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Transparency International Submission to the 8th UNCAC CoSP

Grand Corruption as a Major Obstacle to Achievement of the Sustainable Development Goals

Grand corruption presents a serious threat to the fulfilment of the 2030 Agenda for Sustainable Development, which recognizes that development must balance social, economic and environmental sustainability.

Examples of corrupt schemes across the globe have repeatedly implicated high-level public officials and resulted in the gross misappropriation of public funds or resources. As a direct result, education, health and other development priorities remain underfunded; the natural environment is destroyed; and fundamental human rights are violated. Those who suffer the consequences are ordinary citizens, and particularly those most left behind.

Transparency International (TI) has developed the following definition of grand corruption, together with lengthy explanatory notes, some of which are included in footnotes below:

Grand corruption means the commission of any of the offences in UNCAC Articles 15 - 25¹ as part of a scheme that²

- (1) involves a high level public official; and*
(2) results in or is intended to result in a gross misappropriation of public funds or resources, or gross violations³ of the human rights of a substantial part of the population or of a vulnerable group

¹ The offences listed are:

- Bribery of national public officials;
- Bribery of foreign public officials and officials of public international organizations;
- Embezzlement, misappropriation or other diversion of property by a public official;
- Trading in influence;
- Abuse of functions;
- Illicit enrichment;
- Bribery in the private sector;
- Embezzlement of property in the private sector;
- Laundering of proceeds of crime;
- Concealment; and
- Obstruction of justice

² A 'scheme' exists when offences under UNCAC Articles 15-25 are committed as part of a systematic or well-organised plan of action. A single offence may amount to a scheme when the amount misappropriated or the number of victims is sufficiently high. In determining whether corruption offences are part of a scheme consideration should be given to: (i) the number of transactions; (ii) the duration of the offence(s); (iii) the number of participants; or (iv) the amount misappropriated.

³ Gross violations of human rights: "Although not formally defined in international law, 'gross violations' and 'serious violations' denote types of violations that affect in qualitative and quantitative terms the most basic rights of human beings, notably the right to life and the right to physical and moral integrity of the human person. It is generally accepted that genocide, slavery and slave trade, murder, enforced disappearances, torture or other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, deportation or forcible transfer of population, and systematic racial discrimination fall into this category. Deliberate and systematic deprivation of essential foodstuffs, essential

TI has also prepared a preliminary study of the impact of grand corruption on achievement of the SDGs in five countries, which forms the basis of the recommendations in this submission.

UNCAC and Grand Corruption

The third preambular paragraph of the UNCAC outlines States parties' concern "about cases of corruption that involve vast quantities of assets (VQAs), which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States..."

Recently, the CoSP and subsequent Expert Working Groups underscored the devastating impact of grand corruption on sustainable development. Resolution 7/2 adopted by the CoSP in November 2017 urged States parties to give:

"the necessary focus to, among others, acts of corruption that involve [VQAs], without undermining their commitment to preventing and countering corruption at all levels and in all forms, and thereby contribut[e] to the achievement of the Sustainable Development Goals"⁴.

At the Global Expert Group Meeting in Lima in December 2018 to further the implementation of resolution 7/2, eighty specialists in investigating and prosecuting corruption

"recognised corruption involving VQAs as a threat to global peace and security, the enjoyment of human rights, a liveable climate and biodiversity"⁵.

The Global Expert Group Meeting in Oslo in June 2019 followed up with a substantive session on "the impact of corruption involving VQAs on peace and security, human rights and the environment"⁶.

