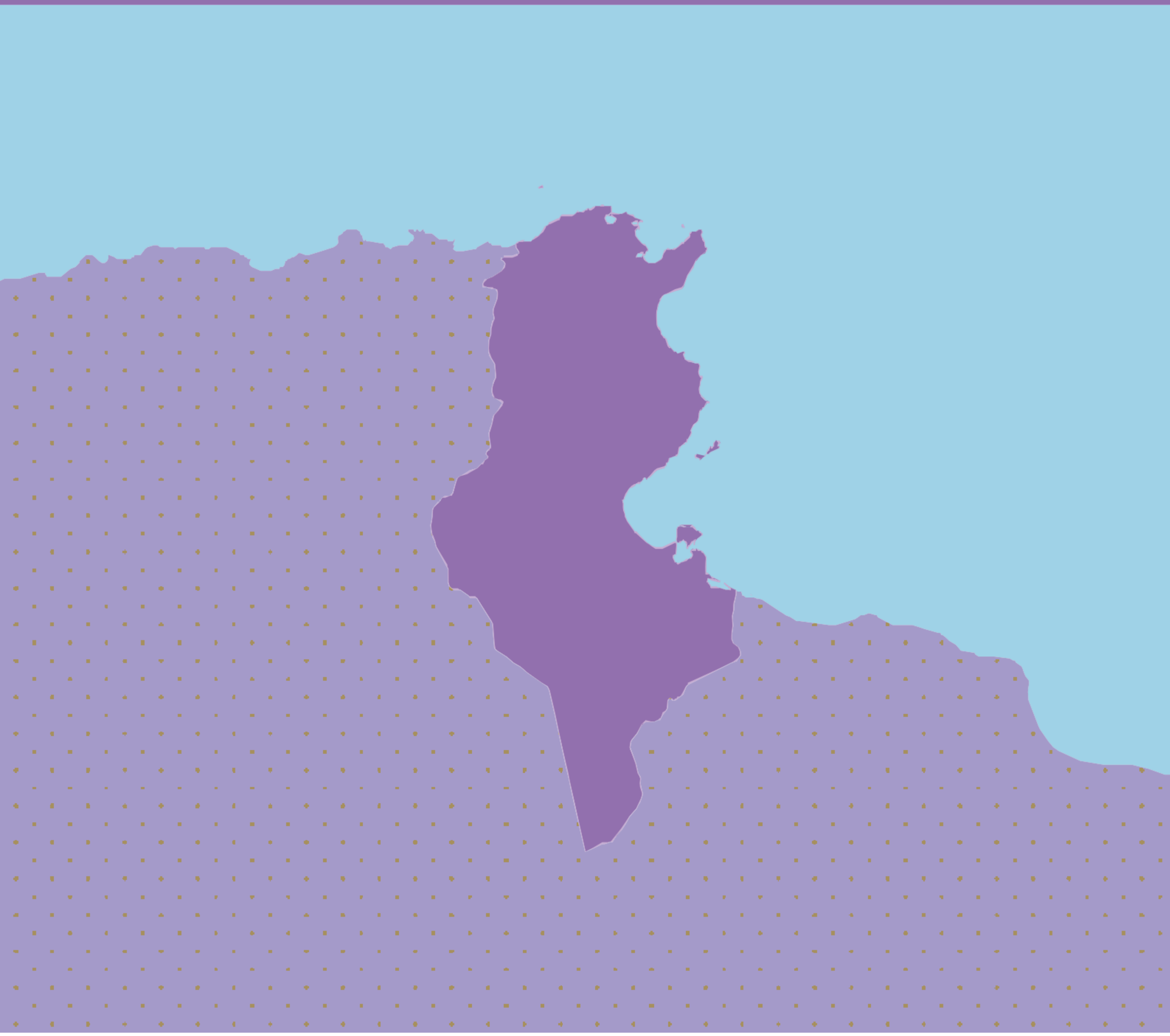
ILLICIT FINANCIAL FLOWS AND ASSET RECOVERY

In Tunisia



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التعاون الألماني
DEUTSCHE ZUSAMMENARBEIT

Mis en oeuvre par

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Foreword

Illicit Financial Flows (IFFs) impact a country's economic and social development in myriad ways. Undocumented flights of wealth to and from - as well as within - a country have severe repercussions on government revenues, wealth that could otherwise be invested in public spending and other forms of economic and social reforms. Illicit financial flows, particularly those related to organised crime and corruption, also withdraw funds from the legitimate economy and may force the State to divert more resources to prevent and respond to criminal activity or to treat or compensate victims. The drain on resources and tax revenues caused by IFFs blocks the expansion of basic social services and infrastructure programs that are targeted at improving the wellbeing and capacities of all citizens, including, in particular, the very poor.

IFFs in many developing countries mean fewer hospitals, schools, police, roads and pensions, as well as fewer job opportunities. It is for these reasons that States must place significantly higher priority on the seizure and confiscation of illicitly-obtained assets, and to channel such recovered assets to high-priority development needs.

New paradigms and policies to counter IFFs must be established to produce an unbroken chain of work from tracing, freezing, seizure, confiscation and recovery of illicitly-obtained assets, through transparent management and liquidation of such assets, to distribution of the proceeds to high-priority development needs. It is this mechanism and paradigm that will enable countries to capture billions in assets and to directly channel them into, for example, more schools, hospitals, community clinics and infrastructure, as well as the much-needed payment of salaries for teachers, nurses and doctors. Such policies also can enable States to significantly reduce youth unemployment. All of these aspects are key factors to a country's development.

In light of the above, the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) are pleased to launch an insightful study on Illicit Financial Flows and Asset Recovery. This study sheds light on the significant damage being caused to Tunisia as a result of unchecked IFFs, and on the significant value of prioritising the capture of illicitly obtained assets linked to such IFFs. The GIZ and UNICRI are committed to providing key support and expertise needed by States to more effectively respond to IFFs. In creating and implementing more effective responses, many of which are identified in the recommendations of this report, States will be able to simultaneously weaken the influence of organised crime and corruption, while also injecting significantly greater funding into high-priority development needs.

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In Tunisia

Executive Summary:

Organised crime produces significant amounts of illicit revenues on a global level. Tunisia's economy suffers greatly from IFFs and reached a peak estimated loss of USD two billion in 2013. It however ranks relatively low on criminality, with terrorism and its financing and human trafficking and smuggling being the most substantial criminal activities in the country. Among other consequences, terrorism has a detrimental impact on tourism in Tunisia, which makes up for a big share of the country's GDP. While Tunisia is increasingly investing in the security sector, this might also mean that the country's is disinvesting in other key development sectors such as education, healthcare and infrastructure.

On this regard, the report highlights key sectors within Tunisia that could benefit if the country were to prioritise the capture of only 10% of the millions that are lost annually because of organised crime and IFFs.

Despite the many efforts made by Tunisia towards improving its strategies for the fight against terrorism and its financing, and, more in general, towards combating organised crime and IFFs, key challenges remain. Some key recommendations to policy makers are provided at the end of this report.

Key Findings:

- The seizure and confiscation of only 10% of the amount of IFFs considered to be circulating within the country, would allow the government to cover the salary of 4,500 nurses for two years or of 2,777 doctors for one year.

- Similarly, this could pay the salary of 4,300 teachers for two years. Alternatively, the recovered assets could fund the entire cost of school meal programmes of some 400,000 students for four years.

- Successful recovery of only 10% of what Tunisia loses to IFFs would enable the government to fully subsidise the minimum wage costs for 40,000 youths for one year, or to subsidise 50% of the minimum wage costs for 80,000 youths for one year.

- The Government of Tunisia should consider the establishment and/or strengthening of non-penal mechanisms for the seizure and confiscation of assets (civil confiscation) – once such mechanisms are in place, and are being implemented (still, with due process for any individual seeking to claim title over such assets), this can reduce the time to confiscate assets from a period of years to a period of several months.

- Consideration should be given to adopting and implementing mechanisms for a centralised Asset Recovery Office (ARO), which houses under one roof, officials with access to databases of, for example, the taxing authority, vehicle registry authority, land registry authority, business records authority, criminal records authority and related entities, in order to allow the ARO (or similar mechanism) to provide law enforcement with consolidated reports on the assets held by those suspected of serious criminal activity, as well as assets in the possession of their family members and/or possible associates.

- The Government of Tunisia may wish to consider establishing the use of Extended Confiscation, Confiscation of Equivalent Value and the use of Unjustified Enrichment Proceedings as a norm within the criminal justice system.

- In light of heavy caseloads of prosecutors and the judiciary, consideration should be given to adopting where possible more agile mechanisms for the settlement of criminal cases, where a defendant agrees to return assets reasonably believed by the State to be the product of corruption or other serious crimes, and/or provides reliable information to the State regarding the serious crimes or illicitly-obtained assets of others, in return for a proportionately lighter sentence.

- The Government of Tunisia may wish to consider strengthening mechanisms for regular dialogue and feedback from civil society and citizens, particularly with respect to where recovered assets should be distributed. This will produce better outcomes with respect to addressing the needs of the people, and will bolster citizen confidence in governmental transparency.

RESEARCH PAPER

Acronyms and List of Abbreviations

AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
AMO	Asset Management Office
ARO	Asset Recovery Offices
CPI	Corruption Perceptions Index
CTAF	Financial Analysis Committee
EU	European Union
FATF	Financial Action Task Force
FMS	Financial Monitoring Service
GDP	Gross Domestic Product
GFI	Global Financial Integrity
GIZ	The Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH
IFFs	Illicit Financial Flows
ILO	International Labour Organisation
MENA-FATF	Middle East and North Africa Financial Action Task Force
ML/FT	Money Laundering / Financing of Terrorism
NGO	Non-Governmental Organisation
OECD	Organisation of Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
SDG	Sustainable Development Goal
TND	Tunisian Dinar
UN	United Nations
UNECA	The United Nations Economic Commission for Africa
UNICRI	United Nations Interregional Crime and Justice Research Institute
USD	United States Dollar
WHO	World Health Organisation

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1. Overview of Illicit Financial Flows and the Recovery of Illicitly-Obtained Assets

1.1. Introduction

This study examines illicit financial flows (IFFs) generated from organised criminal activity in Tunisia. It provides an overview of organised crime and assets linked to organised crime in the country, and outlines the legislative and operational frameworks in place to combat IFFs and to recover illicitly-obtained assets. Effective asset recovery policy is a fundamental component of combating IFFs and mitigating the harm produced by IFFs.

