



FACTI Panel Secretariat &lt;info@factipanel.org&gt;

**[FACTI Inbox] RE: Remarks for transmission to the Panel**

1 message

**Ketakandriana Rafitoson (TI MG)** <krafitoson@transparency.mg>

Wed, Nov 18, 2020 at 7:11 PM

To: "info@factipanel.org" &lt;info@factipanel.org&gt;

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Greetings,

I was a speaker on yesterday's consultation but couldn't express my point of view due to unexpected technological/connectivity problems.

M. Chola therefore kindly referred me to this address so that I can share our movement's point of view (i.e. Transparency International - TI), with the full endorsement of our chapter in Madagascar.

You can read it below, and I'm sending as attachments the submissions that our movement made to the FACTI panel previously this year, in case of need.

I warmly thank our colleagues from the TI Secretariat in Berlin (cc'ed) who prepared those speaking points for us.

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TI has the following three main proposals for the panel's recommendations, as well as for the UNGASS against Corruption political declaration:

- (1) There should be coordinated approaches across institutions to all illicit financial flows and especially towards the secrecy that enables money laundering. We propose two concrete transparency solutions to address illicit flows, outlined below;
- (2) There should be bold steps forward in the field of asset recovery by means of a new multilateral agreement and a greater role for regional or international institutions in asset recovery processes, as outlined below;
- (3) The UN General Assembly should create a UN-level task force or committee to discuss grand corruption and the special measures and international structures required to address it, as well as other gaps in the UNCAC such as those concerning political integrity.

### 1. Countering secrecy with beneficial ownership transparency

Under current global standards the corrupt are able to shield themselves with anonymity. The FACTI interim report extensively covers policy issues and tools surrounding beneficial ownership transparency and recognises secrecy as the common denominator underlying illicit financial flows. The panel notes that in its final report it will consider "proposing solutions related to technical barriers facing better accessibility of beneficial ownership information, as well as the institutional and governance factors that should be addressed with sufficient international political commitment. The value of universal central registers will be of special concern."

The UNGASS political declaration zero draft (para 7) refers to "a new global practice on beneficial ownership transparency" but fails thus far to call for central public registers of beneficial ownership.

- Proposal: Central public beneficial ownership registers should be recognised as a global norm and a Global asset registry (GAR) should be established

The panel's recommendations should seek to reform standards on beneficial ownership and cement the use of central public registers of beneficial ownership as a global norm. These registers should include both legal entities and arrangements such as trusts and be free and open to the public. In addition, the FACTI panel's final report should explore how transparency in corporate ownership can be expanded to other types of assets, such as properties, valuable goods, crypto assets. Currently, information on asset ownership is compiled in a very scattered manner across countries. In addition, in most jurisdictions, assets can be registered in the name of legal entities or arrangements and the information about the natural persons benefiting from them is not available. The establishment of a global asset registry (GAR), which is simply a database of assets – companies, properties, valuable goods, crypto-assets - and their real owners, would make hiding and laundering illicit funds much more difficult as it would give competent authorities much easier access this data.

The FACTI panel could and should play an important role in developing the GAR concept, building on the work that has been carried out so far. It should make recommendations about how existing initiatives could contribute to a GAR as well as the necessary governance and infrastructure for such a register. The UNGASS against Corruption political declaration should also endorse central public registers of beneficial ownership transparency and the creation of a GAR.

## 2. Countering injustice with more effective asset recovery

In its submission to FACTI and to the UNGASS, TI proposed a multilateral agreement to advance developing country recovery of illicitly taken assets. This is based on findings regarding barriers to asset recovery highlighted in both the TI submissions and in the FACTI interim report. One of these findings is that despite the UN Convention against Corruption's chapter V, only a small percentage of the proceeds of corruption from developing countries has been recovered and returned in the last 10 - 15 years. [The amount of proceeds of corruption over a ten-year period can be estimated at US\$ 400 billion based on a World Bank estimate of US\$ 40 billion per year. The amounts lost to developing countries and the harm caused worldwide are much greater if account is taken of other illicit financial flows and harm to victims.] A further common finding is that asset recovery is hampered by barriers to international cooperation, including weaknesses in legal frameworks and enforcement systems. Additionally, it is recognised that asset recovery processes could be expanded beyond recovery of the proceeds of corruption to other illicit financial flows; that there is a need for better data collection; and that it is essential to ensure effective, accountable and transparent asset return.

