apply dual criminality principles, recognizing the predicate crime only on condition that the relevant conduct is also punishable in the country where it was committed (art. 23(2)(c)). In several countries, issues were encountered with respect to the coverage of foreign predicate offences.

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<sup>9</sup> Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of money-laundering.

<sup>10</sup> “Predicate offence” is defined as any offence as a result of which proceeds have been generated that may become the subject of a money-laundering offence (art. 23(h)).

<sup>11</sup> UNCAC Interpretive note, A/58/422/Add.1, para. 32.

- **Self-laundering**-should be criminalized, except where otherwise required by the fundamental legal principles of the country (art. 23(2)(e)). Implementation gaps in this respect were not identified among the MENAFATF countries.

### 1.3.3 Detection, freezing, seizure and confiscation (art. 31)

Countries must provide for the confiscation of proceeds of crime derived from UNCAC offences, as required by article 31 of UNCAC, whereby the term “confiscation” is understood to mean the permanent deprivation of property by order of a court or other competent authority, in accordance with article 2(g). Indeed, almost all countries have adopted measures to this effect by using appropriate statutory definitions of “proceeds”, through jurisprudence, or by making use of the value-based approach (see below), according to the merits of each case. Confiscation usually constitutes an additional criminal sanction, thus requiring a prior conviction, although several countries have opted for civil mechanisms with lower evidentiary standards. In all cases, countries must ensure that all UNCAC offences are covered by national provisions as below:

- **Proceeds and instrumentalities** – Confiscation mechanisms must apply not only to proceeds of crime derived from corruption-related offences, but also to property, equipment or other instrumentalities used or destined for use in offences. This requirement is satisfied in the most countries.
- **Value-based confiscation** is possible in several countries (including MENAFATF countries) as an alternative to property-based confiscation, based on a determination of the value of proceeds and instrumentalities of crime and the confiscation of an equivalent value (art. 31(1)(a)). Alternative mechanisms, such as extended powers of confiscation and non-conviction-based forfeiture, are further identified as good practices in countries that have introduced and developed corresponding regimes.
- **Identification, tracing, freezing and seizure** – Countries are required to adopt, as specified in art. 31(2), measures to enable the identification, tracing, freezing or seizure of proceeds and instrumentalities for the purpose of eventual confiscation. “Freezing” or “seizure” is defined as 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 (UNCAC, art. 2(f)). The effectiveness and expediency of the applicable procedures is of importance, and the significant role of national financial intelligence units and their powers to access financial accounts and banking records under AML/CFT frameworks are observed across countries.
- **Bank secrecy restrictions** – Procedural requirements to facilitate the operation of the provisions of article 31 (and of article 55, on the international cooperation for purposes of confiscation) are set forth in article 31(7). Countries are required to ensure that bank, financial and commercial records are subject to compulsory production and that bank



secrecy restrictions are overcome. Indeed, almost all countries have procedures in place allowing their courts or other competent authorities to order that such records be made available or seized, frequently through national FIUs in the context of AML investigations.

- **Administration of property** – Several countries, in particular MENAFATF countries (see Table 2 below), face issues regarding the administration of frozen, seized and confiscated property, as required by art. 31(3). In this regard, the administration of seized and frozen assets presents challenges for implementing countries, and a need to develop clear and comprehensive rules to ensure the cost-effective conservation of property across various situations and assets, no matter how substantial, is observed. Specific challenges were identified in the management capacities of States and the determination of appropriate asset management systems (e.g., agencies authorized to administer property or skilled persons, such as custodians, curator bones, receivers, asset managers and administrators). In general, no clear trends or policies on the use and disposal of confiscated assets are identified.
- **Transformed, intermingled and secondary proceeds** – Countries must ensure that measures on freezing, seizure and confiscation also extend to proceeds of crime that have been transformed or converted (art. 31(4)) or have been intermingled with property acquired from legitimate sources (art. 31(5)), as well as to income or other benefits derived therefrom (art. 31(6)). Gaps were found in the legislation of a significant number of countries, in particular MENAFATF countries (see Table 2 below), regarding one or more of the above types of property, especially in countries that do not have value-based confiscation.
- **Evidentiary standards** – statutory presumptions of evidence regarding the origin of assets belonging to defendants may facilitate the confiscation of proceeds of corruption (see art. 31(8), a non-mandatory provision). While evidentiary presumptions with respect to corruption offences are established in just over half of the countries under review, there was some regional variation in the application of the measures, and a number of challenges were reported, among MENAFATF countries (see Table 2 below). No apparent obstacles in the protection of the rights of bona fide third parties were encountered (art. 31(9)).

#### **1.3.4 Asset recovery (arts. 53-57):**

The recovery of assets is a fundamental principle of the Convention (art. 51). Chapter V of UNCAC contains important measures complimenting the AML commitments of countries and goes beyond previous conventions in establishing standards which, for many countries, require significant changes in the domestic law and institutional arrangements.

Chapter V sets forth procedures and conditions for asset recovery through direct recovery of property, including facilitating civil and administrative actions (art. 53), and through international cooperation, including recognizing and acting based on foreign confiscation orders (arts. 54 and 55). Article 57 contains important provisions governing the return and disposal of assets.

### 1.3.5 Financial intelligence units (arts. 58, 14(1)(b)):

In accordance with article 58, countries must cooperate to prevent and combat the transfer of proceeds of offences established in accordance with the Convention and to promote means to recover such proceeds. To that end, arts. 14(1)(b) and 58 require States to consider establishing FIUs to serve as national centres for receiving, analysing and disseminating reports of suspicious financial transactions.

### 1.3.6 Summary of implementation challenges:

As summarized in the tables below, there is little variation in the implementation of the AML measures among MENAFATF countries and the rest of the world: the main challenges relate to the scope of predicate offences and the coverage of specific acts of laundering and participatory acts.

With respect to the confiscation, freezing, seizure and detection of corruption-related offences, issues encountered by MENAFATF countries relate primarily to the coverage of transformed, intermingled and secondary proceeds; the administration of proceeds of crime, as well as related evidentiary measures.

**Table 1. Implementation of article 23 (MENAFATF countries in comparison towards global countries)**

| Most prevalent challenges in the implementation of article 23   | MENAFATF countries | 123 countries-Globally |
|---|--------------------|------------------------|
| Scope of predicate offences committed within and outside the jurisdiction and application to offences under the UNCAC.                        | 27%                | 28%                    |
| Application to specific acts of laundering (subpar as. (1) (a) -(b) (I) of art. 23), the acquisition, possession or use of criminal proceeds. | 7%                 | 20%                    |
| Coverage of participatory acts to ML, including association and conspiracy.   | 7%                 | 10%                    |
| Furnishing copies of legislation to UN.   | 7%                 | 19%                    |
| “Self-laundering” not addressed.  | -                  | 3%                     |

