

# ADDRESSING GRAND CORRUPTION: RECOMMENDATIONS TO THE UNCAC CONFERENCE OF STATES PARTIES

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# DEFINING GRAND CORRUPTION



- UNCAC does not define corruption broadly leaving it for national legislation to address the issue of definitions as they implement Chapter 3 on Criminalization and Law Enforcement
- Grand Corruption represents an abuse of high level power for the benefit of a few at the expense of many. It refers to the involvement of high – level officials in large-scale bribery and embezzlement of state and public assets as well as in related offences. Too often those involved go unpunished.

# DEFINING GRAND CORRUPTION



- The definition can be devised based on language in the Convention
- *Grand corruption consists of instances of chapter III corruption offences involving individuals who are, or have been entrusted with, prominent public functions; also involving vast quantities of assets, which may constitute a substantial proportion of the resources of a State; threatening the political stability and sustainable development of those States; or causing significant public damage or infringement of the rights of at least part of a State's population*

# TYPES OF GRAND CORRUPTION



- Globally through networks and schemes of high level officials
- Foreign bribery and money laundering underlining the role played by multinational companies, financial institutions and other facilitators.
- The STAR Initiative database is awash with examples of Grand Corruption.

# TYPES OF GRAND CORRUPTION



- Grand Corruption is experienced differently in all countries depending on country and context:
  - Single government procurement transaction where a company secures the deal through bribes and kickbacks involving a minister or high level official.
  - Systematic “pyramid” bribery schemes also referred to as the ‘franchising’ of whole sectors to corrupt top officials

# TYPES OF GRAND CORRUPTION



- In extreme instances the “whole government has morphed into a criminal organization bent on no other business than personal enrichment, in the process retooling crucial gears of state power to that end”.  
Chayes, p.205; Burgis, T., The Looting Machine (2015)
- High level officials control all law enforcement machinery including police, anti – corruption agencies, police, judiciary and regulatory powers

# CONSEQUENCES OF GRAND CORRUPTION



- Grand Corruption has the capacity to control all machinery needed in a country to fight corruption.
- GC impedes sustainable development and by extension could impede achievement of the 2030 Sustainable Development Goals by distorting economic activity and allocation of resources, both domestic and international, deepening poverty and increasing exclusion.
- Results in human rights violations.

# CONSEQUENCES OF GRAND CORRUPTION



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- The UN Human Rights Council, the Committee on Economic and Cultural Rights and national commissions and truth and reconciliation commissions now factor in their deliberations and planning the effects of corruption on human rights and more broadly the social damage that is often the consequence of GC.

# INTERNATIONAL ACTION NEEDED



- TI and the UNCAC CSO Coalition propose that there is need to elevate the problem in the COSP and devise concrete steps to take against grand corruption;
- TI is convinced Grand Corruption needs to be in national and international platforms.
- The interplay between Grand Corruption and Power must be noted. Power provides ways for crime, business and politics to collude at the expense of hapless communities.

# PRIORITY AREAS FOR ACTION



1. Recognise the seriousness of the crime of grand corruption
2. Increase enforcement against active bribery of foreign public officials
3. Criminalize passive bribery by foreign public officials (UNCAC Article 16.2)
4. Exercise extraterritorial jurisdiction in instances of large-scale embezzlement of state assets or other grand corruption offences.

# PRIORITY AREAS FOR ACTION



5. End secrecy around ownership and control of legal entities and arrangements
6. Increase enforcement against laundering of proceeds of corruption.
7. Eliminate abuse of immunities
8. Allow victims of grand corruption greater recourse to the courts in both criminal and civil proceedings.
9. Deny entry to those involved in grand corruption



## RECOMMENDED ACTION

1. Build on the preambular language that identifies Grand Corruption as a serious form of corruption, needing special attention
2. Request UNODC to prepare an in-depth study of State Party implementation of commitments regarding foreign bribery
3. Urge State Parties to criminalise and enforce passive Foreign Bribery associated with Grand Corruption and review barriers to enforcement against domestic officials

# RECOMMENDED ACTION



4. Urge State Parties to exercise extraterritorial jurisdiction where there is evidence that the nature of Grand Corruption cannot be effectively or satisfactorily addressed at domestic level.
5. Urge State Parties to introduce central registers containing beneficial ownership information and make such information public.

## RECOMMENDED ACTION



6. State Parties urged to actively enforce against and impose sanctions that are deterrent and dissuade complicity of financial institutions and other facilitators of Grand Corruption

7. Domestic immunities should only cover the exercise of functions such as (free speech of Parliament and Members of the Judiciary) but should not include corruption offences. In Grand Corruption cases, there should be exceptions to the international immunity of state officials. Request UNODC to liaise with International Law Commission working on this issue to develop guidance material on immunities.

# RECOMMENDATIONS ACTION



8. UNODC to prepare an in-depth study of implementation of UNCAC Article 35 on private prosecutions.
9. State Parties should consider including corruption within the criteria used for denying visas. The COSP should call on State Parties to ensure that investor programmes develop strong integrity criteria and due diligence processes.