The TI submission and the FACTI report also both refer to obstacles to victim's compensation in foreign bribery cases that mean the people in affected countries are "left out of the bargain" in those cases while billions in disgorged profits go into the treasuries of supply-side countries. The obstacles include the fact that state and non-state victims often lack information about proceedings underway, especially with settlements, which are negotiated in secret. Further, enforcement agencies in supply side states often argue that if compensation is paid to victim states, it will be recycled into corruption.

- *Proposal: UN member states should negotiate a new multilateral agreement on asset recovery should be negotiated*

While overcoming some of the barriers to asset recovery will require long-term reform efforts, a multilateral agreement, if expeditiously concluded, could address some of the legal and process obstacles that would make a difference in the short term, in time to support the achievement of the SDGs. The FACTI panel's final report should include a recommendation that intergovernmental negotiations be initiated for a multilateral agreement on asset recovery. The UNGASS political declaration should also make such a recommendation and indicate steps for follow-up.

Such a multilateral agreement, potentially a protocol to the UNCAC, should apply to all illicit financial flows and cover the following areas:

(1) Specific measures to address barriers to international cooperation and expedite the asset recovery process. This should include mutual legal assistance arrangements, as well as frameworks in destination countries for proactive freezing and non-conviction-based confiscation. It should also address legal frameworks and enforcement systems in origin countries.

(2) Standards, legal frameworks and procedures for transparent and accountable asset freezing, confiscation and return processes [Note: An important step in that direction was achieved at the Global Forum on Asset Recovery (GFAR) in 2017 which agreed the GFAR Principles for disposition and transfer of confiscated stolen assets in corruption cases. These principles include transparency, accountability, benefit to the people of the nations harmed and civil society participation. They have been applied in recent cases involving return of assets to Nigeria and are part of the recent framework for a return of assets to Uzbekistan.]

(3) Standards, legal frameworks and procedures for ensuring restitution and compensation of state and non-state victims including in foreign bribery and related money laundering cases, with special measures in cases of grand corruption

(4) A role for regional or international institutions in coordination of investigations, oversight of asset recovery processes and mediation of disputes.

### 3. Countering impunity with measures against grand corruption

As noted in TI's UNGASS submission referred to above, there is too often impunity in cases of grand corruption. 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 and may also involve enforcement action in multiple jurisdictions. 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. They may also result in jurisdictional battles.

The FACTI panel report highlights concerns about grand corruption, noting that proactive enforcement actions are quite exceptional in grand corruption cases, and many former kleptocrats managed to escape justice and to enjoy their illicit wealth with almost total impunity. The panel observes that recent high-profile instances of grand corruption have contributed to a growing interest in the international battle against cross-border corruption and the recovery of illicit assets. They also note ambitious institutional reform proposals.

The UNGASS political declaration zero draft references concern about corruption "vast quantities of assets" as grand corruption is known in UNCAC parlance, noting its negative impact on enjoyment of human rights and that these challenges have increased during the COVID-19 pandemic. However, it contains no specific proposals for addressing the problem by name, though there are two relevant paragraphs mentioned below.