**Table 2. Implementation of article 31 (MENAFATF countries in comparison towards global countries)**

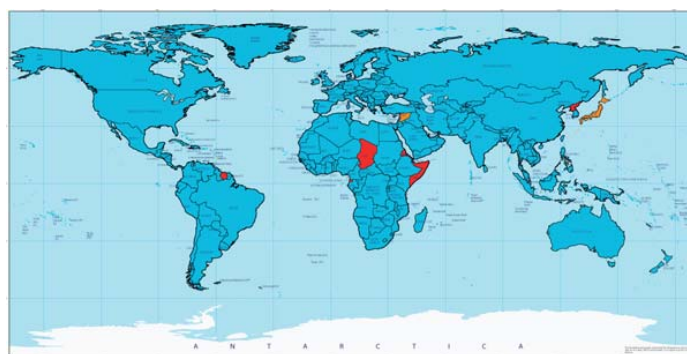
| Most prevalent challenges in the implementation of article 31   | MENAFATF countries | 123 countries-Globally |
|---|--------------------|------------------------|
| Coverage of transformed, converted and intermingled criminal proceeds, as well as income and benefits derived therefrom.                                      | 53%                | 18%                    |
| Challenges in the administration of frozen, seized or confiscated property.   | 47%                | 23%                    |
| Measures providing that an offender must demonstrate the lawful origin of alleged proceeds of crime.  | 33%                | 24%                    |
| Definition of criminal proceeds, property and instrumentalities that are subject to the measures in article 31.   | 13%                | 12%                    |
| Need to overhaul, enhance and ensure significant coherence of existing measures, frameworks and capacity to conduct asset confiscation, freezing and seizure. | 13%                | 5%                     |
| Absent or inadequate measures to facilitate confiscation and overly burdensome requirements (freezing and seizing assets).                                    | 7%                 | 24%                    |
| Other   | 13%                | 17%                    |

## 1.4 Corruption Crimes feature in the National Laws in the Middle East and North Africa Region:

Almost all countries of the MENA region are considered as member countries in the United Nation Convention according to the latest data published on the UNODC website and within the framework of commitment to the United Nations Convention against Corruption signed by the countries of the region. In the frame of commitment to the requirements of the Convention, its listed corruption offences and the mechanisms to be adopted ,in order to limit such crimes and consequences ,thereof at the national and international levels.

The information obtained by the working group based on the questionnaire shows the different degrees of integration of the provisions of the Convention into the national systems of these countries, depending on the internal context and the legal and regulatory structure of each country.

### Signature & ratification Status to the United Nations Convention against Corruption<sup>12</sup>



■ States Parties

■ Signatories

■ Countries that have not signed or ratified the UNCAC

Number of States signatories to the Convention:140

Number of States Parties: 181

This section was based on the analysis of the information contained in the questionnaire received by the working group from fourteen countries that participated in this study<sup>13</sup>.

### 1.4.1 Corruption crimes in the national legislations of member countries:

Based on the analysis of information received from eleven countries, it was shown that national legislations on corruption crimes in the MENA region is divided between laws of a general nature, such as the criminal law which is known in some countries as the penal code, the law of criminal procedures or the law of criminal rule, as well as the special laws governing specific areas such as the Anti-Illegal Enrichment Act, the Public Transactions Act, the Anti-Money Laundering Law, Law of Protection of Public Funds, Law of Competition Protection, Law of Public Offices...). In addition to the, some of the procedures related to corruption crimes are included in regulatory texts such as decrees, executive regulations and others.

<sup>12</sup> [www.unodc.org/unodc/en/treaties/CAC/signatories.html](http://www.unodc.org/unodc/en/treaties/CAC/signatories.html)

<sup>13</sup> Bahrain, Egypt, Emirates, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Sudan and Tunis.

These legislations include most of the corruption crimes set out in the United Nations Convention against Corruption, except for some crimes that are not listed in more than one country. The available information shows that the legislations of seven of the fourteen countries include all the corruption crimes mentioned in the United Nations Convention against Corruption, while it is found that certain acts are not criminalized in a number of countries, particularly with regard to bribery of employees of public international institutions, bribery of foreign public officials, bribery in the private sector, misappropriation of property in the private sector, abuse of power and illicit enrichment.

It should be noted that all countries that have participated in the questionnaire, had considered the crimes of corruption adopted in their national legislations, as original ML crimes except for one country, which laws criminalize the act of obstructing justice and this crime was not listed within its original ML crimes within the international standards. As well as, one country included three corruption crimes as original money laundering crimes (bribery of officials of public international institutions, bribery of foreign public officials and bribery in the private sector), although their laws do not criminalize such acts, which creates an issue at the practical implementation level.

On the other hand, the failures that have been recorded at the level of criminalizing acts of corruption in a group of countries are inevitably reflected in their commitment to recommendation no (3) on the crime of ML and related recommendations.

As for the level of penalties imposed on the perpetrators of these crimes, they vary depending on the type, nature and seriousness of the corruption crime as the severity of the penalty varies between countries, with some countries having severe and varied penalties while others are less stringent. For example, the penalty of execution was imposed in some aggravated cases in a country, and in one country, there penalties were imposed on the legal persons if involved in one of the corruption crimes.

Penalties can be classified as follows:

- ✓ Predicate penalties such as temporary imprisonment, lifetime imprisonment, execution or financial fines, and it may combine between imprisonment and fines.
- ✓ Ancillary offences such as isolation, demotion of the offender, deprivation the employment in the public sector or the deprivation from contracting with the government, as well as banning travel abroad or expulsion abroad.
- ✓ Supplementary penalties such as fines and confiscation.

However, the legislative system of one of the countries did not include consequential or supplementary penalties and was satisfied with basic penalties such as imprisonment and fines. For example, penalties in one of the countries differed between corruption crimes that constitute a felony and those constituting a misdemeanor. In both cases, financial fines and additional ones are applied, as well as imprisonment penalties, depending on the case.

It should also be noted that in most countries concerned, the judicial discretion of the criminal judge has a significant role in determining the penalty depending on the seriousness of the crime and its merits.

#### **1.4.2 Anti-corruption bodies and its relationship with FIU:**

With the exception of four out of the fourteen countries, these countries have established national anti-corruption entities, all of which have been assigned to the same tasks as defined under the United Nations Convention against Corruption and which are carried out in cooperation with other national organizations, including the Financial Information Unit (FIU) which is in charge of combating money laundering. We mention as an example of these tasks and specialties:

- ✓ Implementing and following up the implementation of the commitments contained in the United Nations Convention against Corruption and the relevant international conventions.
- ✓ Directly prosecuting the corruption crimes by receiving reports and complaints, by carrying out an investigation and search and then referring the files to the competent authorities.
- ✓ Strengthening the reporting system of violations and acts suspected of being linked to corruption crimes and protecting the whistle-blowers.
- ✓ Enhancing the cooperation at the local and international levels.
- ✓ Launching the national anti-corruption campaigns.
- ✓ Preparing national strategies and specialized programs and evaluating relevant legislations and regulations.

As for the cooperation with the FIU (according to the information available), it is usually of a complementary nature particularly in the matters of exchanging information, research and investigation due to suspicious reporting, participating in meetings to evaluate the system or developing strategies, as well as in the area of freeze, confiscation and recovery of assets, in addition to the cooperation in preparing and coordinating training programs and workshops in the field of combatting ML and corruption.

It should be noted that there are other entities and authorities in most of the countries with different competencies which are working alongside with the anti-corruption agencies and the FIU including administrative control bodies, control and investigation agencies, mediation agencies and other ones. In addition, some countries have established a court for corruption crimes and anti-corruption prosecution, or financial crimes departments in some courts and security agencies specialized in the field of economic crimes and fighting corruption. One of the countries have strengthened the role of parliamentary fact-finding commissions and public inspectorates.

As for the countries that did not establish special anti-corruption agencies, the other will undertake the above functions, such as administrative and financial control agencies, judicial bodies, public prosecution, law enforcement agencies or the State security body.

## 1.5 Volume of corruption proceeds laundering in the countries of the Middle East and North Africa:

Some studies estimate the assets obtained from some illicit activities to range between 20 to 40 billion USD as corruption proceeds, 500 billion USD from criminal activities, and 500 billion USD from tax evasion in a year, which is nearly 1 trillion USD annually, these proceeds are a result of the developing economies passing in a transition stage<sup>14</sup>.