This study's main objective is to provide targeted recommendations to national authorities, as well as other key stakeholders, in order to create and strengthen mechanisms for the effective and efficient seizure and confiscation of assets linked to organised crime (and, where appropriate, high-level corruption).

The study also provides recommendations to strengthen the effective and transparent management of any recovered assets, including recommendations with respect to directing such assets to high-priority development needs. High-priority needs in Tunisia include the employment, health, and education sectors.

The data collection for this study was undertaken from May through October of 2020, through open source desk research and interviews with key stakeholders

Definition of Illicit Financial Flows

There is no consensus regarding the definition of IFFs, as it covers a diverse set of activities and behaviours, reflecting the complex and multifaceted nature of illicit international trade and finance.[1] The absence of a comprehensible and universally adopted definition explains the difficulty in analysing it and, therefore, producing targeted responses. The United Nations Economic Commission for Africa (UNECA) stated that this lack of terminological clarity limits the emergence of effective policy measures.[2] Another reason for this struggle concerns the statistical feasibility of quantifying IFFs, which is extremely challenging. This is because IFFs, and related crimes, are purposefully hidden or disguised by criminals who are seeking to protect themselves from the interventions of law enforcement agencies. Consequently, attempting to gather reliable information to model criminal actions and the requisite data through which to produce accurate responses is also challenging.[3]

Notwithstanding these limitations, for purposes of this study and assisting States in developing holistic and useful responses to the threat, IFFs are defined broadly as the revenue, proceeds and any other assets generated by the following activities:

- **Corruption,** including the proceeds of theft, bribery, graft and embezzlement of national wealth by government officials;
- **Illicit Commerce,** including the proceeds of tax evasion, misrepresentation, misreporting and mis-invoicing related to trade activities, and money laundering through commercial transactions; and
- **Other Serious Crime,** including the proceeds of criminal activities, including human and drug trafficking, smuggling, counterfeiting, racketeering (also known as criminal protection or extortion) and terrorist financing.[4]

This classification, which is a slight alteration from that used by UNECA in 2013, highlights not only the diverse and evolving nature of illicit financial flows, but also the need for multifaceted (holistic) responses that tackle the threat from various angles – e.g., not just a criminal justice response.[5] The classification also disregards the characterisation that IFFs should only be international in nature – significant losses and harms can occur to national economies, healthcare and education systems, and to employment opportunities, even if IFFs occur within a specific country. The dynamic of the forms of IFFs differs from country to country, depending on the illicit flows transiting into, through and out of the country. Still, higher-value illicit flows, such as the trade of narcotics, tend to correlate with higher levels of other criminality, such as corruption.[6]

This study concentrates on the revenue, proceeds and other assets generated from criminal activities in Tunisia. Due to the interdependent nature of IFFs, this study also examines assets generated from corruption and commerce to provide a useful framework on IFFs in Tunisia. Money laundering is a crucial tool used by organised criminal groups to move illicitly-obtained revenue and to fund criminal activity. There is also a strong link between corruption and organised crime as both are propelled by the same limitations of governance and the law.

Recovery of Illicitly-Obtained Assets

The recovery of illicitly-obtained assets is essential to combating organised crime and IFFs as it deprives criminals of their financial gains and can act as a deterrence against future crimes (by removing the financial motivation of crimes). The recovery of illicitly-obtained assets can also help mitigate the harmful impact of IFFs through the liquidation and reinvestment of those assets into public welfare and high-priority development needs. For the purposes of this study, the asset recovery process includes the tracing, freezing, seizure, confiscation, and management of illicitly-obtained assets.

Worldwide progress in the recovery of illicitly-obtained assets has been, at best, modest. In 2012, the OECD launched a survey measuring assets frozen and returned between 2010 and June 2012. In this time period, a total of approximately USD 1.4 billion of corruption-related assets had been frozen. In terms of returned assets, a total of USD 147 million were returned to a foreign jurisdiction in the 2010-June 2012 period. These figures pale in comparison to the widely quoted estimate that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's GDP. In 2009 alone, criminal proceeds were estimated to be at 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered.[7]

European Union (EU) progress in the recovery of illicitly-obtained assets has also been modest. Europol estimatesorganised criminal groups have a profit of EUR 110 billion annually in the EU.[8] Corruption is estimated to cost the EU economy some EUR 120 billion per year.[9] Europol estimates that about EUR 1.2 billion is confiscated each year in the EU, which represents 0.009% of EU GDP. For a country with a GDP of EUR 200 billion (e.g. Finland in 2014), this amounts to about EUR 17.7 million; for a country with a GDP of EUR one trillion (e.g. Spain in 2014), the figure is about EUR 88.7 million; for a country with a GDP of about EUR 2.2 trillion (e.g. France in 2014), it is about EUR 195.2 million.

For bribery alone, the most widely accepted estimate of global bribery puts the total at around USD 1.5 to two trillion each year.[10]

> Corruption, bribery, theft and tax evasion, and other illicit financial flows cost developing countries USD 1.26 trillion per year. That is roughly the combined size of the economies of Switzerland, South Africa and Belgium, and enough money to lift the 1.4 billion people who get by on less than USD 1.25 a day above the poverty threshold and keep them there for at least six years.[11]

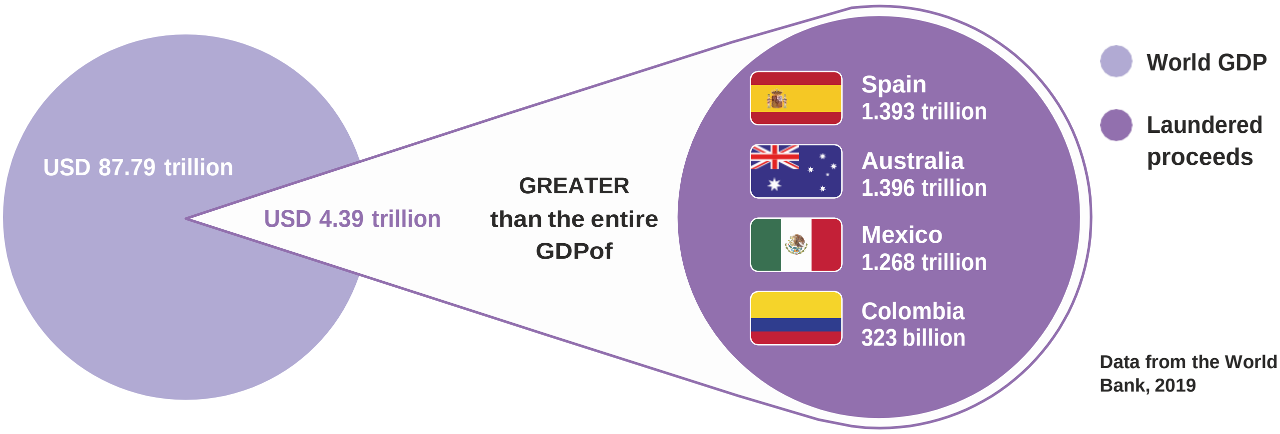
A USD one million bribe can quickly amount to a USD 100 million loss to a poor country through derailed projects and inappropriate investment decisions which undermine development.[12]

Notwithstanding the above, such estimates should be treated with caution. They are intended to give an idea of the magnitude of money laundering, which represent only a portion of IFFs. Due to the illegal nature of the transactions, precise statistics are not, nor likely ever will be, available and it is therefore impossible to produce a definitive estimate of the amount of money that is globally laundered every year. The Financial Action Task Force (FATF) therefore does not publish any figures in this regard. Still, there is near universal consensus that money laundering and IFFs worldwide undermine most economies as well as development.

Just as IFFs weaken development, the recovery of assets linked to IFFs can enhance development. The recovery of only a small portion of illicitly-obtained assets linked to serious criminal activity – both from abroad and from within a country – can provide developing countries with much-needed additional resources. In this context, prioritising the tracing, seizure, confiscation and recovery of illicitly-obtained assets can, aside from providing a useful deterrent to criminality, fundhigh-priority development needs, such as those in the health, education or infrastructure sectors.

Many obstacles, particularly in cross-border cooperation to recover assets, have allowed criminal organisations and corrupt officials to take advantage of such weaknesses.

Estimated annual amount of global laundered proceeds is greater than the entire GDP (2019) of the following countries combined



Data from the World Bank, 2019

Proving that assets are linked to criminal conduct can be a complex and lengthy process, ultimately producing a lack of public confidence in state institutions. Nevertheless, countries that have had the most success in the tracing, freezing, seizure and confiscation[13] of illicitly-obtained assets (whether located abroad or within that particular country) are those that have adopted mechanisms that can accelerate criminal justice processes for confiscation, as well as mechanisms for non-conviction-based forfeiture of assets.[14]

An increasing number of jurisdictions have adopted mechanisms for initiating proceedings for unexplained wealth, or illicit enrichment.[15] Many countries now recognise the value of establishing dedicated Asset Recovery Offices (AROs), essentially offices that house officials with access to multiple databases (e.g., vehicle registry, business registry, tax information, customs database, criminal records). Such AROs, once in place, can take a cross-institutional view of one's assets, as well as the assets held by family members or associates of those suspected of being involved in serious criminal activity – more often than not, when one launders illicitly-obtained assets, he or she does not place them in his or her own name.

Additionally, the establishment and training of specialised forensic financial analysts, who support the role of prosecutors in proving financial crimes, have proven to be beneficial in both criminal proceedings as well as in civil confiscation proceedings.[16]

Mechanisms for Accelerated Conviction and Non-Conviction-Based Forfeiture

Plea bargaining, reconciliation or other expedited settlement of criminal proceedings requiring the defendant to return illicitly-obtained assets in exchange for a reduced sentence (or information regarding assets illicitly-obtained by others);

Mechanisms that allow courts to impose orders for extended confiscation Example: ***issuing an order stating that all assets acquired, say, over the past five years by a defendant convicted of a serious crime, are presumed to have been illicitly-acquired, unless the defendant can rebut this presumption;***

Orders for the confiscation of legally-acquired assets of the defendant, where the State demonstrates that it has taken every reasonable measure to locate the illicitly-acquired assets, but has been unable to do so.

Additional valuable mechanisms may include a separate civil confiscation proceeding against assets that are considered to be illegally-acquired – such proceedings still place the initial burden on the State to prove that certain assets are the product of illicit activities, albeit at a lower burden of proof; civil confiscation proceedings, while they do not adjudicate the criminal culpability of any particular individual, or allow the judge to deprive anyone of their liberty, have the advantage of being able to be adjudicated over a span of months, and to recover assets more quickly, in stark contrast to, say, a criminal money laundering case, which typically takes several years. The initiation and adjudication of a civil confiscation case (against illicitly-acquired assets) does not necessarily preclude the initiation and adjudication of a parallel criminal case (against an individual).