- *Proposal: A UN expert working group or task force should be created to develop proposals on measures to improve the international legal framework and infrastructure for addressing grand corruption and on addressing other related gaps in the Convention*

It is essential that the FACTI final report and the UNGASS political declaration include recommended steps to take to improve the international legal framework and infrastructure for addressing grand corruption. Given the complexity of the subject, they should recommend a UN process, such as creation of a UN expert working group or task force, to conduct work on a legal definition of grand corruption and on possible new agreements and structures to ensure the missing accountability for grand corruption. This could potentially lead to a protocol to the UNCAC on grand corruption. It should be recognised, however, that for some governments, even a mention of the term "grand corruption" is taboo. This could explain why it is not mentioned in the zero draft, but paragraphs 43 and 45 of the UNGASS zero draft of the political declaration are very relevant. The task force should also consider a range of preventive measures to infuse integrity at the top of our political systems, to curb opaque and uneven political financing and to redefine the terms of corporate political engagement, across the board.

Thank you for the opportunity.

Best,

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**"ENSEMBLE CONTRE LA CORRUPTION"**

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**\*\* Vous aussi, signez notre [pétition](#) pour l'accès à des soins de qualités, libérés de toutes corruption**

**\*\* Lisez également les [articles](#) de notre réseau de journalistes d'investigation - MALINA**

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**2 attachments**



**TI to UNGASS against Corruption.pdf**

502K



**FACTI Input TI.pdf**

152K

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.<sup>1</sup>

**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.<sup>2</sup>

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

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<sup>1</sup> 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](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 7<sup>th</sup> UNCAC Conference of States Parties in 2017.

<sup>2</sup> 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](http://www.ipsnews.net)

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

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.<sup>5</sup>

## **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

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<sup>3</sup> <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://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/>

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

<sup>5</sup> 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 7<sup>th</sup> 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.<sup>6</sup>

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)<sup>7</sup>
- 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 corruption<sup>8</sup>

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<sup>6</sup> <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/Opening_Carlos_Holmes_Trujillo_Colombia.pdf) ; [https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Presentations/Mark\\_Wolf\\_-\\_USA.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/>

<sup>7</sup> 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/>

<sup>8</sup> <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.<sup>9</sup>

#### **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

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<sup>9</sup> 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

# Transparency International: input to FACTI panel

Via email to: [info@factipanel.org](mailto:info@factipanel.org)

Dear FACTI Panel Members,

Thank you for the opportunity to provide input to this initiative, which we welcome as an effort to enhance accountability, transparency and integrity in global finance. There is a pressing need for bold political action to bridge the estimated annual SDG funding gap of 2.5 trillion US dollars, as well as to respond in an effective and equitable manner to the challenges of the ongoing Covid-19 crisis.

We also welcome the Panel's current consultation with civil society representatives and other stakeholders, and trust that the Panel will continue with this inclusive approach during the next stages of its work.

## **Illicit Financial Flows: a major driver of poverty and inequalities worldwide**

There is compelling evidence that illicit financial flows exacerbate poverty, inequality and wealth distribution and are a major obstacle to achieving the 2030 agenda. They undermine the implementation of all SDGs, with a particularly detrimental impact on SDG 1 (no poverty), SDG 2 (zero hunger), SDG 16 (Peace, Justice and Strong Institutions) and SDG 8 (Decent Work and Economic Growth)<sup>1</sup>.

Corruption, tax evasion and tax avoidance erode domestic revenue mobilisation, depriving governments from much needed resources to provide public services, invest in public infrastructure and finance development programmes and social policies targeting the most disadvantaged groups of society, including women. They act as a form of reverse distribution mechanism - an extraction of wealth from the lower and middle classes to the richest<sup>2</sup>, shift the tax burden towards the middle and lower end of the income distribution spectrum<sup>3</sup> and probably constitute one of the largest sources of revenue loss in developing countries<sup>4</sup>. In Africa alone, a report by UN ECA estimates that the continent's capital stock would be 60% larger without illicit outflows, while GDP per capita would be up to 15 per cent more and the rate of investment would increase from 19 percent to 30 percent of GDP<sup>5</sup>. Illicit financial flows undermine economic and development outcomes, hinder poverty reduction and fuel rent-seeking behaviours.