According to the World Bank estimates, the amount of theft from the world developing countries annually is ten times as much as the international aid provided to them. Thus, if they succeed in fighting corruption, they can not only abandon international aid but also achieve budget surpluses. In an IMF study, it was found that an increase of only 0.78% as in the rate of corruption reduces the annual income by 7.8% of the annual income growth. As estimated, what has been lost due to corruption from the World Bank assistance since it was launched in December 1945 till now is 100 billion USD and the number reaches 200 billion USD that if the aid from other international banks was added<sup>15</sup>.

African countries lose 25% of GDP annually due to corruption practices, which amounts to 148 billion USD. This estimate includes funds obtained due to corrupt practices of bribery, illegal commissions and corruption in the contracts of public purchasers<sup>16</sup>.

Depending on the country's responses into the questionnaire on the size and scope of the corruption crimes and the laundering of its proceeds, this part is considered the part the most lacking in information. It can be concluded that there is no data on the extent of corruption and the amount of money derived from corruption, which is laundered by most participated countries, this may be due to the difficulty in identifying the normal volume of corruption crimes, since they are carried out in secret like other financial crimes and only a number of these crimes are caught since there is in often a common interest with all the corruption crime parties which prevent any party of the crime from reporting it. It can be useful to benefit from the statistic published in this regard, particularly the statistic included in the report prepared by the Global Financial Integrity Organization regarding to the illicit flow of cash in developing countries from 2004 until 2013, as the report provides the following statistics:

### Volume of Cash flow associated with the Gross Domestic Income (GDP) in Billion US Dollars

| Region  | 2009 | 2010 | 2011 | 2012 | 2013 |
|---|------|------|------|------|------|
| Middle East, North Africa, Afghanistan and Pakistan | 2.2  | 1.9  | 2.5  | 2.0  | 2.1  |
| Asia  | 3.0  | 4.0  | 3.2  | 3.6  | 3.5  |

In accordance with available information on the most frequent crimes, we found that the following corruption crimes are being committed in most of the countries:

- *Bribery of national public officials*
- *Exploitation of positions*

<sup>14</sup> Stolen Asset Recovery (\*) Initiative; Challenges Opportunities and Action Plan, the World Bank, 2007, p. 9

<sup>15</sup> <http://web.worldbank.org>

<sup>16</sup> Stolen Asset Recovery (\*) Initiative

- *Abuse of power*
- *Embezzlement of properties in the private sector*
- *Embezzlement of properties by a public official*

These crimes are often committed in public sector such as ministries and public institutions as well as in some domains of the private sector such as FIs and private institutions including banks, money exchange companies and insurance companies. However, the following was noted based on the analysis of the answers given by the participated countries:

- In terms of the authorities that detected suspicious transactions related to corruption proceeds laundering during the last five years (2011 – 2015), it was noted that these crimes are limited at most of the countries in banks and at the general prosecution.
- In terms of reporting suspicious corruption proceeds, the number thereof varied from one country to another, as the number of these reports ranged between fifteen and twenty reports in some countries during the last five years. However, the number of reports in one country exceeded 12.000 reports, at a rate of 2400 reports per year. It must be noted that the statistics of the remaining five countries did not record any numbers worth an analysis.
- In terms of the cases subjected to investigations from 2011 until 2015 and the size of money associated thereto, we received three answers in this regard as the analysis showed a significant variation. At the time where the number of the investigated cases witnessed an increase from 700 cases in 2011 to exceed 1200 cases in 2015 in one country, this number witnessed a decrease in other countries to two or three cases a year.
- As for the size of money associated with the investigated cases, it also a remarkable variation between the countries that submitted statistics in this regard, as the size of the money decreased in one of the two country from 16 million USD in 2011 to reach 5 million USD in 2015, while in another country, the size of money was 1 million and 300 thousand USD in 2011 and 775 thousand USD in 2012 to increase up to 10 million USD in 2013, then 2 million 790 thousand USD in 2014 and 3 million 600 thousand USD in 2015.
- As for the number of corruption proceeds referred to a court of law and the number of cases ,in which a judgment was rendered from 2001 until 2015 remain very low based on the available information. It must be noted in this regard that the working group prepared statistics based on the answers of three countries only where the number of referrals in two countries varied between one or two referrals per year while this number reached around 600 referrals in the remaining country. We must also point out that only one country rendered judgments in this regard at a rate of one judgment per year.
- In terms of the size of corruption proceeds funds recovery, the working group received information from only two countries in this regard. One country was able to recover funds associated with corruption from 2011 until 2015, as the value of the recovered funds that was 8 million USD in 2011 increased to reach 10 million USD in 2012 and then decreased

down to 560 thousand USD in 2014 versus nothing in 2013 and 2015. As for the second country, the value of these funds increased from 4 million USD in 2012 to 4.5 million USD in 2013, 6 million USD in 2014 and then exceeded 122 million USD in 2015.

Due to the remarkable decrease in reporting a suspicious laundering the corruption proceeds, as well as the conviction rates in these crimes, the team in charge of preparing this study recommends the region countries to study the following reasons considered in general factors that affect the effectiveness of the anti-corruption system in the states:

1. The lack of prioritization of the fight against corruption crimes in the national strategies of few countries, which reflect the level of importance thereof.
2. Focus of the efforts in some region countries on the original crime (any corruption crime) rather than the crime of laundering the corruption proceeds.
3. The insufficient of institutional coordination, in few countries, particularly between Anti-corruption bodies, FIU, and litigation parties.
4. Lack of strictly and effectiveness of the control systems over persons bound to report (in some countries), in order to ensure the full compliance with the local laws provisions.
5. Weakness of the capacities of the persons bound to report a suspicious laundering the corruption proceeds transactions in some cases.
6. Weakness of technical methods used, in few countries, in analyzing the financial reports that may enhance the possibilities of presenting the sufficient proofs for conviction in corruption and money laundering crimes.
7. Absence of judicial authorities specialized corruption crimes investigation in some countries, leading to the lengthiness of the litigation period.
8. Competency of specific courts of law in ML cases that are not necessarily, the same courts competent in the predicate offenses, in few countries.
9. Insufficient human and technical resources allocated to fight corruption.
10. Lack of adequate specialized training for investigators, prosecutors and judges in financial investigation techniques and what distinguishes them from other traditional methods of criminal investigations.



## **Chapter (2): Methods and Tools of laundering the proceeds of Corruption Crimes**

The FATF considered the issue of laundering the proceeds of corruption crimes with a significant importance, which is clearly reflected in the application report published in 2011 entitled “laundering the proceeds of corruption” referred to in Chapter (1). The report of the FATF mentioned in the context of grand corruption crimes confirmed that the main crimes resulted in proceeds which come as the following: 1. Direct bribe or through commissions, 2. Extortion, 3. Profit and conflict of interest, 4. Embezzlement of state funds by fraudulent ways.

The report of the Financial Action Task Force (FATF) mentioned in 2011 indicated that one of the methods used in laundering the proceeds of corruption crimes is the establishment of companies or legal entities as well as the exploitation of gatekeepers and offshore and inshore FIs, in addition to the use of registered owners (or brokers) or cash funds methods.

As for the crime of bribery of public officials and those entrusted with prominent functions, the laundering of the proceeds of this crime varies between the use of legal persons and credit funds (corporate vehicles) to transfer cash flow to its accounts or its interest using the form of registered owners (nominees) representing in most of the cases close family members such as the wife, parents or children. The same method was used in the crime of embezzlement of properties by a public official and the crime of abuse of the functional powers, although the last category of crimes was characterized by the use of offshore factors to own real estate properties in order to concealment the proceeds thereof.