1.2. International Regulations and Recommendations

A broad set of international conventions, standards, and bodies have been developed in order to combat IFFs. These include UN conventions which establish standards that all countries are expected to meet in order to avoid providing a safe haven for various kinds of IFFs. They also include treaties or organisations with narrower membership, but which set out more detailed measures; a number of these treaties allow for critical and useful peer reviews to ensure compliance.

Key International Parameters Regarding Illicit Financial Flows

- 1988 UN Convention against Illicit Trafic in Narcotic Drugs and Psychotropic Substances
- 1999 UN International Convention for the Suppression of the Financing of Terrorism
- 2000 UN Convention against Transnational Organised Crime
- 2003 UN Convention against Corruption
- FATF 40 Recommendations

In 2015, the General Assembly of the UN adopted the Addis Ababa Action Agenda which invites “appropriate international institutions and regional organisations to publish estimates of the volume and composition of illicit financial flows”.[17] Similarly, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDG) call on countries to:

- significantly reduce illicit financial and arms flows by 2030;
- substantially reduce corruption and bribery in all their forms;
- develop effective, accountable and transparent institutions;
- strengthen domestic resource mobilisation, also by supporting developing countries;
- enhance global macroeconomic stability;
- strengthen the recovery and return of stolen assets and combat organised crime.[18]

The UN also highlights the need for a methodology to estimate IFFs in order to comply with the data requirements stemming from the global SDG indicator framework.[19]

The EU and the OECD also play key roles in defining priorities that countries need to consider to better address the threats of money laundering and IFFs, as well as the need to strengthen mechanisms for the seizure and confiscation of assets, and the need to tackle tax evasion.[20] Additional mechanisms such the Camden Asset Recovery Inter-Agency Network (and similar networks) provide much-valued support and cross-border dialogue for police and prosecutors to better capture assets linked to organised crime and high-level corruption.[21]

2. Overview of Illicit Financial Flows and Organised Crime in Tunisia

2.1 Overview of Tunisia

- Tunisia borders Libya, Algeria and the Mediterranean Sea
- Population of around 11.7 million people, 98% ethnic Arab
- Languages: standard Arabic, Deria (dialectal form most widely used) and French
- 1956: independence from France
- Parliamentary Republic

Geographical and Regional Context

In the last decade, North African borders have gained renewed attention given political developments in the region. Starting from 2011, the Arab Spring (also known as the Jasmine revolution), which originated in Tunisia, paved the way for major changes in the region. Protesters across different countries demanded that autocratic leaders step down after years of despotic rule. While in some cases these changes brought about a democratic transition, such as was the case in Tunisia, in others it left a vacuum where state institutions became increasingly more fragile and less prepared to face crises. Where the state is unable to operate effectively, criminal organisations can take (and often have taken) on a greater role in society by consolidating their power through illicit financial flows (IFFs).

IFFs from developing countries are extremely high and increasing over time. Global Financial Integrity has estimated that developing countries lose about USD one trillion per year.[22] Of these countries, the ones that make up the North African Region tend to be high on the list of countries with high IFFs due to their oil-exporting nature. Global Financial Integrity reports that North Africa accounts for the highest amounts of trade-related illicit flows in the African continent; as of 2015, the region reportedly lost over USD 20 billion from trade related IFFs – Algeria, Egypt, Morocco, Libya and Tunisia incurred a loss of over USD 300 billion combined as a result of unaccounted capital flights between 1970 and 2015.[23]

Tunisia is not immune to IFF-related exploitation. Located not far from Italy's shores (about 5.2 miles), Tunisia is a transit point for goods, services and people that seek to reach Europe. The 2016 Financial Action Task Force (FATF) report states that Tunisia's largest threat is the financing of terrorism, followed by the risk of corruption and a weak financial sector.[24] The total amount of illicit financial outflows in 2013 reached almost USD two billion, which amounts to about USD 181 per capita.[25] Moreover, between 1960 and 2010, Tunisia was found to have lost a total of USD 38.9 billion to different forms of illicit activities.[26]

Various studies demonstrate that IFFs harm countries in myriad ways, especially developing ones. Specifically, the consequences rising from criminal activities have long lasting effects on the growth of developing economies as these tend to impact the credibility of the country and deter foreigners from investing[27] through Foreign Direct Investment. Moreover, IFFs hurt domestic economies as there is less capital to pay for public goods and services, such as public health, schools, infrastructure and other development needs.[28] The African Economic Outlook measured that the investment to gross domestic product (GDP) ratio of Africa could increase by more than ten percent if these financial flows remained in the continent.[29]

Tunisia is taking various steps in the fight against IFFs. In 2003, it established the Tunisian Financial Analysis Committee, a committee in charge of combating money laundering the financing of terrorism by issuing regular research material and policies to local officers.[30] Internationally, Tunisia is a signatory country of the United Nations Convention against Transnational Organised Crime, the United Nations Convention against Corruption and is one of the founders of the Middle East and North Africa Financial Action Task Force (MENA-FATF). As a result of its efforts to fight organised crime, the FATF no longer regards Tunisia as part of the Anti-money Laundering Deficient List nor as in need of compliance monitoring.[31] Therefore, although Tunisia is still subject to major economic losses due to IFFs, it is also taking many necessary steps to fight these illegal activities.

Socio-Economic Context

Tunisia is often considered to have a relatively strong and stable economy. Among other things, this stability is linked to the Former President Zine el Abidine Ben Ali's encouragement toward the development of an open market economy. The welcoming of Foreign Direct Investment and the spur in exports under his rule fuelled years of an annual growth close to five percent.[32]

Still, Tunisia greatly suffered from the 2008 financial crisis. Unemployment among the youth rose significantly, fuelling widespread discontent among the population. Once it became increasingly evident that the Ben Ali regime was highly corrupt, protestors took to the streets and rebelled against the leader in what is known today as the beginning of the Arab Spring.[33] Following these uprisings, the country also witnessed a surge in terrorist attacks, some of which targeted Tunisia's tourism sector. As a result, the tourism industry, which once represented 21% of Tunisia's GDP, suffered between 2011and 2016, dipping to an all-time low of 14.3% in the months following the attacks.[34] Moreover, between 2015 and 2017, Tunisia's overall growth rate dropped precipitously, fluctuating between one and two percent annually, a stark contrast from the five percent of previous decades.[35]

Political and Governance Context

Tunisia is a Parliamentary Republic. Habib Bourguiba was the first President of Tunisia and ruled the country through a one-party state for 31 years. Following a coup, Zine el Abidine Ben Ali took over the presidency and governed the country until uprisings which began in 2011. Protestors demanded political change and the ousting of Ben Ali, who fled in 2011. A Constitutional Assembly was established to set the stage for a new Constitution, which was ratified in 2014.

2.2. Illicit Financial Flows and Organised Crime in Tunisia

Impact of IFFs in Tunisia

Tunisia's economy suffers greatly from IFFs. One study by the Global Financial Integrity shows that Tunisia incurs a loss of over USD 1.2 billion a year due to IFFs and reached a peak of USD two billion in 2013, about USD 181 per capita.[36] Another study recently found that the estimates of informal trade between Tunisia and its neighbours, Libya and Algeria, is between USD 1.8 and 2.4 billion.[37] With a reported GDP of USD 38.79 billion and USD 11.900 GDP per capita as of 2017,[38] these losses greatly impact Tunisia's economy and the day- to-day life of average Tunisians.

While IFF-related losses are high, Tunisia ranks low on criminality. In fact, Tunisia is the best performing country in terms of general criminality and ranks 53 out of 54 on the EU Index of Criminality.[39] According to ENACT, Tunisia is highly resilient to organised crime given its robust legislative framework to fight criminality and its high levels of transparency and accountability.[40] Moreover, Tunisia ranks 49th among African countries on the EU's Criminal Market Score, with no criminal market imposing significant influence on the country.[41] Still, losses pertaining to IFFs exist in Tunisia and are closely related to criminal activities as these generate most illicitly-obtained assets.

Criminal activities in Tunisia appear under different forms and threaten the country's economic and social stability in different manners. According to the FATF, terrorism and its financing represents the most pervasive criminal activity, followed by corruption and market or regulatory abuses.[42] According to both the US Department of State[43] and ENACT,[44] human smuggling and trafficking also represent significant threats to the country. The illegal smuggling of drugs (in particular of cannabis) and of non-renewable resources such as oil also create large quantities of illegal activity that hurt Tunisia's overall economy.[45] With this in mind, this report seeks to analyse these different criminal activities and their effects on Tunisia's economy, with the overall goal of elaborating specific recommendations on how to strengthen the need to trace, seize and confiscate illicitly-obtained assets linked to organised criminal activity and corruption.

Counterfeit Goods: Fuel Smuggling and Drug trafficking

Goods smuggling is a serious issue in Tunisia. In 2019, the Tunisian Customs Agency reported that the value of seized smuggled merchandise amounted to DIN 244 million.[46] Of these goods, fuel represents a huge revenue loss, both for the State and for local business owners. In 2017, it was estimated that about 30% of all country-owned fuel sales derived from the illicit fuel market, with over 20 thousand people involved in its counterfeiting.[47] Moreover, in 2016, some 40 local gas stations were closed as a result of this illegal activity.[48]

Both drugs and tobacco also represent popular smuggled goods. Consumption and trafficking of cannabis has been on the rise for the past decade.[49] Additionally, in 2012, 61 million drug tables were seized by Tunisian authorities.[50] More recently, in 2019, the General Directorate of the Customs seized 50 thousand packs of smuggled cigarettes.[51] Tunisia ranks as the world's second consumer of illicit cigarettes after Libya, with one out of four cigarettes consumed in the country deriving from this market.[52] These amounts represent a huge burden upon Tunisia's economy, with USD 565 million in revenue lost to this activity.[53] ENACT reports that, in some cases, cigarette stakeholders are able to manipulate quantities sold on the licit market so as to take advantage of shortages they create in the illicit market.[54]

Terrorism and its Financing

Tunisia experienced a surge in terrorist-related activity in 2015. The conflict in neighbouring Libya has had a detrimental effect on Tunisia. Libya's lack of capacity to monitor its borders has made it easier for smugglers to cross over into Tunisia undetected,[55] smuggling both drugs and arms.[56] Tunisia also became a transit point for Jihadists seeking to fight for the Islamic State.[57] In addition, Tunisia is reported to have among the highest number of foreign fighters that joined the Islamic State in Syria.[58] One study found that, although many foreign fighters will not be inclined to commit acts of terror, those who do will commit them with higher intensity and fatality.[59] In fact, both the Bardo Museum and the Sousse terrorist attacks were committed by returning foreign fighters,[60] a key indicator that the threat posed by returnees is a real one that cannot be underestimated.