The loss of resources for development caused by illicit financial flows has been linked to high levels of unemployment, poverty and inequality<sup>6</sup>. This has a detrimental impact on the poorest and most marginalised groups, especially women who represent a higher share of the world's poor, undermining the "leave no-one behind agenda". Women are particularly affected by the impact of IFFs on poverty and inequalities, as IFFs

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<sup>1</sup> Transnational Alliance to Combat Illicit Trade. 2019. Mapping the impact of illicit trade on the sustainable development goals. [https://unctad.org/meetings/en/Contribution/DITC2020\\_TRACIT\\_IllicitTradeandSDGs\\_fullreport\\_en.pdf](https://unctad.org/meetings/en/Contribution/DITC2020_TRACIT_IllicitTradeandSDGs_fullreport_en.pdf)

<sup>2</sup> Kar, D. Schjelderup, G. Salomon, M. Baker, R. 2015. Financial Flows and Tax Havens: Combining to Limit the Lives of Billions of People. Global Financial Integrity and Norwegian School of Economics. <https://gfintegrity.org/report/financial-flows-and-tax-havens-combining-to-limit-the-lives-of-billions-of-people/>

<sup>3</sup> Coplin, N. Nwafor, A. 2019. It's not all about the money: Domestic revenue mobilisation, reducing inequality and building trust with citizens. Oxfam. <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/620754/bp-its-not-all-about-money-drm-080519-en.pdf>

<sup>4</sup> OECD. 2014. Fragile States 2014: Domestic Revenue Mobilisation in Fragile States. <https://www.oecd.org/dac/conflict-fragility-resilience/docs/FSR-2014.pdf>

<sup>5</sup> UN Economic Commission for Africa. 2015. Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa Commissioned by the AU/ECA Conference of Ministers of Finance, Planning and Economic Development. [https://www.uneca.org/sites/default/files/PublicationFiles/iff\\_main\\_report\\_26feb\\_en.pdf](https://www.uneca.org/sites/default/files/PublicationFiles/iff_main_report_26feb_en.pdf)

<sup>6</sup> Herkenrath, M. 2014. Illicit Financial Flows and their Developmental Impacts: An Overview. <https://journals.openedition.org/poldev/1863>

reduce public resources available for programmes focused on promoting gender equality and for public services provision on which women and the poor are more reliant. The origins of illicit flows also differently affect men and women, particularly when considering the impact of corruption (including gender specific forms of corruption such as sextortion<sup>7</sup>) and human trafficking, which are known to disproportionately affect women<sup>8</sup>.

Our input calls for an overarching, Common Core Agenda to tackle secrecy, and proposes two major reforms, namely

- 1) a Global Asset Register, and
- 2) a Multilateral Agreement on Asset Recovery

Thank you for your consideration, and please do not hesitate to contact us on [deriksson@transparency.org](mailto:deriksson@transparency.org) if we can provide further details on these proposals.

Daniel Eriksson  
Managing Director, Transparency International

### A Common Core Agenda to tackle secrecy

Existing international frameworks provide a wide range of measures to tackle different angles of the challenge of illicit financial flows: corruption, tax evasion and avoidance, and other criminal activities. All of these activities thrive on the same factor: secrecy.

At the same time, existing counter-measures tend to be dispersed across different frameworks, institutions and policy areas.

For this reason, Transparency International proposes the FACTI Panel to consider launching **a Common Core Agenda for tackling Illicit Flows that focuses on secrecy.**

This Common Core Agenda would seek to convene all relevant actors and encourage them to prioritise the issue of secrecy by taking concrete measures to address it in their respective fields – including anti-corruption, tax transparency, and sustainable development - for a pre-defined period of time. In practice, this could range from reforming reporting standards, placing more emphasis on transparency in country review assessments, or making opacity the focus of policy and research output, among others.

Enhancing transparency and removing anonymity – particularly around company ownership – would significantly improve global chances of arresting the illicit flow of resources out of their countries of origin. It will help prevent corrupt actors from siphoning off development finance into private accounts stashed away in secrecy jurisdictions – and help to detect and return it when they do.

