

Transparency International statement: Recommendations for robust action against grand corruption

Input to the Sixth UNCAC Conference of the States Parties

The preamble of the **UN Convention against Corruption** adopted in 2003 expresses concern “about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States...” This is a reference to grand corruption.

In the common understanding, **grand corruption** represents an abuse of high-level power for the benefit of the few at the expense of the many. It refers to the involvement of high-level officials in large-scale bribery and embezzlement of state assets, as well as other corruption offences.

Examples of grand corruption are well known. A raft of court documents and studies describe the networks and schemes of high-level officials around the globe who have been involved. Scores of foreign bribery and money laundering cases underline the role of multinational companies as well as of financial institutions and other facilitators. The Stolen Asset Recovery Initiative’s database of corruption cases provides many examples.¹

Grand corruption occurs to different degrees and in **different forms** according to country and context.² It may occur in a single government procurement transaction in which a company secures the deal through bribes or kickbacks involving a minister. Or it may involve systematic “pyramid” bribery schemes or the “franchising” of whole sectors to corrupt top-level officials.

In **extreme systems** of grand corruption, “the whole of government has morphed into a criminal organisation bent on no other business than personal enrichment, and has retooled the crucial gears of state power to that end”.³ In this scenario, high-level officials may use control over legislative and regulatory powers to legalise their activities and to weaken oversight and enforcement functions. They may also interfere directly with the justice system in order to thwart being held to account. Using the levers of state control, they may also suppress independent efforts by civil society and the media to investigate and expose corruption.

Grand corruption is a major obstacle to the achievement of sustainable development. It undermines and distorts economic activity and the allocation of resources, both domestically and internationally. It deepens poverty and increases exclusion.

Grand corruption also results in violations of **human rights**. As noted by the United Nations High Commissioner for Human Rights in 2013:

¹ See online database: [http://star.worldbank.org/corruption-cases/assetrecovery/?f\[0\]=bundle%3Apuppet_masters](http://star.worldbank.org/corruption-cases/assetrecovery/?f[0]=bundle%3Apuppet_masters)

² Michael Johnston has described four different “syndromes” of corruption, according to context. See, *Syndromes of Corruption* (2005). See also, Chayes, Sarah, *Thieves of State* (2014)

³ Chayes, p. 205. See also, Burgis, Tom, *The Looting Machine* (2015)

*There is no doubt that, in practical terms, corruption is an enormous obstacle to the realization of all human rights—civil, political, economic, social and cultural, as well as the right to development. Corruption violates the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in every aspect of life of the community....*⁴

Consequently, the effect of corruption on human rights has been taken up by the United Nations Human Rights Council,⁵ the Committee on Economic and Cultural Rights,⁶ and national commissions, including truth and reconciliation commissions.

Grand corruption offences and associated laundering of the proceeds frequently take place **across borders**. But while cross-border transactions have multiplied exponentially, effective systems of cross-border oversight and enforcement have not. This creates opportunities.

Transparency International is convinced that further **international action** is required against grand corruption. The measures provided by UNCAC point the way. But in contexts of system-wide grand corruption, one can expect little from national prevention and enforcement systems. In such contexts, the role of other states and of collective international action is key.

A whole array of measures can be considered for addressing grand corruption, ranging from strengthening existing systems to new international legal frameworks and institutional structures. Transparency International will survey these options in a forthcoming report. For this statement, we focus on nine priority areas for action:

1. **Recognise the seriousness of the crime of grand corruption:** In light of the specific nature and enormous harm done by grand corruption, it merits a special focus from the international community. Building on the Convention and its preambular language, the CoSP should identify grand corruption as a serious form of corruption that must be given special attention.
2. **Increase enforcement against active bribery of foreign public officials:** Foreign bribery contributes to and often constitutes grand corruption. Despite the UNCAC Article 16.1 requirement to criminalise it, enforcement against foreign bribery is weak or non-existent in many major exporting countries.⁷ The CoSP should request UNODC to prepare an in-depth study of State Party implementation of commitments regarding foreign bribery.⁸
3. **Criminalise passive bribery by foreign public officials** (UNCAC Article 16.2): In countries that enforce against active foreign bribery, evidence of grand corruption