The links between terrorist and criminal organisations is becoming increasingly evident. The terrorists that committed the Paris and Brussels attacks in 2015 and 2016 previously engaged in various criminal activities.[61] Intersections between terrorism and criminal groups were also evident in Tunisia; there was a surge in counterfeit goods during the same time in which there was an increase in terrorist-related activities.[62] A study by the International Crisis Group found that criminals and jihadists increased cooperation with one another and created a sort of 'Islamo-gangsterism' to augment their control over distinct territories across the Tunisian border and operate more effectively, particularly with respect to counterfeited goods.' [63]

Terrorism and Tourism

Quantifying in numbers the economic impact of terrorism and its financing on Tunisia is not self-evident. However, if one were to look at the impact of such flows on the overall development of the country, the harm becomes more apparent. For example, tourism, which as previously mentioned makes up a large portion of Tunisia's GDP, was hugely impacted by the surge in terrorism. As much as 12% of the Tunisian labour force is employed in the tourism sector,[64] rendering this segment of the population highly vulnerable to any changes in the industry.
Other related industries, such as food and beverage ones, were also likely affected by the drop off in tourism as they represent major providers for the tourism industry.

While increasing counter-terrorism strategies and investing in stricter controls by the military and police may seem like the safest strategy to combat the surge in terrorism, bolstering these strategies can also represent a burden on Tunisia's economy and likely result in State divestment from other sectors, such as education, welfare and infrastructure. The impact of such divestments can have long-term detrimental effects on the economic development of the country, therefore representing a further negative impact of terrorism on Tunisia's economy.

Corruption

Corruption in Tunisia, as in many countries, is a thorny issue. Rampant nepotism among family members of the Ben Ali regime was a key component of the country's upheaval in 2011.[65] Subsequent governments have taken action to fight high-level corruption in the country, but the issue is far from resolved. In moderate terms, corruption and bribery are still present in many sectors across Tunisia, including within the national police,[66] the judiciary[67] and Tunisia's public service.[68] However, corruption in Tunisia is not as rampant as in other countries in the surrounding neighbourhood. The US Department of State reports that American companies are not significantly deterred from doing business in Tunisia even though they are aware that bribery and corruption may be an issue at the time of certain business transactions.[69]

Corruption was pervasive within the Ben Ali family for decades. A report by the World Bank from 2014 shows that family-owned businesses linked to the former President received special benefits from the government and that, although representing only three percent of economic output, their profits amounted to 21% of all private sector profits.[70] The University of Massachusetts also found that, between 1960 and 2010, Tunisia lost USD 38.9 billion, including USD 33.9 billion while President Ben Ali was in power.[71] Some reports indicate that Ben Ali may have hidden up to USD 17 billion in illicitly-obtained assets;[72] this alone suggests that stronger policies and mechanisms (both criminal and civil) are needed to more effectively seize and confiscate assets linked to corruption.

Unfortunately, corruption did not end with the fall of the Ben Ali regime. Tunisia is still ranked as the eighth most corrupt country in the MENA region.[73] Transparency International scores Tunisia with a 43 out of 100 through the Corruption Perceptions Index (CPI), 100 being the least corrupt and 0 the most.[74] Moreover, Transparency International also indicates that 67% of surveyed Tunisians believe corruption has surged during the period between 2018 and 2019, with 18% admitting to have accepted a bribe.[75]

Nevertheless, Tunisia seems to be on a positive trajectory in the fight against corruption.[76] The Ministry of State Property and Land Affairs recently announced a goal to appoint a government agency tasked with reutilising recovered assets linked to organised crime and corruption. Stolen money retrieved from the Ben Ali family has been returned to the people of Tunisia in different forms:

- 2019: The then Tunisian Finance Minister Ridha Chalghoum announced that the state would reinvest USD 420 million retrieved from stolen assets into the state budget.[77]

- Between 2012 and 2018: The National Confiscation Committee ordered the confiscation of 2,335 assets from the Ben Ali family, recovering about USD 450 million.[78]

- 2021: Tunisian officials indicated that technical support provided by the United Nations Interregional Crime and Justice Research Institute (UNICRI) facilitated strengthened contacts between Tunisian officials and Swiss Ministry of Justice Officials, and facilitated the identification of additional bank accounts involving potentially illicitly-obtained assets. In March 2021, Switzerland announced the return of an additional TND 3.5 million (USD 1.27 million)[79] to Tunisia, although the freeze on many other assets was set to be lifted. It is unclear to what extent this has been due to differences within the Tunisian and Swiss judicial systems.

INLUCC is also active in the development of anti corruption policies – officials from INLUCC have equally indicated that, in addition to the need to strengthen inter-institutional coordination in the fight against corruption, priority should be given to bolstering regulation of non-financial professions in order to inhibit illicit financial flows.[80]

Notwithstanding the above, it is unclear into what development projects such funds have been reinvested. It is also widely considered that far too little of what has been stolen by former officials has been recovered – some of this is due to weaknesses within the Tunisian legislative and operational framework, but also due to a lack of pro-active engagement by foreign jurisdictions to assist Tunisia in seizing, confiscating and returning such assets.

Human Trafficking and Migrant Smuggling

Tunisia is both a country of origin and destination of human trafficking. A 2018 report shows that almost 800 people were victims of human trafficking in Tunisia, 48% of which were minors.[81] This number represents an increase from the previous year, when 742 people were registered as victims of human trafficking.[82] In its 2019 report on trafficked persons, the US Department of State indicated that Tunisia was failing to address the 'minimum requirements' [83] needed to stop this crime and was therefore categorised under Tier 2. The report concluded that women and children are the most vulnerable to trafficking, with their trafficking increasingly on the rise.[84]

Human trafficking and forced labour create a significant amount of illicitly-obtained assets worldwide. According to the International Labour Organisation (ILO), these amount to roughly USD 150.2 billion per year globally.[85]

On June 25, 2020, Italian police confiscated EUR 1.5 million in Palermo from a Tunisian national caught smuggling migrants into Italy.[86] Migrants pay up to EUR 3,000 for a one-way trip from Tunisia to Italy.[87] While these illegal activities may not be as significant as those attributed to other serious crimes, they nonetheless represent an amount of money that, if intercepted if only in part, could benefit high-priority development needs, such as the building of schools and hospitals and facilitating youth employment, or projects that benefit those most vulnerable to human trafficking and migrant smuggling.

Market and Regulatory Abuses

Tax and regulatory abuse are serious problems in Tunisia. The FATF estimates that tax evasion and avoidance in Tunisia results in more than USD 500 million in lost revenue every year.[88] While Tunisia has taken important steps to monitor these activities by instituting the Financial Analysis Committee (CTAF), it still lacks the proper amount of personnel to keep up with the high number of reported fraudulent transactions. The FATF suggests that, to fill this gap, Tunisia needs to invest more resources in hiring the necessary personnel and provide them with adequate training to act on "[...] the growing number of suspicious transaction reports".[89]

Money Laundering

Money laundering is a crime that spans different sectors across Tunisia. In particular, the US Department of State indicates that illicit flows are laundered primarily as a result of clandestine immigration and the trafficking of goods, such as stolen vehicles and narcotics.[90] The financial sector is also subject to requirements to identify potential money laundering; although Tunisia has strict currency controls (banknotes of Tunisian dinars are not allowed to leave the country), it is likely that a system of hawala facilitates illicit activity throughout the financial sector.[91]

While money laundering represents a serious threat to Tunisia's economic development, the Tunisian government is taking steps to curb this threat. In 2011, Tunisia set up an ad hoc Financial Analysis Committee (CTAF) to monitor money laundering activities and the financing of terrorism. As a result, in 2018 the European Union removed Tunisia from its money laundering blacklist and in 2019 the FATF removed Tunisia from its grey list of non-compliant countries. It should be noted that traditional paradigms for addressing IFFs focus on only the criminal justice sector and improving money laundering investigations; notwithstanding this, multiple measures to capture illicitly-obtained assets (including more effective tax authority action, and the introduction and implementation of a civil confiscation law) are needed outside of the strictly criminal justice approach of dealing solely with money laundering.

The Dilemma of "Informal" versus "Illegal" Economies

It is important to note that, although these activities are illegal, they represent a source of income for millions of people.[93] In many cases, these illicit activities provide jobs and a source of revenue for people that have no other means of survival.[94] The International Crisis Group reports that parallel economies such as the ones present is Tunisia are a 'necessary evil' for the survival of the country's economy.[95] However, it is also true that Tunisia's economy suffers a great deal from illicit trade activities, as custom duties over trade goods are not paid, and VAT is inevitably not collected.[96] This of course strengthens the argument for better policies to incentivise citizens to move from the informal to the formal economy, a subject outside of the sphere of this particular study.

2.3. Tunisia's Legal and Operational Framework

Tunisia has ratified:

- **1988** : UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- **1999** : International Convention for the Suppression of the Financing of Terrorism
- **2000** : UN Convention Against Transnational Organised Crime
- **2003** : UN Convention Against Corruption.

2003

Tunisia approved its first Anti-Money Laundering and Terrorist Financing Law [97]– Law No. 75 of 10/12/2003 which aimed to facilitate the country's compliance with AML/CFT standards. The law established:

- The Tunisian Commission of Financial Analysis (CTAF)
- Tunisia's official financial intelligence unit,[98] presided over by Tunisia's Central Bank.[99]

2006

Prior to Ben Ali's fall, the FATF issued its first Mutual Evaluation Report on Tunisia. The FATF addressed Tunisia's deficiencies in tackling the risks of ML/FT and stated that Tunisia was lagging behind in implementing adequate prevention measures.[100] The report noted that, between 2003 and 2005, only five cases of suspicious transactions were filed with the CTAF.[101] Of these, none were deemed risky transactions and were thus not reported for prosecution.[102] However, the report also noted that Tunisia is not significantly at risk of money laundering, in part because it is not a regional financial hub.[103]

2007
The World Bank conducted an evaluation of Tunisia's compliance with the 40 FATF recommendations and published the country's first mutual evaluation report.[104] The report indicated that Tunisia lacked the necessary legal framework to tackle money laundering and the financing of terrorism.[105]

2009
Tunisia revised Law No. 75 to implement the recommendations issued in 2007 by 'supplementing'[106] and 'completing'[107] it

2012
The IMF issued a report mentioning Tunisia's AML deficiencies and indicating that "financial soundness indicators suffer from deficiencies and banking sector data should be improved as a matter of urgency".[108]

2015
Tunisia issued a new AML/CFT law – Basic Law No. 26 of 7/8/2015. According to Tunisian authorities, this law is compliant with the FATF and UN Security Council resolutions.[109] The law implements Chapter 26 of the UN Security Council Resolution 2178 which criminalises financing the transfer, transport and training of terrorists.[110]

2016-2017
The FATF produced a second Mutual Evaluation Report for Tunisia. This report had more far-reaching consequences than the first as it placed Tunisia on the FATF's grey list of non-compliant countries. This meant that Tunisia:

- Had to step up its efforts to improve its AML/CFT regime in order to avoid becoming part of the FATF blacklist of countries that are non-compliant and non-cooperative (also known as the Non-Cooperative Countries or Territories, NCCTs)
- Could face international sanctions and limitations over receiving loans from multilateral organisations such as the International Monetary Fund.