We believe the FACTI Panel can play an important role in advancing the debate around secrecy and anonymity in a way that:

- (i) contributes to the achievement of the goals of existing bodies and frameworks; and
- (ii) fills a gap in the international infrastructure, as there is currently no body or institution with a mandate and reach to explore and coordinate cross-cutting, innovative approaches to this problem.

With only ten years left to achieve the 2030 targets, there is a need for seismic change to ensure that resources intended to build schools, hospitals and other key development infrastructure are not captured by special interests. Existing institutions must play their part in shining a light on secrecy, which includes

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<sup>7</sup> Transparency International 2020. Breaking the silence around sextortion: the links between power, sex and corruption. <https://www.transparency.org/en/publications/breaking-the-silence-around-sextortion>

<sup>8</sup> Merkle O. 2020. The gendered dimensions of illicit financial flows <https://knowledgehub.transparency.org/helpdesk/the-gendered-dimensions-of-illicit-financial-flows>

establishing a global asset register and accelerating the return of misappropriated assets. Please see below for further details on initiatives to implement these two proposals.

Only in this way can we generate and safeguard the vast resources needed to overcome the immediate COVID-19 crisis as well as the longer term development needs around the world. The Panel has a key role to play in driving forward this ambitious agenda. Transparency International, with its network of more than 100 chapters, stands ready to support measures to disrupt the mechanisms and networks that enable corruption, tax evasion and tax avoidance.

## Global Asset Registry

Our second proposal relates to the establishment of a Global Asset Registry, consisting of a database of assets – companies, properties, valuable goods, crypto-assets - and their real owners. Not only would this enable the concentration of capital to be calculated, it is an essential step to allow countries to introduce wealth taxes, a measure now being widely considered as a potential source of revenue to address the economic fallout of the COVID-19 pandemic.<sup>9</sup>

A Global Asset Registry (GAR) would also contribute to the fight against corruption, tax evasion and other sources of illicit financial flows. Hiding and laundering illicit or unreported funds would become much more difficult if tax authorities and law enforcement had the ability to access this data.<sup>10</sup> Naturally, the Registry would also facilitate international cooperation and asset recovery.

A workshop organised in 2019 by the World Inequality Lab, the Independent Commission for the Reform of International Corporate Taxation (ICRICT), Tax Justice Network, Transparency International and the Financial Transparency Coalition with experts from academia, civil society, and multilateral bodies discussed the impact a global asset registry could have in reducing inequality by exposing corruption and tax evasion and analysed concrete alternatives for implementing such a registry.<sup>11</sup>

Currently, information on asset ownership is compiled in a very scattered manner across countries. Registries of assets such as companies, properties, yachts and private jets as well as bank accounts are under the responsibility of different authorities. It is not uncommon, for instance, to have in one country multiple authorities at the sub-national level compiling this information without the existence of a centralised database. Access to these scattered databases is also limited, particularly in cases where assets are registered in a third country.

Another common problem is that in most jurisdictions assets can be registered in the name of legal entities or arrangements and the information about the natural persons benefiting from them is not available, making it more difficult for tax and law enforcement authorities to detect wrongdoing. should start collecting asset ownership information at the beneficial ownership level, or beneficial ownership registration laws should expand their scope to cover any foreign or local legal vehicle that owns assets in the country. A GAR should ensure that asset ownership information is available at the beneficial ownership level, meaning that assets registered in the name of a foreign or domestic legal entity would also have to include the name of the beneficial owners.

