

Transparency International Submission to the UNGASS against Corruption
**Proposals on the international legal framework and infrastructure
to address grand corruption impunity**

We congratulate the UNCAC Conference of States Parties and UNODC on the consultative process for the political statement to be adopted at the UN General Assembly Special Session (UNGASS) against Corruption in April 2021. The UNGASS next year offers a timely international focus on the problem of corruption, which is a source of injustice and inequality, undermines economic development and blocks efforts to address common global challenges, including environment and health.

This submission recommends steps to improve the international legal framework and infrastructure for sanctioning grand corruption, drawing on the Oslo Statement adopted by the UN Expert Group Meeting on Corruption Involving Vast Quantities of Assets (VQA) in June 2019 attended by over 140 experts from more than 50 countries.¹

1. Despite international legal framework – national level impunity for grand corruption

The worldwide corruption problem has been amplified by ever-increasing globalization and, according to recent studies, by policies mandated by international financial institutions calling for privatization of state-owned enterprises; deregulation of economic sectors; and certain cuts in government expenditure.²

The UN Convention against Corruption (UNCAC) and other anti-corruption conventions, as well as the UN Convention on Transnational Organised Crime (UNTOC), provide a solid international legal framework for a global and regional response to the corruption problem. Their review mechanisms help to make the conventions and other international standards stronger than they otherwise would be. The increasing attention of the UN human rights bodies in Geneva and of the Inter-American Commission to links between corruption and human rights violations

¹ Oslo Statement on Corruption Involving Vast Quantities of Assets (14 June 2019): https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo_Outcome_Statement_on_Corruption_involving_Vast_Quantities_of_Assets_-_FINAL_VERSION.pdf. The Statement was adopted at the last of three Expert Group Meetings organised as follow-up to Resolution 7/2 on Corruption Involving Vast Quantities of Assets (VQA) adopted at the 7th UNCAC Conference of States Parties in 2017.

² See for example, Reinsberg, Stubbs, Kentikelenis, King, [“The World System and the Hollowing Out of State Capacity: How Structural Adjustment Programs Affect Bureaucratic Quality in Developing Countries”](#) (2019); Reinsberg, Kentikelenis, Stubbs, [“Creating crony capitalism: neoliberal globalization and the fueling of corruption”](#) (2019); Reinsberg, Stubbs, Kentikelenis, King, [“Bad governance: How privatization increases corruption in the developing world”](#) (2019), researchgate.net; Jomo Kwame Sundaram, [“Privatization Increases Corruption”](#) (2019), www.ipsnews.net

is also a welcome and important development.³ This includes the work of the Working Group on Business and Human Rights.⁴

However, despite progress made thanks to this framework, in cases of grand corruption there is too often impunity. Powerful perpetrators interfere with and disable their national justice systems, making justice officials unable or unwilling to deliver accountability. Moreover, since grand corruption schemes usually involve public and private sector actors across multiple jurisdictions, investigation of such cases is complex and expensive. These challenges result in the lack of effective legal remedies against grand corruption, including lack of reparations for the victims and for the collective harm caused.

The international legal framework and infrastructure does not currently provide a basis for ensuring accountability for the perpetrators of grand corruption schemes, leaving them to gut states of their intended functions and turn them into a machinery for illicitly extracting public resources.

Impunity for grand corruption should be addressed by the international community as a matter of priority because of its grave negative impact on human rights, security and development, blocking achievement of the Sustainable Development Goals.⁵

2. New international legal framework - defining grand corruption and special procedures in a protocol to the UNCAC

Countering impunity starts with an analysis of grand corruption, including the types of criminal activity, the negative impacts, and the reasons for impunity. This in turn can provide the basis for a legal definition of grand corruption and for introducing special measures to counter impunity.

Transparency International has been working with a group of experts to analyse the grand corruption phenomenon and develop a new legal definition focusing on three main features: a corruption scheme; involvement of a high level public official; and serious harm caused, which may take the form of large-scale misappropriation of public resources or gross violations of human rights.

Defining grand corruption provides the basis for introducing new national approaches to the impunity problem. For example, in national law the definition could be used to trigger special procedural rules to achieve greater accountability, whether within the “home” jurisdiction of

³ <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx>; <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/Documentation.aspx>; https://www.oas.org/en/iachr/media_center/PReleases/2018/053.asp; <https://ijrcenter.org/2020/01/10/new-inter-american-commission-report-analyzes-corruption-as-human-rights-problem/>

⁴ [Working Group on the Issue of human rights and transnational corporations and other business enterprises](#)

⁵ See [TI Statement on Grand Corruption as an Obstacle to the Achievement of the Sustainable Development Goals](#) (December 2019); [The many-headed hydra: how grand corruption robs us of a sustainable future](#) (Jenkins, December 2019) This was recognised in the expert group meetings organised on the basis of Resolution 7/2 on Corruption Involving Vast Quantities of Assets (VQA) adopted at the 7th session of the UNCAC Conference of States Parties in 2017.

the grand corruption or in other jurisdictions. The special procedural rules could cover extraterritorial jurisdiction, standing for victims, sanctions, statutes of limitation, lifting of immunities and return of assets.

At international level, the definition of grand corruption could provide a threshold for the jurisdiction of any newly created international anti-corruption bodies.

With a protocol to the UNCAC on grand corruption, states could agree on a common understanding of the term, the associated special procedures required at national level and, potentially, new international institutional arrangements. The Oslo Statement, in its Recommendation 47, encourages consideration of the development of such a protocol.