The 2016 FATF report shed light on several deficiencies in Tunisia's local AML/CFT regime. It stressed that terrorism and its financing was of primary concern, and that the country's law enforcement sector lacked the adequate funds to address the plethora of AML/CFT cases it was receiving.[111]

As of 2017, of the 1,647 individuals in custody on ML/FT charges, only 183 had been successfully tried, while the others still awaited their prosecution or final sentencing.[112] Moreover, the report also found that NGOs and other purported charitable organisations were involved in ML/FT schemes and urged Tunisia to address this matter.[113] As a result, Tunisia implemented a thorough investigation of its NGO sector and found that approximately 100 of these were at risk of ML/FT exploitation.[114]

Tunisia was also found non-compliant with FATF recommendations relating to the implementation of international requirements to fight ML/FT, most notably those relating to UN Security Council Resolutions 1267 and 1373 establishing sanctions regimes and calling on member countries to implement asset recovery measures.[115]

Tunisia published its first National Risk Assessment (NRA). This is a legal document issued by the Governor of the Central Bank of Tunisia and the Ministry of Justice that details Tunisia's efforts to assess the country's ML/TF risks.[116] The document aims to address FATF recommendations concerning the lack of regulation and oversight by identifying gaps in the country's operational framework.

Tunisia's judiciary system was criticised for its sluggish prosecution of terrorists.[117]

Following the FATF's Mutual Evaluation Report of 2015, Tunisia promulgated a series of regulations to fight terrorism financing. These regulations sought to implement UN Security Council Resolutions 1267 and 1373, which require states to sanction designated terrorist organisations and to freeze their assets.[118] As a result, the FATF indicated that CFT deficiencies were resolved.[119]

2018-2019
Tunisia also took steps, noted by the FATF in 2019, to strengthen its risk-based AML/CFT supervision of the financial sector, integrating designated non-financial businesses and professions into its AML/CFT regime, maintaining a comprehensive and updated registry on beneficial ownership information, and increasing the efficiency of suspicious transaction report processing by allocating the necessary resources to the financial intelligence unit. As a result of these key actions, the FATF decided that it would no longer monitor Tunisia under the International Cooperation Group Review (ICRG).[120]

2020

May – The Government announced that it will introduce legislation for civil confiscation. There are no further reports on this.

The Government also announced, by Presidential Decree, the establishment of an inter-institutional committee to enhance coordination on the seizure and recovery of assets, the use of the "reconciliation' process in criminal cases to more quickly recover assets and the prioritisation of directing recovered assets to address high development needs.[121] These mark significant and pro-active steps for Tunisia on the issue of asset recovery, although the implementation of such measures needs to be monitored to ensure that actual, concrete results are achieved.

In addition to law enforcement (police and prosecutors), the main competent bodies in the fight against corruption include the National Authority for Anti-Corruption (INLUCC), which is an independent body with defined powers in the investigation of cases of corruption. According to Law 2011-120, INLUCC is mandated to create anti-corruption policies, including those related to the detection, investigation and coordination on anti-corruption matters. INLUCC notably also facilitates inter-institutional (and public-private) memoranda of understanding on issues related to the prevention of corruption.

Additionally, the judicial and financial unit within the Court of First Instance of Tunis is tasked with the investigation and prosecution of complex cases of corruption, along with the Tunisian Financial Analysis Committee (CTAF); this latter entity is under the Central Bank and operates as a financial intelligence unit, playing an important role in the fight against money laundering and corruption. The new Constitution (2014) foresees the creation of a new authority referred to as the *Instance de la Bonne Gouvernance et de la Lutte Contre la Corruption* (IBOGLUCC); however, such authority is yet to be created due to a lack of consensus within the legislature.

Tunisian law confers broad investigative prerogatives to investigating judges, as well as to the INLUCC and the CTAF in the tracing, freezing, seizure of proceeds and instruments of criminal offenses.

The management of confiscated property is carried out by the Confiscated Property Management Committee created by Decree-Law No. 2011-68 of July 14, 2011.

Cooperation among law enforcement agencies within the framework of joint investigations and special investigative techniques is facilitated by different national stakeholders.

There are many channels of direct communication between Tunisian law enforcement authorities and their foreign counterparts, notably through INTERPOL Tunis and the CTAF. His includes secure channels of communication, such as INTERPOL's I-24/7 data exchange system and the Egmont system.

Section 91 of the Tunisian Criminal Code criminalizes active bribery of national public officials, but the provisions of this section do not appear to explicitly cover the act of direct or indirect offers of bribes. Tunisian law also does not appear to provide for the criminalization of bribery (active and passive) of foreign public officials and officials of public international organizations.

In addition to the Tunisian AML law, the Criminal Code envisages that all proceeds of an offense must be confiscated, including property of equivalent value (in cases in which the actual proceeds of a crime cannot be located).[122] Confiscation also applies to property, materials and other instrumentalities used or intended to be used in the commission of an offense.

Although Tunisia has adopted Law No. 2018-46 on the declaration of assets and interests, it remains unclear as to whether this is being effectively implemented.

Tunisian law does not allow the reversal of the burden of proof given its contradiction with the principle of the presumption of innocence (art. 27 of the Constitution). While several drafts for civil confiscation laws do not reverse the burden of proof, and would accelerate the confiscation of illicitly-obtained assets, from a period of several years to a period of just several months, a number of Tunisian officials and policy makers do not appear to be fully aware that the burden of proof is not reversed.

3. Impact and Cost of Illicit Financial Flows in Tunisia

3.1. Harm Assessment of Illicit Financial Flows in Tunisia

IFFs impact a country's economic and social development in myriad ways. Undocumented flights of wealth to and from (as well as within) a country have severe impacts on government revenues, wealth that could otherwise be invested in public spending and other forms of economic reforms. However, the harm provoked by IFFs goes well beyond the mere loss of government revenue. The OECD assesses that IFFs can impact a country through several categories of harm, among them economic, societal, governance, physical and environmental.[123]

IFFs and organised crime affect trust in public officials, government institutions, and the rule of law. Low levels of trust, civic engagement, and social capital can impede development and further bolster organised criminal groups.[124] This creates a harmful cycle that increases political instability and weakens governance. The cost of corruption to developing countries is also enormous, with the World Economic Forum estimating an annual USD 1.26 trillion in cost to developing countries.[125]

What Could be Done with USD 1.26 trillion?

To illustrate the significant cost of corruption, USD 1.26 trillion is enough money to lift the 1.4 billion people living on less than USD 1.25 a day above the poverty threshold and keep them there for at least six years. Additionally, UNCTAD proposed in March 2020 a USD 1 trillion liquidity injection through the IMF to help countries with the COVID-19 crisis, providing money for crucial emergency health services and social relief programs.

Corruption not only directly generates IFFs (e.g. banking fraud, embezzlement) but also creates an environment in which organised criminal activity can flourish; the two are mutually reinforcing.[126] Organised criminal groups exploit the fragility of public authorities caused by corruption, often gaining benefits and access to political power.[127] This creates an environment where organised criminals benefit from corruption, compounding and reinforcing both crime and corruption. Corruption can also weaken the threat of judicial and legal consequences for criminal activity, mitigating any real deterrence effect of the legal system.

Economic Harm

In the direct form, IFFs withdraw funds from the legitimate economy, and may force the State to divert resources in order to prevent and respond to criminal activity, or to treat or compensate victims. Indirectly, IFFs damage the economic climate, competitiveness, investment and entrepreneurship.[128]

The drain on resources and tax revenues caused by IFFs have significant effects on the budget and increase the deficit. The loss of financial resources blocks the expansion of basic social services and infrastructure programs that are targeted to improving the wellbeing and capacities of all citizens, including in particular the very poor.[129]

IFFs also weaken financial systems and allow individuals to hide stolen assets, evade taxes, and avoid the adverse impacts of currency devaluation. Instead of benefiting the people and local economies, the money can end up in offshore tax havens.[130] In some cases, this produces a minority that has political power and influence over most of the population, and which has less incentive to develop the domestic economy and social services.[131]

A study conducted between 2000 and 2010 of 39 countries demonstrated that the economic growth of these countries could have amounted to about three percent more had IFFs been eradicated.[132] For commodity-reliant economies, such as oil-producing countries, this figure was as high as 3.9% of GDP.[133]

IFFs impact poverty and general living standards. For example, income per capita was 1.5% lower than average in Sub-Sahara Africa as a consequence of capital flight.[134]

IFFs impact the economy of a country by financing underground and parallel economies, which in turn hurt the stability, credibility and competitiveness of a country's licit economy.[135]

The economic harm produced by IFFs to Tunisia's economy is vast. According to GFI, trade mis-invoicing represents the most harmful illicit transaction in the country, vastly contributing to financial losses both to the country and the Tunisian people.[136] As of 2013, an estimate of about USD 181 per capita was lost each year to IFFs, amounting to about USD two billion for the entire country.[137]

Societal and Governance Harm

Societal harm creates or exacerbates societal tensions, as well as economic or social marginalisation.[138] IFFs may impact societies by incentivising those in vulnerable groups to participate in, or fall victim to, organised criminal activity. The UN Human Development Report warns that IFFs constitute a roadblock to human development by "weakening governance and reducing consumption, investment and social spending, hurting the long-term construction of collective capabilities and the expansion of human development".[139] For this reason, addressing IFFs can be instrumental to improving societal and developmental needs.[140]

IFFs harm society also by undermining political institutions and therefore reducing public trust in national authorities. This is also known as 'structural / governance harm'.[141] Harm to government reputation occurs whenever a law is broken and the government appears to be ineffective in responding to such criminality.[142]