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<sup>9</sup> Shaxson, N., “Could the wealth in tax havens help us pay for the coronavirus response?”, Tax Justice Network, March 2020, [www.taxjustice.net/2020/03/27/could-the-wealth-in-tax-havens-help-us-pay-for-the-coronavirus-response/](https://www.taxjustice.net/2020/03/27/could-the-wealth-in-tax-havens-help-us-pay-for-the-coronavirus-response/)

<sup>10</sup> Independent Commission for the Reform of International Corporate Taxation (ICRICT), 2019. *A Roadmap for a Global Asset Registry*. <https://www.icrict.com/press-release/2019/3/25/icrictnew-paper-a-roadmap-for-a-global-asset-registry-measuring-and-tackling-inequality-curbing-tax-avoidance-tax-evasion-corruption-and-illicit-financial-flows>

<sup>11</sup> World Inequality Lab, ICRICT, Tax Justice Network, Transparency International, Financial Transparency Coalition, 2019. *The 2019 Global Asset Registry Workshop*. <https://www.taxjustice.net/wp-content/uploads/2019/09/Sept-2019-GAR-workshop-brief.pdf>

The GAR would work to break those silos, and allow relevant information to be centralised and accessible, enabling the analysis, cross-checks and red-flagging for all relevant actors in the public and private sectors to conduct due diligence and investigate potential criminal activity.

While ideally the GAR would be a global inventory of asset ownership, its establishment could be done in stages by extending the scope of existing initiatives or building on them. For instance, at least 40 countries have already adopted beneficial ownership of legal entities as the norm.<sup>12</sup>

The requirements for disclosing the real beneficial owners could be expanded to other assets such as real estate and land, private jets and yachts. Another step would be to then combine all this information in one single place at the domestic level that later could be combined with similar initiatives undertaken by other countries.

Considering the relevance of the debate around wealth concentration to mobilise resources to fight the COVID-19 pandemic as well as a source to mobilize resources to achieve the 2030 Agenda, another alternative to start the establishment of a GAR would be to start developing a global inventory focusing on luxury assets commonly known to be related to wealth concentration and money laundering, including high-end real estate, financial wealth, yachts private jets and art.

The FACTI panel could play an important role in discussing the scope and developing the GAR concept building on the work that has been carried out so far.<sup>13</sup> The panel should also explore how existing initiatives could contribute to a global asset registry and consider the necessary governance and necessary infrastructure to establish such a register.

### Multilateral Agreement on Asset Recovery

Our third proposal is for a multilateral agreement on asset recovery to advance justice, human rights and the achievement of the 2030 Sustainable Development Goals (SDGs). This could be a stand-alone General Assembly-approved instrument or declaration or, if limited to proceeds of corruption, a protocol to the UN Convention against Corruption (UNCAC).

Despite UNCAC chapter V, the work of the Stolen Assets Recovery Initiative (StAR), and efforts within the Lausanne process to overcome obstacles, only a small percentage of the roughly estimated US\$ 400 billion proceeds of corruption from developing countries in the last 10 years has been recovered and returned<sup>1</sup>. The estimated amounts lost to developing countries rise into the trillions if account is taken of other illicit financial flows and harm to victims, including that caused by embezzlement, foreign bribery and related offences<sup>2</sup>. Moreover, the harm caused by illicit financial flows is not limited to developing countries.

While overcoming some of the barriers to asset recovery requires long-term reform efforts, a multilateral agreement could address some of the legal and process obstacles that would make a difference in the short term, in time to support achievement of the SDGs.

TI's proposal for a multi-lateral agreement takes into account the UNCAC; the 2030 SDGs (in particular SDG 16); UN General Assembly resolutions on asset recovery; the UN General Assembly's Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the UN Guiding Principles on Business and Human Rights; successive Human Rights Council resolutions on the subject of the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights; as well as UNCAC resolution 7/2 on Preventing and combating corruption involving vast quantities of assets and the Lima and Oslo Statements on Corruption Involving Vast Quantities of Assets.<sup>3</sup>

It also takes into account the Common African Position on Asset Recovery (2019); the Global Forum on Asset Recovery Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases (GFAR Principles, 2017); and the Lausanne process Guidelines for the Efficient Recovery of Stolen Assets (2014).

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<sup>12</sup> Transparency International, Beneficial Ownership Registers: Progress to Date (Upcoming).

<sup>13</sup> In addition to the workshop briefing mentioned above, the ICRICT continues conducting relevant research. The commission is undertaking a feasibility study in the UK for the establishment of a local GAR.