3. New international infrastructure – options for tackling grand corruption impunity

The nature and scale of the problem of grand corruption suggests the need for a comprehensive approach that includes reforms to international justice institutions. One notable proposal from the Government of Colombia and US Judge Mark Wolf is for creation of an international anti-corruption court with jurisdiction over grand corruption cases where countries themselves are unable or unwilling to pursue them.⁶

The proposal for a stand-alone court deserves careful study. So too, do six other potential reforms to the international criminal law infrastructure:

- Extending the jurisdiction of the International Criminal Court (ICC)
- Regional anti-corruption courts, similar to regional human rights courts that already exist. This is under consideration in Africa under the Malabo Protocol and in discussions at the Economic Community of West African States (ECOWAS)⁷
- International or regional anti-corruption prosecutors or enforcement agencies. The new European Prosecutor's Office provides an example of how that might work.
- International or regional investigative agencies. An example of this is the International Anti-Corruption Coordination Centre established by the UK in July 2017, which brings together specialist law enforcement officers from multiple agencies around the world to tackle allegations of grand corruption⁸

⁶ <https://colombiareports.com/colombia-to-propose-international-anti-corruption-court-at-un/> ; https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Presentations/Opening_Carlos_Holmes_Trujillo_Colombia.pdf ; https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Presentations/Mark_Wolf_-_USA.pdf ; <https://www.brookings.edu/research/the-case-for-an-international-anti-corruption-court/>

⁷ In May 2019, the Network of Anti-Corruption Institutions in West Africa (NACIWA) recommended the expansion by the ECOWAS Authority of the jurisdiction of the Community Court of Justice to include criminal cases relating to corruption due to the increasing trans-border nature of corrupt practices and prevalence of corruption in the region: <https://www.ecowas.int/west-african-regional-anti-corruption-network-recommends-modalities-for-corruption-risk-assessment-training/>

⁸ <https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption-centre>

- A framework for ad hoc international anti-corruption courts focused on one country. This could follow the models of the international criminal tribunals for atrocities in Rwanda, Yugoslavia, Sierra Leone and Cambodia
- A framework for ad hoc international prosecution or investigative functions focused on one country. A salient example is the International Commission against Impunity in Guatemala (CICIG) set up by the United Nations in 2006. Its mandate ended in 2019

The complexity of this subject matter points to the need for in-depth analysis and multi-stakeholder expert discussions over an extended period. The options, and possible combinations of options, should be evaluated according to a range of criteria, including political feasibility, effectiveness and cost - criteria that are to some extent interconnected.

Along the same lines, the Statement adopted by the Oslo Expert Group Meeting in June 2019. Includes two of its recommendations encouraging the exploration of innovative ideas, including most of the infrastructure options mentioned above.⁹

4. The Oslo Statement's additional proposals regarding international legal framework and infrastructure

The Oslo Statement contains many other proposals that should be considered for improvements in the international legal framework and infrastructure for sanctioning grand corruption. It includes recommendations for new international standards; new international research and analysis; improvements in existing infrastructure; and potential new infrastructure.

New international standards and agreements are recommended on asset verification (Recommendation 2); beneficial ownership transparency (BOT), including consideration of public registers of legal entities (Recommendation 10); and to remove existing uncertainties around the interpretation of legal privilege or professional secrecy (Recommendation 15).

More international research is recommended on existing and emerging systems of BOT (Recommendation 10); the enablers of corruption involving VQA (Recommendation 14); the impact of corruption involving VQA on global peace and security, the enjoyment of human

⁹ Oslo Statement on Corruption Involving Vast Quantities of Assets (14 June 2019):

- Recommendation 46: Innovative ideas to end impunity should be explored, including analysis and discussion of proposals such as the establishment of regional mechanisms for prosecution: and international mechanisms, such as establishing an international anti-corruption court.
- Recommendation 47: Other innovative ideas that could be further analysed and discussed are, for example: the establishment of an international special rapporteur for anti-corruption; the development of a protocol to UNCAC on corruption involving VQA; exploring the possibility of extending the jurisdiction of the International Criminal Court to include corruption involving VQA; creating international commissions against corruption and impunity; elevating the Jakarta Principles to a more binding instrument; promotion of the three zero principles as enshrined in the Beijing Initiative for the Clean Silk Road

rights, the climate and bio-diversity (Recommendation 31); and the identification and compensation of victims of corruption involving VQA (Recommendation 32).

Improved mechanisms, systems and approaches are recommended including strengthened international reviews of anti-corruption and anti-money-laundering systems and pursuing synergies among monitoring mechanisms (Recommendation 12); improved international information sharing systems with timely access to cross-border financial transactions (Recommendation 21); strengthened global networks of law enforcement authorities working on cases involving VQA (Recommendation 37) and the extended use of joint investigation in transnational cases (Recommendation 39).

New infrastructure and approaches should be considered, including the innovative ideas mentioned in this submission in footnote 9, as well as support funds for anti-corruption practitioners in difficult circumstances and similar initiatives to protect anti-corruption fighters, such as investigative journalists and other activists (Recommendation 51); extending protections through international, regional and bilateral channels from threats against whistleblowers, witnesses, journalists and civil society activists involved in pursuing grand corruption cases (Recommendation 53) and prioritisation by international stakeholders of addressing state capture, foreign funding in politics and the penetration of political parties by organized crime groups (Recommendation 58).

5. Proposal for creation of a UN expert working group or task force

It is essential that the UNGASS against Corruption include a focus on measures to improve the international legal framework and infrastructure for addressing grand corruption. There are no simple solutions at global level, but with a programme of coordinated research, analysis and discussion over a period of about two years, experts could consider ideas for improvements, including the proposals in the Oslo Statement.

The political declaration of the UNGASS against Corruption should mandate creation of a UN expert working group or task force to oversee such a programme of work. They should make proposals for a legal definition of grand corruption and for new agreements and mechanisms to ensure the missing accountability for grand corruption.

10 March 2020