Structural and governance harm concerns the damage done to the quality of governance and the legitimacy of the social contract, the rule of law, and the development process, as a result of corruption, organised crime, IFFs, and impunity.[143]

This harm prevents the achievement of Goal 16 of the SDGs, of promoting peaceful and inclusive societies for sustainable development, and providing access to justice for all, as well as building effective, accountable and inclusive institutions at all levels.[144] For instance, the combination of high IFFs and high levels of corruption can result in weakened service delivery and the diversion of funds away from Tunisia's government programmes, including in the health sector. Similarly, the need to increase

expenditure on security priorities to control organised crime, such as law enforcement and border control, can divert limited government resources away from investments in social services, such as health and education.[145]

In conjunction with economic and political figures, civil society has a key role to play in terms of defending and cultivating the rule of law. Strong and capable government institutions and civil society discourages many illegal activities, and prevents the growth of IFFs. For instance, a transparent tax system and sound public expenditure management can discourage tax evasion, while a strong culture of integrity and accountability within government, along with real. sanctions for both criminal and ethical violations, is essential to prevent and manage potential conflict-of -interest situations and can act as a strong deterrent to corruption.[146]

According to the African Economic Outlook, capital flight from Africa amounted to an additional increase of four to six percentage points in terms of head count ratio of people living below the poverty line.[147]

The societal and governance harm of IFFs in Tunisia is particularly evident. In 2011, widespread corruption among members of the Ben Ali family, extensive mis-use of State funds and the transfer of State capital abroad, led people to revolt and oust the President. Moreover, Transparency International reports that 67% of surveyed Tunisians believe that, as of 2019, corruption is still on the rise.[148]

Physical and Environmental Harm

Other forms of harm include those that hurt people or infrastructure (physical harm) and, more generally, that provoke damage to the environment, such as toxic waste and pollution. In particular, the exploitation of natural resources is a severe problem on the African continent, whereby the illicit transit of goods such as minerals, oil, flora and animals havefar-reaching consequences beyond their mere trade. In real terms, billions of dollars are lost annually from the exploitation and illegal trade of natural resources. Moreover, criminals will often resort to violence to secure a stronghold over natural resources from which they derive significant revenue.[152]

Exploitation of natural resources is not as widespread in Tunisia as in other African countries. Although hunting is regulated and illegal for protected species, organisations for the protection of animals in 2015 found that between 50 thousand and 227 thousand birds were killed annually.[152] Some species are trafficked for money. For example, a goldfinch, a type of songbird, can sell for up to USD 400 on the illicit market.[153] While their actual value may seem small, the trafficking of such species is not insignificant and can endanger such wildlife species, as well as fragile ecosystems.

3.2. Investment of Recovered Assets into Tunisian Development

IFFs are by nature intended to be hidden. Therefore, measurements of illicit flows can only be made indirectly using related data, which makes such measurement imprecise. Additionally, there are many forms of illicit flows that cannot be detected using available economic data and methods (e.g. cash transactions).[154] For these reasons, the estimates presented here are likely to be conservative. However, they still provide one measure of the largely unobservable IFFs problem. Moreover, even a conservative estimate of this dynamic indicates a significant degree of impact on Tunisian society.

Estimates about IFFs in developing countries vary significantly, and while work has been done by the United Nations to estimate the proceeds of various transnational criminal activities, there remain considerable knowledge gaps, including on the extent to which these proceeds flow through the international financial system.[155] However, because the question is critical to the future of Tunisia's population, any indication of the collective significance of IFFs is helpful to policymakers, citizens, and other stakeholders in the country.

In developing countries, total IFFs grew at an average annual rate between 7.2% and 8.1% over the period of 2005 to 2014, reaching estimated levels between USD 620 billion and USD 970 billion in 2014.[156] As stated above, Tunisia was found to have lost roughly USD 38.9 billion to different forms of illicit activities, from 1960 through 2010;[157] the total amount of illicit financial outflows in 2013 (most recent available data) reached almost USD two billion, which amounts to about USD 181 per capita.[158] Still, even by conservative estimates, Tunisia incurs a loss of over USD 1.2 billion a year due to IFFs.[159]

IFFs in developing countries, such as Tunisia, mean fewer hospitals, schools, police, roads, and pensions, as well as fewer job opportunities.[160] The United Nations[161] has indicated that there is clear “collateral damage” of outflows produced by embezzlement, the diversion of public property, and the plundering of the public treasury.

Increased focus on the seizure and confiscation of only a portion of assets linked to IFFs would have a significant impact on accelerating development within Tunisia, assuming that recovered assets are liquidated and effectively distributed to high-priority development needs. The following presents the development challenges for key sectors, as well as the development opportunities in Tunisia if the government were to prioritise the recovery of only 10% of assets lost through IFFs in the country.

The Health Care Sector

Between 2003 and 2017, health expenditure as a percentage of GDP in Tunisia has witnessed a steady increase, reaching 7.2% in 2017.[162] Health expenditure is the total sum of public and private health expenditure. It comprises health services that include, for example, family planning activities, nutrition activities and emergency aid.[163] Between 1980 and 2005 Tunisia increased its total health expenditure from TND 143 million to TND 2,250 million.[164]

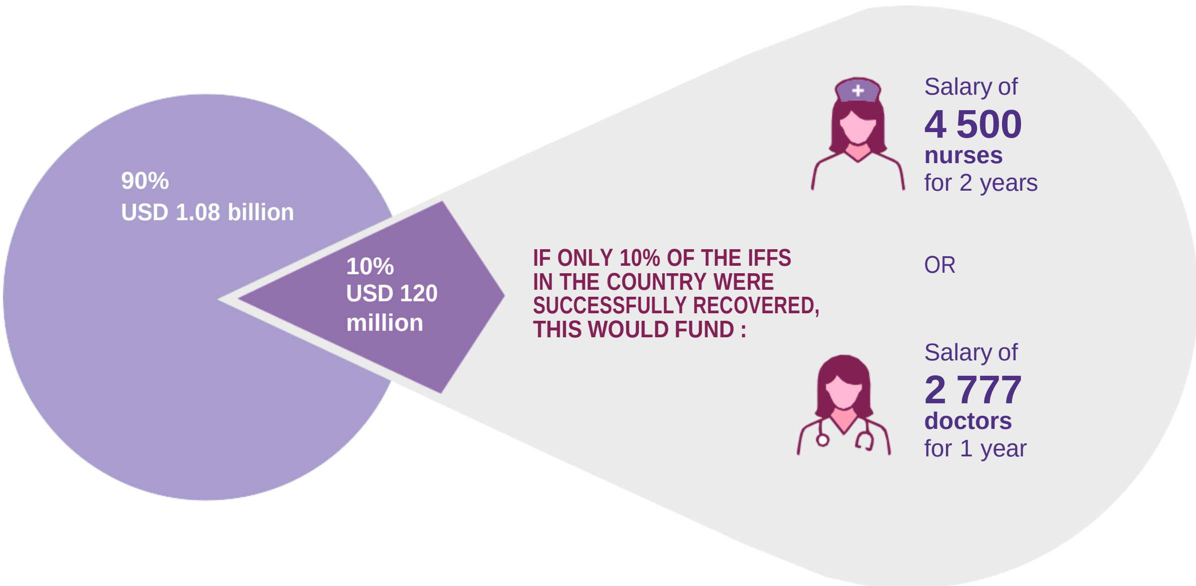
According to the World Health Organisation (WHO), Tunisia has made significant progress in improving its healthcare system. For example, Tunisia has progressed extensively in controlling communicable disease. Diseases such as measles, polio and neonatal tetanus are almost extinguished.[165] As far as child healthcare is concerned, infant mortality rates have significantly improved, with a sharp decrease in the number of infant deaths.[166] As of 2016, the life expectancy at birth was 74/78 for males and female respectively.[167]

Although Tunisia has made significant progress in improving the conditions of its healthcare system, there are still some challenges remaining. For example, according to the Middle East Eye, there are only 87 specialised cancer doctors to treat over 12,000 yearly cancer patients.[168]

If Tunisia were to successfully seize and confiscate only 10% of the amount of IFFs considered to be circulating within the country, this would enable the government to fully cover the salary costs of 4,500 nurses throughout the country for a period of two years (at a rate of approximately USD 1,100 per month).[169] Alternatively, the recovered assets could cover the salary costs for 2,777 doctors for an entire year (at a rate of approximately USD 3,600 per month).[170]

How Recovered Assets Can Strengthen the Health Care Sector in Tunisia

Tunisia's average annual losses due to IFFs linked to criminal activity (Estimated total USD 1.2 billion) :



The Education Sector

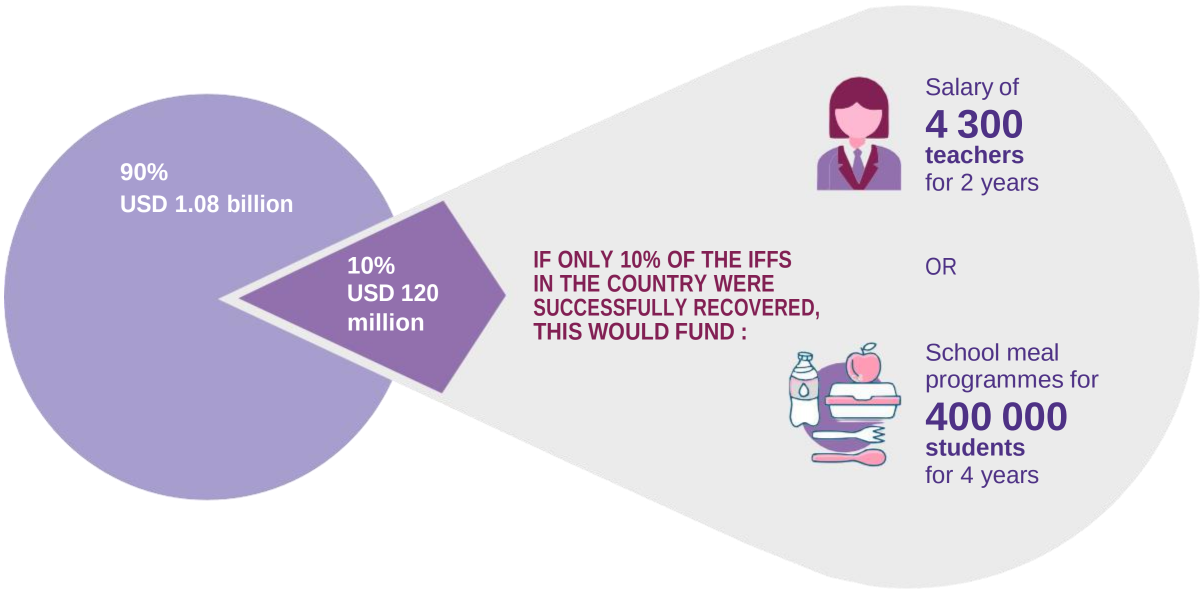
Between 1992 and 2015 public expenditure in the Tunisian education system has increased at a steady pace between, reaching 6.6% of real GDP.[171] In 2015, with a GDP of USD 43.17 billion, public expenditure in education reached USD 2.85 billion.