⁴ See

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13131&#sthash.DqKlja5H.dpuf>

⁵ See eg. The Human Rights Case Against Corruption:

<http://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCASEAGAINSTCORRUPTION.PDF>

⁶ See eg, Concluding Remarks on several countries of the 56th session of the Committee on Economic, Social and Cultural Rights:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=968&Lang=en

⁷ Exporting Corruption reports of Transparency International,

http://www.transparency.org/exporting_corruption

⁸ This should take into account the OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (2014)

has been collected against bribe-payers and sanctions imposed, but there were no criminal proceedings against implicated foreign public officials in their home countries. In such instances, there are grounds for enforcement pursuant to UNCAC Article 16.2, where necessary through the exercise of extraterritorial jurisdiction. The CoSP should urge States Parties to criminalise and enforce against passive foreign bribery associated with grand corruption and should request UNODC to review barriers to enforcement against domestic officials.

4. **Exercise extraterritorial jurisdiction in instances of large-scale embezzlement of state assets or other grand corruption offences:** In many cases, there is no possibility of enforcement in the home country, whether due to perversion or weakness of the justice system. The CoSP should urge States Parties to exercise extraterritorial jurisdiction in such cases where there is evidence of grand corruption.
5. **End secrecy around ownership and control of legal entities and arrangements:** Companies, trusts and foundations whose ownership and/or control has been hidden or concealed, for example behind nominees, or by secrecy provisions in certain jurisdictions were identified as vehicles for enabling laundering of corruption proceeds in more than 70% of over 200 cases of grand corruption surveyed by the World Bank.⁹ Secret ownership also enables collusion, self-dealing or other deception in procurement, licensing and other government processes. It further serves as an obstacle to detection and investigation of corrupt transactions. The CoSP should urge States Parties to introduce central registers containing beneficial ownership information and make that information public.
6. **Increase enforcement against laundering of corruption proceeds:** Frequently, the proceeds of grand corruption are laundered in other jurisdictions, but due to weaknesses in anti-money laundering procedures—such as failure to enforce enhanced due diligence for Politically Exposed Persons—suspicious transactions are not reported and/or investigated and the proceeds are not frozen, seized and confiscated. The CoSP should call on States Parties to actively enforce against and impose dissuasive sanctions for complicity of financial institutions and other facilitators in grand corruption.
7. **Eliminate abuse of immunities:** Immunities are sometimes abused to shield the corrupt from accountability. Domestic immunities should only cover the exercise of functions (such as free speech by members of Parliament or judiciary) but should not include corruption offences. In grand corruption cases, there should be exceptions to the international immunity of state officials. The CoSP should request UNODC to liaise with the International Law Commission, which is working on this issue, and to develop guidance material on immunities.
8. **Allow victims of grand corruption greater recourse to the courts, in both criminal and civil proceedings.** In some countries police and prosecution services may not function well for the purpose of tackling grand corruption. The population affected by corruption may have the greatest incentives and interest in bringing legal proceedings and be the most willing to take action. Provision should be made for private prosecutions. Further, civil society organisations or representatives of classes

⁹ World Bank/UNODC Stolen Asset Recovery Initiative, *The Puppet Masters* (October 2011) <https://star.worldbank.org/star/publication/puppet-masters>

or groups of people should have the right to initiate legal proceedings against those responsible for grand corruption for the collective harm (or social damage) caused as well as for voiding public sector contracts concluded through corruption. The CoSP should ask UNODC to prepare an in-depth study of implementation of UNCAC Article 35 and to provide guidance on private prosecutions.

9. **Deny entry to those involved in grand corruption:** Corrupt individuals often enjoy and launder the proceeds of grand corruption abroad via the purchase of luxury goods and real estate. “Golden visa” or “significant investor” programmes may hinder cross-border enforcement if checks on the origin and legality of funds are not stringent. Denial of entry measures can act as a sanction as well as a disincentive for the corrupt. States Parties should consider including corruption within the criteria used for denying visas. The CosP should call on States Parties to ensure that investor programmes develop strong integrity criteria and due diligence processes.