In the frame of understanding the methods of ML resulted from the corruption crimes specified in the United Nations Convention against Corruption in the Middle East and North Africa, the second part of the questionnaire distributed by the FATF Secretariat , has included questions about the most frequent corruption crimes as per the registered reports and cases ,as well as the methods of laundering the proceeds of these crimes, in addition to collected and analysed practical cases.

### **2.1 Questions Analysis:**

#### **2.1.1 The used methods:**

##### **First: Monetary Use:**

The monetary use is considered one of the most prominent and famous methods in ML, not only in the region countries, but also around the world, as it ensures the necessary anonymousness and does not leave any traces noticeable by the perpetrator of the original crime or ML crime. The cases are subjected of the studies, which included the use of monetary in some cases and involving large sums in other cases, due to the advantages offered by the monetary. Thus, the foreign quote of the global administrator, Mr. Jack Welch, “cash is king” is still true.

Despite the lack of clear data in some cases involving the purchase of assets outside the countries where corruption crimes were committed, it does not rule out that some of the funds used in the execution of cross-border ML transactions were brought through cross-border physical transportation of funds.

There is no doubt that an organized and increased control over cross-border monetary transfer which is needed in the region countries and in many other countries. Thus, it is deemed necessary for the MENAFATF to focus on this issue in the next phase.

### **Second: Using FIs:**

This method is considered the most important and best choice used by the perpetrators of predicate offenses and ML, not only because it provides a safe place to deposit the money to be laundered but it also allows to dispose the money in any way or method wanted by the perpetrator once the illegal funds were deposited at the FIs.

The cases presented by the countries of the region that proved that most of these transactions were committed through using different types of FIs, particularly banks and securities companies. This method comes in line with the methods specified by the FATF in the paper regarding to, and the paper of corruption proceeds laundering. There is no doubt that the financial sector at any country constitutes the main factor through which the funds are directed towards the desired uses.

### **Third: Legal Entities Establishment (Corporate Vehicles):**

This method is considered a traditional method still used to concealment the criminal activity proceeds of various types such as trust funds, limited liability companies, limited liability private or public institutions or companies, international business companies and others. The OECD report of the year 2001 indicated that a wide variety of commercial activities<sup>17</sup> is conducted through the legal entities that may own several assets that may be exploited to concealment criminal activities proceeds.

The FATF report of the year 2011 regarding to the corruption proceeds laundering indicated that several factors contribute in the increase of risks of corruption crime proceeds laundering through the establishment of companies and legal entities, as follows:

1. Easy establishment and dissolution of legal entities in geographical regions.
2. These entities can be established as a part of a chain of companies located in different geographical regions – multinational companies – while one person or several persons owns an entity in a geographical area from this area or other areas.
3. Using specialized agents to cover-up BO identity.
4. Easy adoption of the method of registered owners to disguise or to concealment the identity of the beneficiary.

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<sup>17</sup> Behind the Corporate Veil, Using Corporate Entities for Illicit Purposes <https://www.oecd.org/corporate/ca/43703185.pdf>

5. Presence of several legal entities established in some geographical areas, in order to concealment the identity of BO from the properties.

**Fourth: Using registered Owners Method (Nominees):**

This is a common method used to disguise and transfer the corruption proceeds, where most often the perpetrators use their families and relatives in hiding the trace of funds. Through the analysis of the case studies in the countries of the region provided to us, we found that this method is frequently used in the crime of embezzlement of properties by the public officials and the crime of abuse of the functional powers. It is very probable that this method was used repeatedly in the fund's recovery examples referred to hereinabove but since the details of these cases were not taken, this theory cannot be confirmed. Few examples submitted to us, that the mentioned cases where the perpetrators purchased real estates, cars and valuable products and registered them under other names such as in the name of their wives, family members or close partners for the purpose of disguising and hiding them.

**Fifth: Using offshore elements (registered owners or foreign accounts/property):**

This method is based on the use of jurisdictions that allow non-residents to have accounts and assets on their territory, in order to make it more difficult to investigate their source by the country, the money is transferred to it. By analysing the submitted case studies, this method is used in the countries of the region, through the external remittances, multiple external accounts, and the use of external third-party accounts.

**Sixth: Use of DNFBPs in laundering proceeds of corruption crimes:**

Although this method is not clearly mentioned in any of the cases submitted by different states, however it can be detected in few used methods mentioned hereinabove, such as the use of registered owners, and offshore accounts as well as purchase of real estates, cars and valuable products such as expensive cars and precious metals that require the involvement of non-financial professions such as lawyers in the registration of a real estate ownership, dealers of precious metals and stones, notary public in the registration of real estates and cars, and others. However, it should be noted that this ML method is not sufficiently addressed in the region, and thus it should be prioritized in the next phase.

It is clear from the methods of money laundering identified by analyzing the responses received from the countries participating in the study, and the cases reviewed through public sites, confirm there are significant similarities between the methods used in the MENA region and North Africa, and the methods included in the paper of the FATF regarding to laundering the corruption proceeds that was issued in 2011. Although the differences between the sociality of the people of these regions may impact the methods used therein depending on the economic and financial conditions, especially that some methods identified in the paper that were based on the answers provided by the countries indicated the absence of direct focus on some basic

ML methods, such as the use of DNFBPs and types of FIs beside banks and securities companies, such as insurance companies, financial leasing and real estate mortgage.

### 2.1.2 Used Tools:

The analysis of the questionnaires submitted by the participating states indicates the commonality of the following methods:

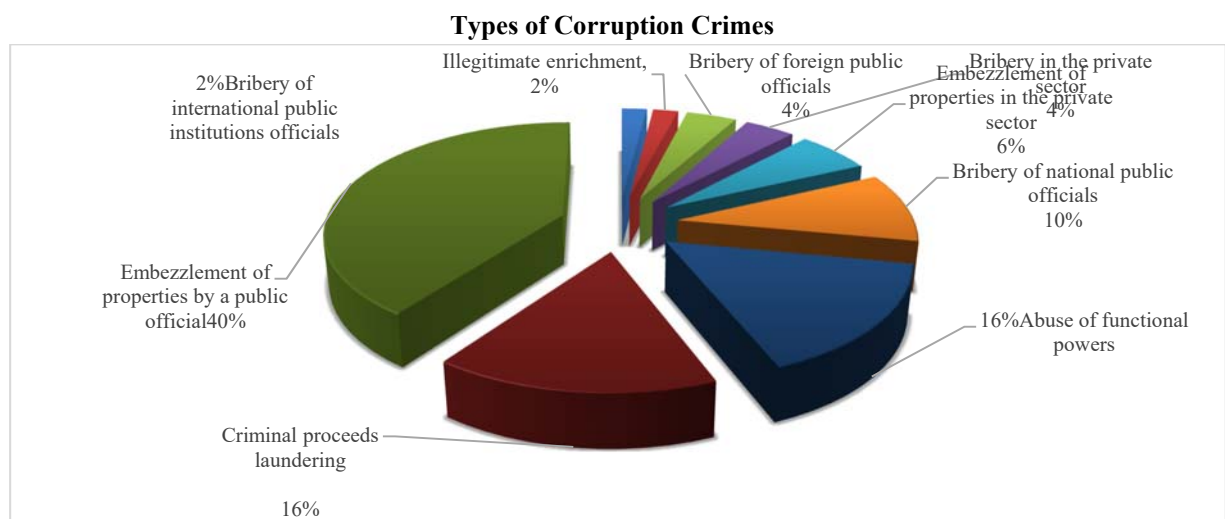
- *Checks*
- *Cash*
- *Purchase of gold and precious stones*
- *Money transfer*
- *Real estates*
- *Purchase of valuable products*

### 2.2 Case studies Analysis:

The understanding of the corruption proceeds laundering methods is strictly linked to understanding the extent of scope of corruption crime in the region. The analysis of the adopted methods is based on the predicate offenses analysed lead to ML crime and the category of the perpetrators thereof. The outcomes of the questionnaires analysed which was submitted by the participated countries and the case studies provided by opened sources in the number of 42 case studies, which proved that the main of the corruption crimes in the Middle East and North Africa region are as in the following order:

1. *Embezzlement of public properties.*
2. *Criminal proceeds laundered and abuse of functional powers.*
3. *Bribery of national public officials.*

The chart as below, clarifies the rates associated with these results as per the corruption crimes, which provided for as in the United Nations Convention against Corruption:



The embezzlement of public properties by an employee is the most common corruption crime in the region occupying a rate of 40% of the total corruption crimes, followed by the criminal proceeds laundered and the abuse of functional powers occupying equally 16% compared to other corruption crimes.