Although Tunisia has increased its public expenditure in the education system, there are still considerable gaps. Reforms from the early 2000s sought to increase the number of enrolled students,[172] without seeking significant overhauls in the quality of education or strong increases in the number of qualified professors. In 2011, the Ministry of Labour concluded that course content was lagging behind in many areas, especially those providing language skills.[173] Moreover, about 75% of students in eighth grade placed “low” or “below low” in key courses such as mathematics,[174] indicated a failure in qualitative school curricula. There is also a shortage of educational human resources across the country, with a lack of more than 5,000 teachers reported in 2017.[175] School facility infrastructure is often inadequate to support students with the required school needs, including school meal programmes.[176] However, Tunisia's education system is relatively better off when compared to the rest of the region. In fact, adult literacy was reported as high as 80% in 2011, the highest in the Maghreb region, and 98% of kids between the ages of 6 and 11 are enrolled in school.[177]

If Tunisia were to successfully seize and confiscate only 10% of the amount of IFFs considered to be circulating within the country, this would enable the government to fully cover the salary costs of 4,300 teachers throughout the country for a period of two years (at a rate of approximately USD 1,150 per month).[178] Alternatively, the recovered assets could cover the entire cost of school meal programmes (at an estimate USD 30 million) for some 400,000 students in the country for a period of four years; this would also have the benefit of facilitating a reduction in dropout rates, as many school-aged children (and their families) depend on such meal programmes.[179]

How Recovered Assets Can Strengthen the Education Sector in Tunisia

Tunisia’s average annual losses due to IFFs linked to criminal activity (Estimated total USD 1.2 billion) :



The Employment Sector

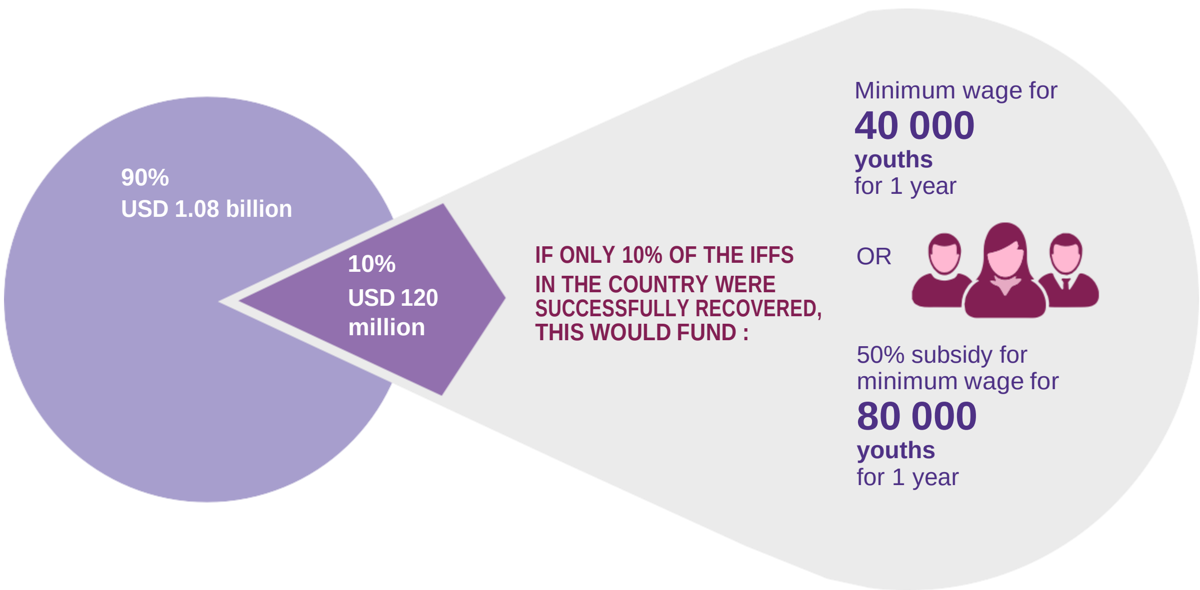
High unemployment rate is perhaps the most pressing issue Tunisia is currently facing. As of 2019, unemployment rates were up to 16% of the population.[180] More alarmingly, 36% of young people between 15 to 24 years were reported to be jobless.[181] The World Bank estimates that urban areas of Tunisia experience a 33.4% rate for youth unemployment.[182]

Youth unemployment can have a devastating effect on the country; an increasing number of young Tunisians are leaving the country to look for better opportunities elsewhere,[183] thus draining the economy of efficient workers. High and persistent youth unemployment has created disillusioned generation that is distrustful of their future opportunities, and of the government's ability to address this.[184] Therefore, creating jobs in Tunisia is of the essence to improve the overall quality of life of many Tunisians and should become a strengthened priority for the government.

If Tunisia were to successfully seize and confiscate only 10% of the amount of IFFs considered to be circulating within the country, this would enable the government to fully subsidise the minimum wage costs for 40,000 youths for a full year, at a rate of USD 3,000 per year.[185] Alternatively, the recovered assets could subsidise 50% of the minimum wage costs for 80,000 youths for a full year.[186]

How Recovered Assets Can Strengthen the Employment Sector in Tunisia

Tunisia's average annual losses due to IFFs linked to criminal activity (Estimated total USD 1.2 billion) :



4. Conclusions and Recommendations

This study has examined the severe negative impact of IFFs and related crimes on Tunisia, and has highlighted some of the sectoral needs that can be significantly addressed if the government prioritises the capture of IFFs and illicitly-obtained assets. Effective asset recovery policy is fundamental to mitigating and preventing future costs of IFFs on the country. In light of the above, this study provides the following recommendations to national authorities and other key stakeholders to help strengthen the effective and transparent recovery of illicitly-obtained assets, to inhibit IFFs and therefore to facilitate more accelerated development within the country.

1. Identify and Implement Mechanisms that Improve Asset Management

The Government of Tunisia should consider identifying and implementing mechanisms that improve efficiency in seizure, confiscation of assets, liquidation of those assets, and the distribution of funds, in a highly transparent manner, to high-priority development needs (needs identified inclose cooperation with civil society organisations, and needs identified through regular feedback from citizens).

2. Publish Clear and Unambiguous Policy Statements on IFFs/ML and Asset Recovery

Consideration should be given to publishing clear and unambiguous statements and policies with respect to IFFs / ML and the priority of the Government to seize and confiscate (with due process) assets linked to organised criminal activity.

3. Establish the Use of Extended Confiscation as a Norm within the Criminal Justice System

The Government of Tunisia should consider adopting and implementing, as the norm, not the exception, within the criminal justice system, the use of extended confiscation, which allows a court, once a conviction has been entered for specified serious crimes which can generate significant financial flows, to enter an order that there is then a legal presumption that ALL income and assets of the defendant acquired over, for example, the past five to ten years, shall be deemed to have been illicitly acquired, unless the title holder can prove that the property was acquired through legal means, with legally-acquired assets, and in good faith.

4. Establish the Use of Orders to Confiscate Legally-Acquired Assets of Equivalent Value as the Norm Within the Criminal Justice System

Tunisian authorities should consider adopting and implementing as the norm, and not the exception, within the criminal justice system, the use of orders to confiscate legally-acquired assets of equivalent value, where the illicitly-obtained assets of a defendant cannot reasonably be located or which have been depleted by the defendant or others. This is consistent with the principle that crime should not pay.

5. Ensure that the Criminal Justice System can Continue Proceedings Against the Assets of Individuals Charged with Serious Income-Generating Crimes, even if :

a. The defendant is a fugitive from justice (as long as the State demonstrates to the court it has done everything reasonable to provide notice to the defendant of criminal proceedings against him or her);
b. The defendant dies prior to culmination of the criminal proceedings; or
c. The defendant is declared mentally or physically incapable of participating in the criminal proceedings against him or her.

All of the above are consistent with the principle that crime should not pay, even if the assets are found to be in the name or possession of others. The only exception here would be those who have acquired such assets in good faith and without any reasonable knowledge that such assets were the product of criminality.

6. Establish the Use of Unjustified Enrichment Proceedings as a Norm Within the Criminal Justice System

Authorities should consider adopting and implementing as the norm, and not the exception, the initiation and prevalent use of proceedings against individuals for unjustified enrichment, or unexplained wealth, where the State can demonstrate to the court that an individual's assets significantly exceed his or her reported or reasonably possible income. Such can be done in criminal proceedings, civil proceedings or both.

7. Adopt more Agile Mechanismsfor the Settlement of Criminal Cases

In light of heavy caseloads of prosecutors and the judiciary, consideration should be given to adopting more agile mechanisms for the settlement of criminal cases, where a defendant agrees to return assets reasonably believed by the State to be the product of serious crime, and/or provides reliable information to the State regarding the serious crimes or illicitly-obtained assets of others, in return for a proportionately lighter sentence. Consideration should be given to not allowing such a mechanism for principals in organised criminal syndicates

8. Adopt and implement mechanisms for a centralised Asset Recovery Office (ARO)

Authorities should consider adopting and implementing mechanisms for a centralised Asset Recovery Office (ARO), which houses under one roof, officials with access to databases of, for example, the taxing authority, vehicle registry authority, land registry authority, business records authority, criminal records authority and related entities, in order to allow the ARO (or similar mechanism) to provide law enforcement (police and prosecutors) with consolidated reports on the assets held by those suspected of serious criminal activity, as well as assets in the possession of their family members and/or possible associates (in light of the fact that most who launder assets do not launder them in their own name).