**The proposal:** A multilateral agreement should cover all illicit financial flows and should address three main areas:

- (1) Specific measures to address barriers to international cooperation and expedite the asset recovery process. This should include mutual legal assistance arrangements, as well as frameworks in destination countries for proactive freezing and non-conviction based confiscation
- (2) Standards, legal frameworks and procedures for transparent and accountable asset freezing, confiscation and asset return processes
- (3) Standards, legal frameworks and procedures for ensuring restitution and compensation of state and non-state victims in cases of grand corruption, foreign bribery and money laundering.

In the context of transparent and accountable asset return, the GFAR Principles and the guidance in the Common African Position on Asset Recovery should be followed. Both set out standards that are specific, enforceable, and suitable for most jurisdictions.

With regard to the second and third areas mentioned above, an international agreement could resolve a set of key issues in order to build trust, collaboration and successful outcomes in asset recovery. The following are some of the key principles that should be included in such agreement:

- Transparency
  - *In destination countries:* Publishing up-to-date information on asset management and asset return frameworks and policies, including policies for notifying source/origin countries. Publishing data on freezing, seizure and confiscation processes underway and amount of assets involved, broken down by country of origin.
  - *In source/origin countries:* Publishing up-to-date information on asset management frameworks and policies and data on the status and use of transferred funds or property.
- Accountable structures
  - *In destination countries:* Establishing transparent arrangements for immovable assets. Creating funds, trusts or escrow accounts for confiscated assets, where possible
  - *In source/origin countries:* Creating a returned asset management agency or designating an existing entity for management of returned assets with clear administrative powers and responsibilities for transparency and accountability. Creating a central returned assets account or public budget account under which returned assets are administered. Creating of an asset register, including for physical assets.
- Oversight
  - *In destination and source/origin countries:* Providing for monitoring of the use of frozen, confiscated and returned assets at all stages of the asset recovery process by relevant actors such as parliamentary committees, supreme audit institutions and interested stakeholders, including civil society organisations.
- Use of funds in source/origin countries
  - Creating domestic and regional policies that recognise that in the countries impacted by illicit financial flows, the whole society is the extended victim of the crime and that once direct victims of corruption or other malfeasance have been adequately compensated or cannot be identified, returned assets should be used for development, meeting the SDGs or other social investment projects
  - To that end, in policies and practice providing for the participation of interested stakeholders, including civil society organisations, in decision-making processes about the use of returned assets
- Victims' access to justice in foreign bribery and related money laundering cases<sup>4</sup>
  - Notification of states and other victims: Providing for timely notice to enforcement authorities in affected states about opportunities to participate in foreign bribery cases at different stages, from investigation (where feasible) to final disposition. Likewise, notification of other potential affected parties, such as competitors, shareholders, consumers and others who may have been harmed as a result of foreign bribery – this is especially relevant in very large cases
  - Victims' impact statements: Arranging for such statements by victim states and other victims
  - Compensations of victims: Establishing principles and guidelines with respect to compensation of victims, including a broad definition of victims and recognition of social or collective damages<sup>5</sup>. Allowing the authorities in victim states and other victims to submit claims for restitution or compensation. In foreign bribery cases, disgorged profits could be taken as one estimate of harm, albeit an imperfect one
- Victims' access to justice in grand corruption cases (including foreign bribery cases)<sup>6</sup>

- Standing for non-state actors: Making arrangements for standing for victims and representatives of a broad class of victims in countries other than their own, to present victims impact statements and to make claims. Making arrangements for a victims fund, where appropriate. Appropriate for cases where the justice system in the home country is unable or unwilling to address the corruption due to the corruption in question due to the influence of high level officials benefitting from grand corruption.
- Possible role for regional or international institutions in oversight of asset recovery processes and dispute mediation

A multilateral agreement on asset recovery covering the three areas and the specific issues listed above would serve justice and help return much needed resources to be used for the achievement of the SDGs.

24 May 2020