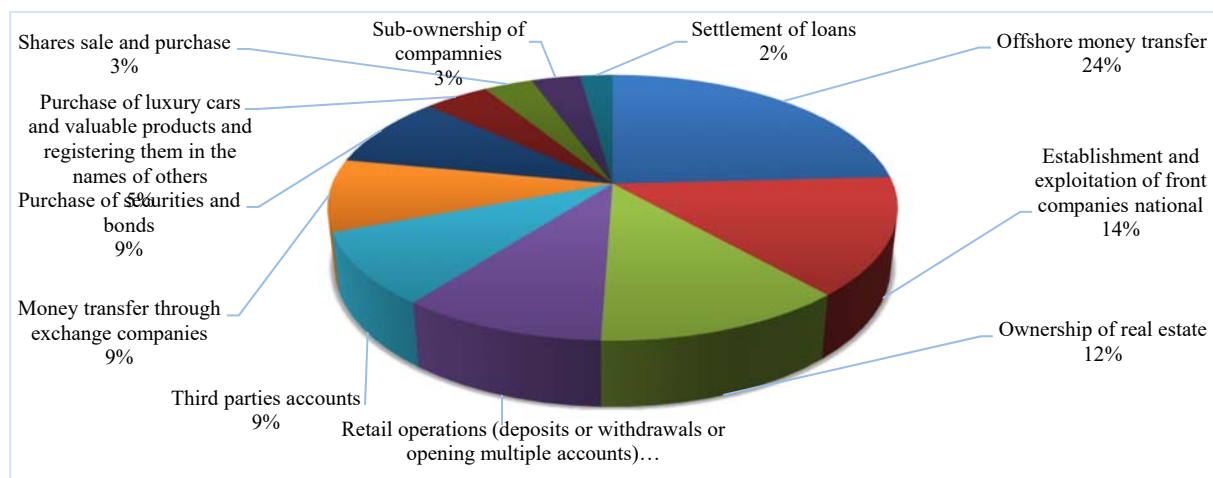
Regardless of the types of the most frequent crimes as shown hereinabove, the commonality between them is the category of perpetrators of these crimes, which is the public official, entrusted with important jobs as in the first class. Thus, this category is classified as a high-risk category, as it is extremely exposed to corruption acts, particularly embezzlement of properties and abuse of functional powers to achieve personal benefits. As a primary conclusion, it is clear that the region is witnessing a significant deal of major corruption compared to the minor corruption as classified<sup>18</sup> by the Transparency International Organization linking between the corruption act and the powers of an employee.

In terms of the geographical distribution of these crimes in the region, we may say that the crimes are being committed in countries of different economic and political backgrounds, which confirms that corruption crimes can be committed in any society, if provided with a suitable environment.

### 2.2.1 Comprehensive analysis of the adopted methods in laundering the corruption proceeds in the region:

After reviewing the adopted methods in laundering the proceeds of these crimes and carrying out a comprehensive analysis of the data received from countries (without taking into consideration the type of the committed corruption crime), it was found that these crimes are classified as per the extent of their exploitation by the perpetrators as follows:

**Methods adopted in corruption proceeds laundering in the region**



Cases indicates – 42 cases, that remittances outside the country's geographical area account for 24% of the region's methods and methods of laundering the proceeds of corruption, indicated that these are the most common methods in the region, followed by the establishment and exploitation of front companies (national) represented by 14% of the overall adopted methods of laundering the corruption proceeds, then real ownership classified as the third common method in the region at a rate of 12%. We also notice a clear percentage decrease in the purchase of luxury cars and

<sup>18</sup> [http://www.transparency.org/whoweare/organisation/faqs\\_on\\_corruption](http://www.transparency.org/whoweare/organisation/faqs_on_corruption)

valuable products, sale and purchase of shares, sub-ownership of companies and settlement of loans meaning that these methods are not as frequently used as the methods at the region as per the received cases. It should be noted that ML in general is a complex operation formed of several consecutive operations and thus the success of all these operations requires the perpetrators to use multiple methods as needed for each country. Therefore, laundering the corruption proceeds can also involve several methods, as many factors are taken into consideration such as the value of the money, the powers of the perpetrator and the type of the corruption crime in determining the range of the possible options. Thus, we may say that laundering the corruption proceeds is a participatory crime involving several parties other than the perpetrators of the predicate offences.

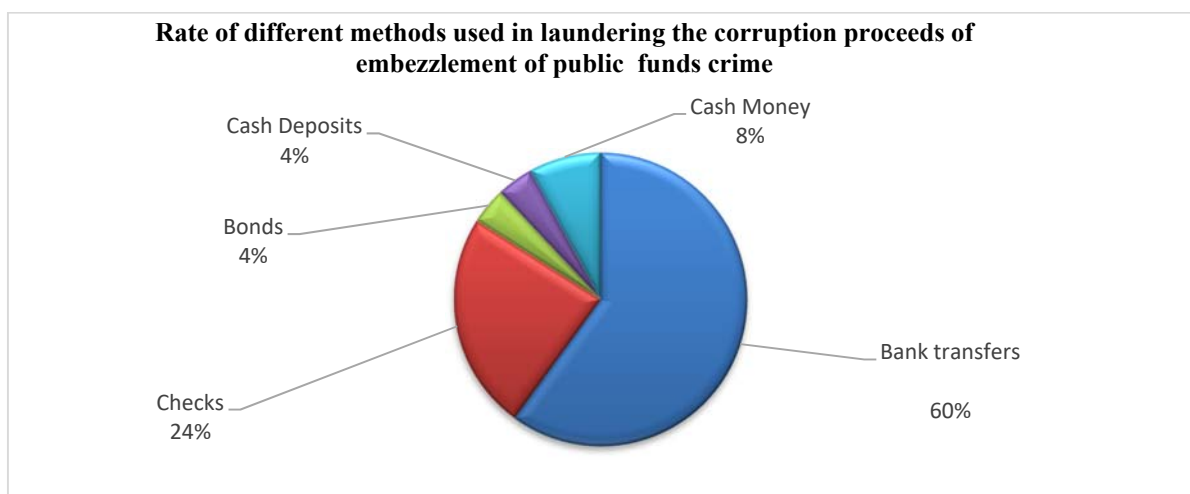
In the context of the aforementioned conclusions related to the corruption crimes confirming that the category of public officials entrusted with important jobs is the category the most exposed to corruption crimes, and in view of the nature of the jobs assigned to this category of employees gaining them fame in the society, this category finds itself bound to resort to third parties and particularly the bank accounts of these parties in order to launder the proceeds of corruption crimes in order to hide the relation between the funds and the source thereof.