9. Ensure that a Centralised Asset Management Office (AMO) is in Place

Authorities may wish to ensure that a centralised Asset Management Office (AMO) is in place for the transparent management of seized and confiscated assets, and for the public auctioning off of seized assets which are subject to significant depreciation (with the proceeds from such sales to be held in a State bank account until the case is fully adjudicated), as well as the public auctioning off, as the rule, not the exception, of all confiscated assets, particularly if the State does not have the capacity to effectively optimize the management of such assets. Exceptions may exist, for example, for assets which are businesses in which innocent individuals may lose their jobs if the asset is auctioned off, or where some assets can, in a transparent manner, be distributed to local communities for optimized use, or to Stateentities (e.g., vehicles to the National Police for undercover operations, as long as checks are in place to avoid corrupt distribution or misuse of such property). Public policies should be put in place to ensure that a significant percentage of the proceeds from the sale of confiscated assets should go to high-priority development needs (e.g., to build schools, clinics, or to bolster youth employment).

10. Establish or Strengthen Non-Penal Mechanisms of Civil Confiscation

Given that money laundering cases often take years to adjudicate, and thus to produce a final order for confiscation of assets linked to organised criminal activity and corruption, and given that this produces an inherent, and often justified, perception by the public that the criminal justice system is too slow in the recovery of assets, strong consideration should be given to the establishment and/or strengthening of non-penal mechanisms for the seizure and confiscation of assets (civil confiscation) – once such mechanisms are in place, and are being implemented (still, with due process for any individual seeking to claim title over such assets), this can reduce the time to confiscate assets from a period of years to a period of several months, and thus bolster public confidence in the judicial system, as well as facilitate the funding of high-priority development needs, as well as funding for law enforcement and judiciary entities charged with the fight against organised crime and corruption.

11. Empower the Taxing Authority to more Efficiently Seize and Confiscate Assets

Consideration should be given to strengthening the taxing authority power to seize and confiscate assets linked to tax evasion and other unreported income and assets.

12. Tighten controls on financial institutions to:

- **a.** Report suspicious transactions;
- **b.** Identify true (“beneficial”) owners of bank accounts, companies and trusts; and
- **c.** Vigorously sanction financial institutions and other reporting entities which do not comply, including heavy fines and/or closure (temporary or permanent) of such financial institutions or reporting entities.

13. Strengthen Mechanisms for Regular Dialogue and Feedback from Civil Society and Citizens, particularly with respect to where recovered assets should be distributed

The Government of Tunisia should consider strengthening dialogue with civil society, as this will produce better outcomes with respect to addressing the needs of the people, and will bolster citizen confidence in governmental transparency.

14. Strengthen Regional and International Cooperation

Consideration should be given to strengthening cross-border cooperation through regular face-to-face dialogue with police and prosecutorial focal points in other key countries regarding the tracing, freezing, seizure, confiscation and recovery of assets linked to organised criminal activity (and corruption), and the speedy resolution of pending cases. Such can include, on a case-by-case basis, agreements to share confiscated assets, as a means to incentivise cross-border cooperation.

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14 These often include civil confiscation proceedings, which still place the initial burden on the State to prove that certain assets are the product of illicit activities, albeit at a lower burden of proof.

15 For example, Antigua and Barbuda, Austria, Canada, Colombia, France, Hong Kong, Italy, the Netherlands, New Zealand, the United Kingdom, Singapore and Switzerland.

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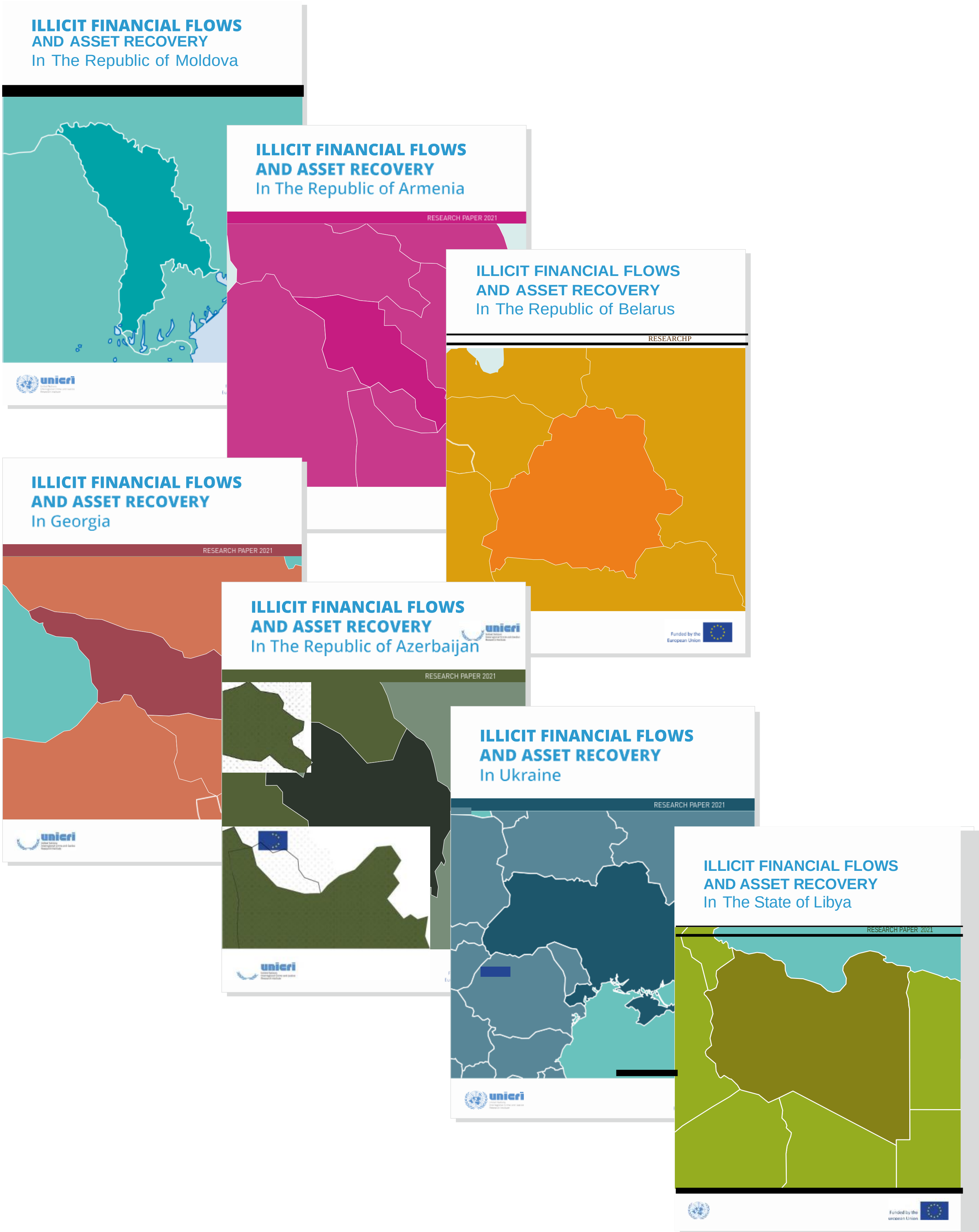

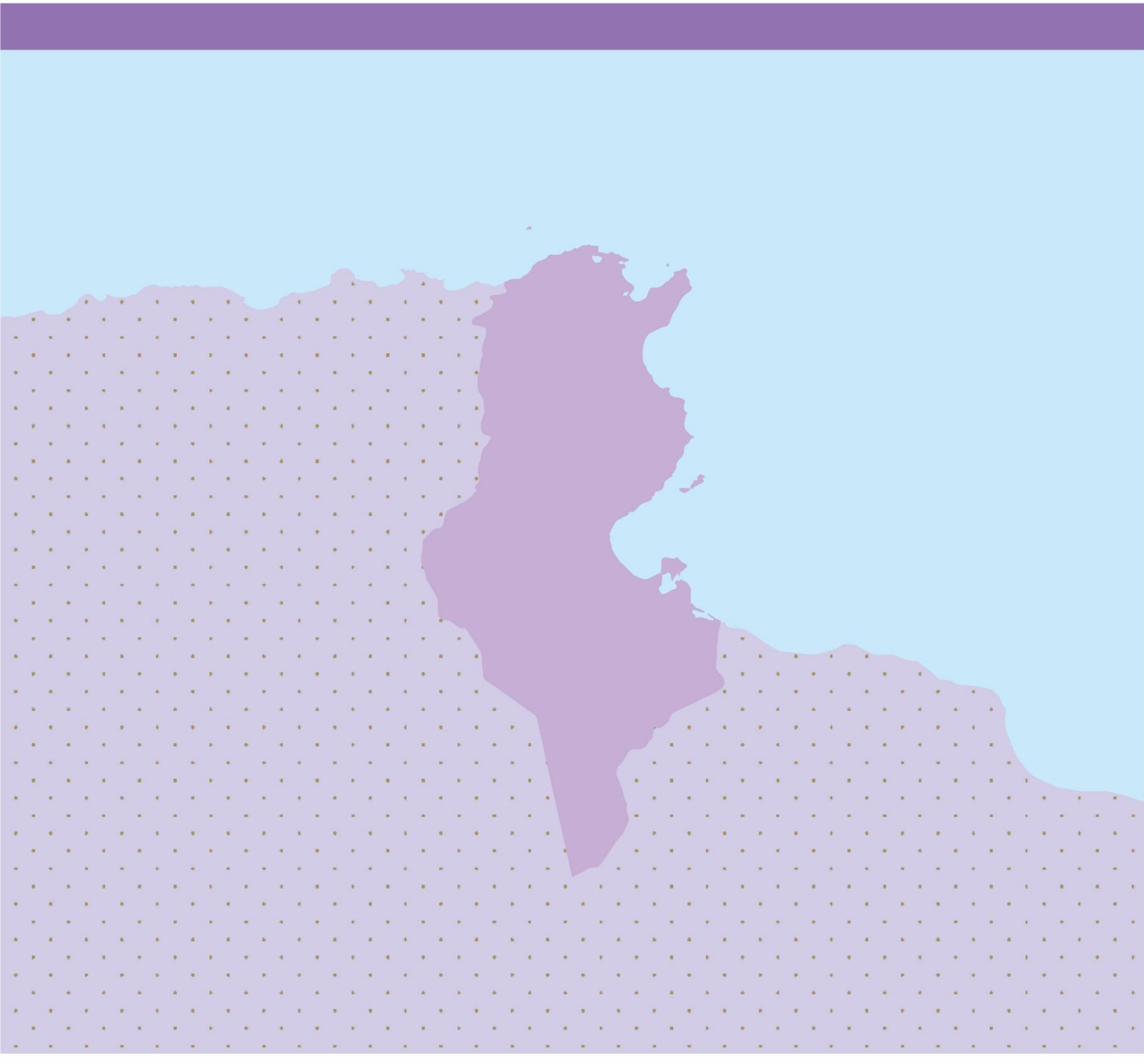

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