In addition to these important methods specified in the chart hereinabove, the perpetrators of corruption crimes exploit other methods as well in ML.

As for the diversity of the adopted methods in laundering the corruption crimes proceeds and the ability of the perpetrator of the corruption crime to succeed in the most important and difficult stage of the act which is to enjoy the proceeds of the crime away from any accountability, the numbers referred to in the chart hereinabove indicate that the available methods for laundering the proceeds of corruption crimes vary between 9 methods.

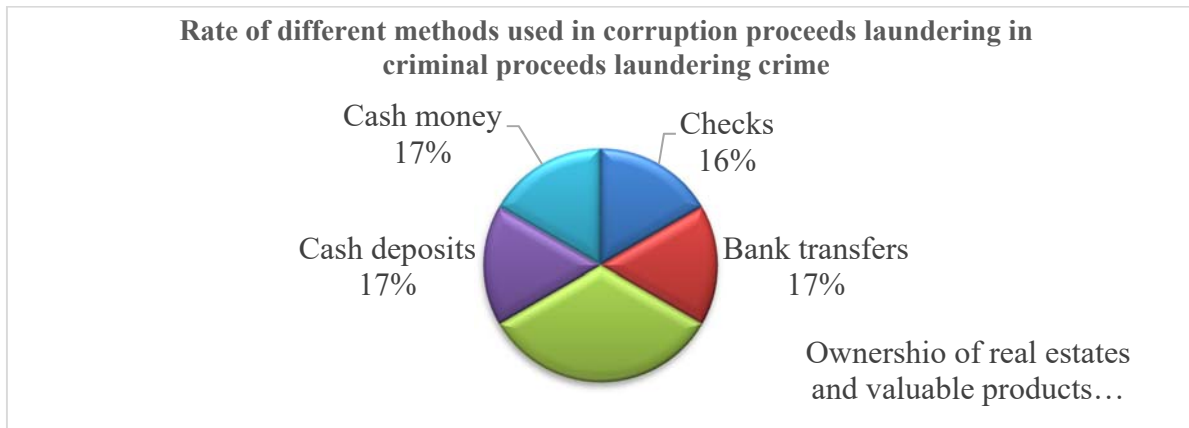
For a better understanding of the adopted method of laundering the corruption proceeds in the region and a wider exploitation of the available data, the received cases were analysed taking into consideration the type of crime. Below is a detailed analysis explaining the adopted methods and tools in ML depending on the type of the corruption crime.

**1- Embezzlement of properties by a public official:**

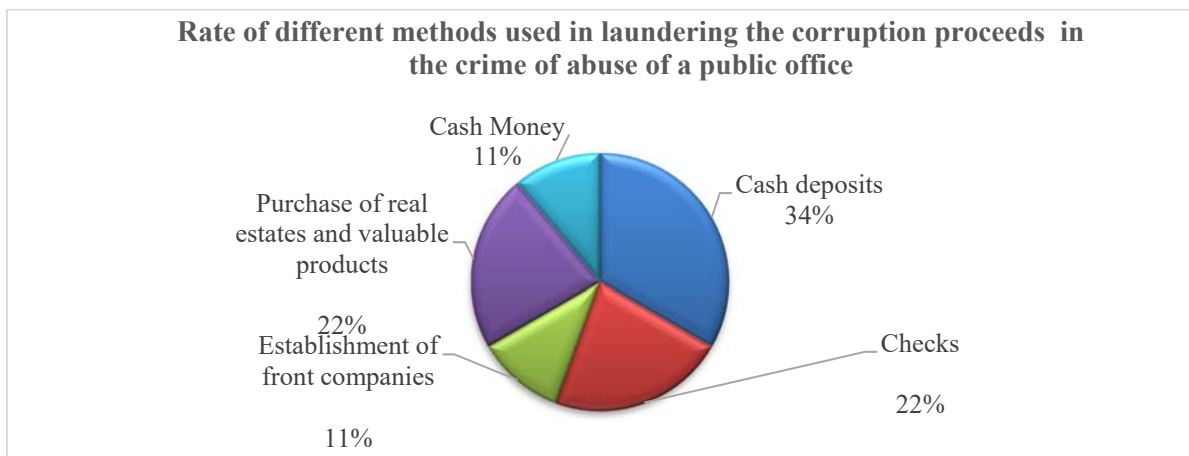


As for the methods used in this crime which are contribute significantly to spread off, the statistics show that this method is used it was found that it is done through bank transfers at a rate of 40% in the region, 24% through checks, while cash deposits and bonds rates varying between 4% and 8%in in the region. As for laundering the proceeds of embezzlement of public properties and funds it represents 60% of the cases.

**2- Criminal proceeds laundering:**



**3- Abuse of a public office:**



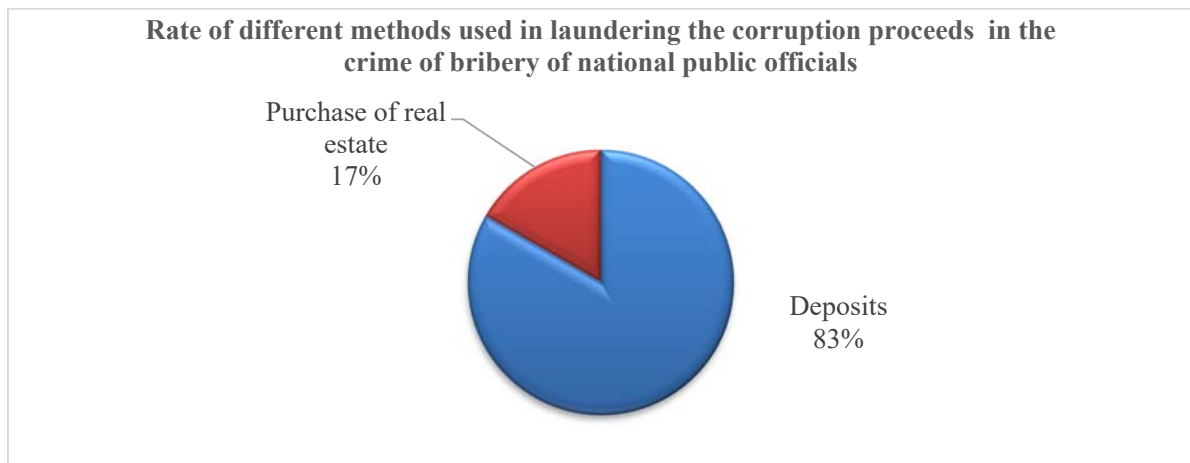
In terms of the scope of these two crimes spread in the region, they account for 16% of other corruption crimes, depending on the cases provided by member countries in the region.

In the frame of laundering the proceeds of crime it was found that the highest rate goes to real estate purchasing and valuable products at 33%, followed by bank transfers, cash deposit and cash money at a rate of 17% each followed by checks at a rate of 16%.

In the frame of laundering the proceeds of abuse the public office, it was found that the highest rate goes to cash deposits at 34%, followed by checks, real estate purchasing and valuable

products at equal rates of 22%, and then the establishment of front companies and the use of cash rates of 11% in this crime.

#### **4- Bribery of national public officials:**



In the term of scope of this crime spread; the statistics show that it consists of 10% of the overall crimes in the region. As for laundering the proceeds of bribery of the national public officials, it was noticed that the cash deposits method occupies 83% compared to a rate of 17% for the real estate purchase.

#### **5- Embezzlement of properties at the private sector:**

In the frame of laundering the proceeds of embezzlement of properties at the private sector, the case studies in the region representing the embezzlement of properties at the private sector occupying a rate of 6% show that they are mainly focused on checks.

#### **6- Bribery at the private sector:**

The bribery crime at the private sector occupies a rate of 4% of the overall crimes. The proceeds of this crime are all laundered through the deposit of money in bank accounts, usually involving accounts of third parties as well.

#### **7- Bribery of foreign public officials:**

The bribery of foreign public officials represents 4% of the overall crimes. The proceeds of this crime are all laundered through cash deposits only.

#### **8- Illicit enrichment:**

The illicit enrichment represents 2% of the overall crimes in the region. The case studies show that the laundering of the proceeds thereof is being done through owning and building real estates and registering them in the name of the wife or a family member.

#### **9- Bribery of international public institutions officials:**

The bribery of international public institutions officials represents 2% of the overall crimes. The proceeds of this crime are all laundered through cash deposits in an intermediate account.



## **Chapter (3): Challenges of Anti-Corruption Proceeds Laundering**

There is no doubt that the fight against laundering the corruption proceeds is not an easy one as it is facing technical and practical challenges that must be overcome in order to reach positive results in all the concerned sectors. During the workshops held in Khartoum (December 2015) and Jeddah (November 2016), case studies were presented and fully discussed, which helped in preparing a list of challenges in addition to the case studies collected and analysed from questionnaires (it worth mentioned that these cases are not common in all cases so to create a trend, but its challenges referred to a few number of cases), the challenges facing corruption proceeds laundering are as follows:

### **3.1 Main challenges and issues increasing laundering corruption proceeds operations:**

- Despite having a national strategy/plan to fight corruption in most member countries, its absence poses as a major challenge for the other few.
- Absence of dedicated bodies in fighting corruption in few numbers of member countries.
- Weakness of coordination between national authorities concerned with fighting corruption in few numbers of member countries.
- Long-time of judicial procedures which negatively impact the effectiveness of fighting corruption.
- Weakness of the supervisory role of the competent authorities in the governmental sectors.
- Failure of supervision on some sectors of the FIs other than banks regarding of due diligence effective implementation monitoring and supervising.
- Failure to give sufficient concern regarding the DNFBPs other than given the same interest to the FIs sector.
- Difficulty in reaching an accurate definition of PEPs and BO (In limited cases by few numbers of member countries).
- Weakness of internal control measures at FIs and regulatory bodies in few numbers of member countries.
- Cash based economies make it more difficult to trace the proceeds of corruption.
- Challenges related to the infiltration of organized criminal groups to the legitimate economy channels.
- The reluctance of bribery beneficiaries to report.
- Weakness of civil society initiatives in providing awareness on anti-corruption.

### **3.2 Challenges in the context of implementing the procedures of identifying the economic right holder (the real beneficiary) of politically exposed persons (beneficial for of PEPs):**

- Difficulty in reaching an accurate definition of the concept of Politically Exposed Persons (PEPs) and their relatives, and the absence of a list including their names and the names of the persons and entities involved in the corruption crimes.

- Identify the challenges of identifying the BO in companies, contributions, bank accounts.
- Some suspected cover-up on BO in corruption cases.
- Lack of interest to update data to verify whether the economic right holder is classified as a Politically Exposed Person (PEP).
- Laundering the corruption proceeds in foreign countries.
- The reluctance of bribery beneficiaries to report, in order to achieve their interests as fast as possible.

### **3.3 The most prominent challenges hindering the work of the FIU in the context of combating corruption proceeds laundering:**

- Lack of sufficient reports (STRs) on corruption crimes, in few countries, due to the absence of a national anti-corruption body.
- Inclusion of some reports of the predicate offenses at the same time (drug trafficking, corruption and other crimes), making it difficult to determine the predicate offenses source of the proceeds associated to money laundering.
- Weakness of the STRs quality in few cases.
- A Slow of the information exchange mechanism between FIU and the LEAs.
- Newly issued regulatory controls for DNFBPs.
- Inadequacy of available capabilities to achieve the requirements of FIU, in terms of using the most recent operational and strategic analysis techniques in order to link suspects and follow the cash movement onshore and offshore.

### **3.4 Procedures adopted in countries to protect whistle-blowers, witnesses and experts:**

After reviewing the responses, it was found that many countries have put in place procedures to protect whistle-blowers, witnesses and experts. These procedures were provided for in the penal codes accredited by the country or in the ML law of some countries. Below is a list of the most prominent adopted procedures:

- Ensuring the safety of the witnesses and cover-up their identities.
- Providing physical protection to victim, witness, whistle-blowers, expert and their families.
- Using a voice changer technology when listening to the witness during a trial.
- The judge must listen to each witness alone and may confront the suspects with each other and with the suspect.
- Giving the witnesses their due allowances and indemnifications for attending for testimony.
- Cover-up the identity of the witness or expert in the minutes and documents regarding to the case requiring the testimony of the witness or the statement of an expert in order to protect the real identity.
- Referring in the address of the witness or expert to the headquarters of the judicial police where the testimony was given or to the location of the competent court of law.

## **Chapter (4): Assets Recovery**

The United Nations Convention against Corruption addressed the assets recovery in chapter (5) thereof, particularly in Articles (51 – 59). The chapter specified several procedures through which the countries can ensure the recovery of stolen or smuggled assets abroad. The funds recovery procedures are depending on several preventive measures included in the convention and provided in the FATF recommendations regarding to the financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs).

In this context, the significant role of the Financial Information Unit (FIU) in funds recovery is very well noted, as stated in article (58) of the convention addressing the Financial Information Unit (FIU) in chapter (5) stipulating that “the member countries shall cooperate to prevent and to combat the proceeds of criminalized actions in accordance with this convention as well as to enhance the methods of funds recovery; thus, a FIU should be established in charge of receiving, analyzing and circulating between the competent authorities”.

It should be noted that the UN Convention Against Corruption legitimized the recovery of funds in non-penal methods, through the implementation of the provisions regarding to the non-penal confiscation as the recommendation no (38) of the FATF advised the countries to cooperate in the implementation of the provisions thereof, unless any provision thereof was in contradiction with the principles of the local laws.

The World Bank cooperated with the United Nations Office on Drugs and Crime (UNODC) since 2007 in the launch of the Stolen Asset Recovery\* initiative (Star) based on chapter (5) of the United Nations Convention against Corruption and aiming at supporting the countries with whom they wish to cooperate in the policies making regarding the stolen assets recovery and building the capacities of the officers enabling them to carry out their job in efficient manner as well as providing the technical assistance in funds recovery issues.

The initiative published several studies aiming at identifying the main issues related to the asset recovery and obstacles facing countries based on the actual experiences of countries in terms of taking the necessary measures to recover stolen assets that were smuggled to other countries<sup>19</sup>.

The analysis of the collected questionnaires showed the following:

### **4.1 Obstacles impeding the national cooperation in the process of assets recovery:**

- ✓ Administrative routine in delaying the issuance of suitable decisions and send a rogatory letters (the term “rogatory letters” is the synonym of Mutual Legal Assistant).
- ✓ Lack of understanding of the laws and necessary procedures in the countries to which recovery requests are submitted.

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<sup>19</sup> \* Star.worldbank.org

- ✓ Insufficiency of human and technological resources, which are not available with competent authorities for a fast and effective interaction with all authorities in different frames.
- ✓ Requirement of longer time for the mechanisms of information collection adopted by the law enforcement agencies to access the information regarding to these authorities.
- ✓ Absence of specialized authorities in assets recovery and corruption crimes issues in a few countries.

#### **4.2 Suggestions to overcome these obstacles:**

- ✓ Building a comprehensive system to exchange data and information between the different bodies of the country, in order to develop its ability to make decisions, particularly in the field of funds/assets recovery, and working on finding solutions to achieve an electronic link between the different authorities even if only on a partial basis.
- ✓ Ensuring there are a parallel financial Investigation when investigating in the predicate offenses in the money laundering offenses.
- ✓ Activating the role of financial information units in exchanging information with counterparts and non-counterparts.
- ✓ Expeditious accession of all countries of the region into Egmont Group ,in order to promote the international cooperation with counterpart.
- ✓ Considering the principles of information exchange between financial information units issued by Egmont Group, which include, among other provisions, the spontaneous exchange of information between financial information units.
- ✓ Supporting the authorities concerned with the human and technological resources.
- ✓ Establishment of an authority/department specialized in the asset's recovery and corruption crimes issues in order to settle them as soon as possible.

#### **4.3 Obstacles impeding the international cooperation in the process of assets recovery:**

- ✓ The need to conclude bilateral agreements with the concerned countries.
- ✓ Diversity in the powers of the law enforcement agencies and FIU of concerned countries.
- ✓ Delaying in issuance of judicial judgment in the concerned countries.
- ✓ diversity of the judicial systems of the countries, resulted in formal obstacles impeding the execution of cooperation requests.
- ✓ diversity implemented judicial systems.
- ✓ Failure by several foreign authorities to respond to requests for MLA received by sending the required information available to them in respect of the offenses under investigation, or by issuing judicial decisions that prevent the transmission of information required to the requesting countries or impede the recovery process.
- ✓ Several foreign countries carry out internal investigations based on requests for MLA sent by the requesting country, without disclosing the information resulting from the investigations.

- ✓ Insistence of some countries to translate the requests into their local language, which requires time and impedes the international cooperation for funds recovery.
- ✓ Ambiguity of the MLA procedures exchanged between the countries receiving the request.

#### **4.4 Suggestions to overcome these obstacles:**

- ✓ Encouraging the conclusion of international agreements and understanding memorandums.
- ✓ Urge different countries to adopt a unified process in terms of the MLA requests regarding the corruption crimes, in order to respond to the requests in timely manner and avoiding the obstacles thereof.
- ✓ Identifying all the procedures adopted by the countries to cooperate with the requested country, regarding to the MLA requests.
- ✓ Requested countries must respond to the received ones without posing obstacles or rejecting the request based on the internal regulations that are not provided for in bilateral and multilateral agreements.
- ✓ Encouraging the countries with the stolen assets to cooperate, in order to overcome the obstacles impeding the fulfilment of the fund's recovery steps.
- ✓ Considering the issuance of unified legislations and regulations in this field.
- ✓ Determining a central authority in the state specialized in receiving assets recovery requests.

#### **4.5 Success factors that may assist the competent authorities in assets recovery at the international level:**

- ✓ Adopting a work path through FIU in parallel with the judicial one to achieve the required outcomes.
- ✓ Responding to all initiatives taken by the international organizations related to the asset's recovery and fighting the corruption at the international level.
- ✓ Intensifying the cooperation and coordination in the international meetings and conferences in order to determine the latest developments and to exchange expertise in this field.
- ✓ Working on promoting the technical efficiency of MLA requests exchanged in investigations, prosecutions and judicial proceedings related to the asset's recovery and corruption crimes.
- ✓ Encouraging the concerned parties in exchanging experiences and developing the skills with regional and international counterpart authorities in the field of recovering assets and combatting corruption.
- ✓ Establishing an internal regulation helping in assets recovery.
- ✓ Concluding international agreements in this regard.

## **Chapter (5): Indicators of identification of laundering the corruption proceeds**

After analysing the statistics and understanding the used methods, it is necessary to conclude indicators regarding to laundering the corruption proceeds to be accredited and circulated in the concerned sectors with this study. Based on the case studies presented at the workshops held in Khartoum (December 2015) and Jeddah (November 2016), the analysis of the collected questionnaires and the study of the cases thereof, we list herein below the indicators that help in identifying corruption proceeds laundering.

### **5.1 General Indicators:**

- Unknown source of funds.
- Incompatibility between financial transactions and the nature of suspected person and the suspicious activity.
- Completion of commercial transactions through financial operations in rounding numbers without fractions.
- Involvement of exposed persons occupying the official positions in financial transactions with offshore FIs.
- Failure to determine the justifications of the operations carried out through the account of the suspected.
- Ambiguous relation between the suspected and financial transactions parties.
- Acknowledged of information confirming that the suspected was subject to corruption crimes investigations.
- Rapid settlement of bank loans.
- Client inquiry about the financial limit above which the threshold Limit is exceeded.
- Continuous change of the income in a public official.
- Excessive signs of luxury and well-being on the public official and his family are disproportionate to his economic situation.
- Increase of bank deposits/transfers to the public official account.

### **5.2 Indicators of real estate property ownership transfer:**

- Customer refrains from presenting information and documents required by the authenticator/notary.
- The client has retracted from the process suddenly and without any reasonable justification for such retreat, especially when the retreat is linked to the strictness of the authenticator/notary to abide by legal procedures.
- Cash Settlement of the property.
- Purchase of expensive real estate properties, without being justified considering the financial situation of the client.

- Selling or buying of the real estate at less price or higher than its real value.
- Change of the authenticator/notary public by the client continuously without a justification, as the logic supports keeping the same notary public considering the gained trust and quality of service.
- Transfer of real estate property ownership to different persons within a short deadline without any justification thereto.
- Frequent real estate properties sale and purchase by the client, without being justified considering the occupation and financial situation of the client.

### **5.3 Indicators related to the establishment of companies:**

- Establishing different companies by the same persons in close times.
- Adopting a single headquarters for different companies, indicating “front companies” that are frequently used in ML operations.
- Establishment of several front companies by the client without being justified by legitimate commercial or tax considerations.

## **Chapter (6): Recommendations**

In the light of the efforts deployed in the preparation of this report, recommendations were concluded regarding to the combat against laundering the corruption proceeds, noting that this report did not address the tasks of other concerned parties in fighting corruption at the concerned countries.

1. The Financial Information units (FIUs) must play a leading role in setting the national anti-corruption strategies, that will be directly reflected in the general orientation of national strategies.
2. The necessity to benefit from the report outcomes, in terms of amending the national and regional priorities in view of the methods and trends analyzed.
3. The necessity to strengthen the operational cooperation and coordination between the investigation authorities in corruption crimes and FIU through parallel financial investigations.
4. The need to explore if any methods existing to laundering the proceeds corruption if any.
5. The countries undergoing to recover stolen assets through the judicial proceedings and bilateral agreements, should consider adopting a parallel path through the FIU in order to save time to maintain the assets/funds to be recovered.
6. The need to enhancing the national and international cooperation of exchanging information, related to laundering the corruption proceeds, by strengthening the cooperation procedures between the local bodies, when needed, and concluding the bilateral and multilateral agreements at the international level.
7. Stressing the importance of applying the procedures related to BO in banks and financial institutions, ensuring the implementation of due diligence procedures, where appreciated, because of their role in protecting the financial sectors in this field and enhancing the level of regulatory systems to ensure that they fulfill the roles assigned to them legally.
8. Encouraging the member countries to prepare a list of Politically Persons (PEPs) and circulating it between the concerned parties to facilitate the implementation of due diligence procedures.
9. Promoting the exchange of information between the MENAFATFs member countries on corruption crimes due to the mutual benefit thereof affecting all parties.
10. Strengthen the protection of witnesses and whistle-blowers in Member States.



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