The SDGs, Human Rights and Anti-Corruption

As Barkhouse et al have pointed out: "The SDGs focus on social, economic, political, cultural, and environmental development through good governance, the rule of law, access to justice, personal security, and the fight against inequality. The realisation of human rights, including, *inter alia*, the right to health, the right to an adequate standard of living, the right to education, non-discrimination, gender equality, and the right to development, is an explicit objective of the SDGs, derived from the Universal Declaration of Human Rights and the core UN human rights treaties. The realisation and implementation of the SDGs are in turn dependent upon

primary health care or basic shelter and housing may also amount to gross violations of human rights." International Commission of Jurists in The Right to a Remedy and Reparation for Gross Human Rights Violations, Practitioners' Guide No 2 (Revised Edition, October 2018)

⁴ "Resolutions adopted by the Conference of the States Parties to the United Nations Convention against Corruption", Resolution 7/2, Vienna, November 2017, p.8

⁵ Global Expert Group Meeting on Corruption involving Vast Quantities of Assets, "Outcome Statement", Lima, December 2018, p.5

⁶Id. p.1

good governance, transparency, participation, and accountability - the cornerstones of anticorruption policy.”⁷

The paramount importance of curbing corruption is reflected in SDG 16, dedicated to the promotion of peaceful and inclusive societies, commits states to “substantially reduce corruption and bribery in all their forms”, as stipulated by target 16.5. The closely related target 16.4 obliges governments to “significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organised crime”. State parties should develop, publish and implement strategies to meet these critical targets⁸.

Yet that alone is insufficient. SDG 16 should not be seen in isolation. Where corruption plagues hospitals, progress on SDG 3 targets on healthcare will be limited. Where corruption blights schools, SDG 4 targets on education are unlikely to be realised. Where corruption infests service delivery, goals on poverty eradication, clean water and affordable energy will be almost impossible to achieve. Without tackling corruption, any progress towards the other sustainable development goals is likely to be fragmentary, short-lived and volatile.

Currently, most anti-corruption measures target petty corruption. As illustrated by Transparency International’s case studies, however, the impact of grand corruption is even more destructive to the chances of realising the 2030 Agenda. The insights the case studies offer on the pernicious direct and indirect effects of grand corruption should catalyse and guide global action to clamp down on such schemes.

Key findings of TI’s Preliminary Study

According to our early findings, the impact of grand corruption on the SDGs is most apparent across three main types of scheme:

- where large-scale misappropriation of public funds severely reduces the overall budget available for sustainable development efforts;
- where government ministries and departments directly responsible for delivering specific SDGs seriously compromise their ability to uphold their commitments;
- where undue influence over government policy results in the gross privileging of private gain over the public interest to the detriment of SDG implementation.

⁷ Barkhouse, Hoyland and Limon, *Corruption: a human rights impact assessment*, 2018. The interrelationship between corruption and human rights is increasingly recognised. See, for example, the UN General Assembly, Human Rights Council, “Summary of the expert workshop on good practices of United Nations-system support to States in preventing and fighting against corruption, with a focus on human rights”, April 2019, p.13: “there is abundant evidence of important correlations between the perceived levels of corruption and the enjoyment of human rights.”

⁸ A study of 26 developed countries showed that only 3 had strategies. See Pyman, Eastwood, Hungerford and Elliot, “Analyzing the anti-corruption approaches of the 26 top-ranked countries”, March 2018

This is borne out by the five preliminary country case studies Transparency International has prepared. In some countries, we find cases of high-level officials directly embezzling funds from infrastructure and health budgets. In others, the scale of looting at the highest levels of government is so vast that it has led to negative macroeconomic consequences, with severe ramifications for the provision of basic services. There are also examples where the influence of private interests over public policy is so disproportionate that it frustrates action in critical areas, such as measures to combat climate change⁹.

Analysis of these individual cases reveals several common themes:

- the difficulties in bringing the high-level officials involved and those with whom they collaborate to justice;
- the dangers for investigators, judges and prosecutors and whistleblowers in bringing these cases out into the open;
- the reliance on an extensive network of private sector enablers, including international banks, law firms and anonymous companies that facilitate the laundering of the proceeds of corruption, often in high-income countries; and
- the poor track record of the international community in returning funds lost to corruption to the victims of these schemes.

These issues can affect all countries, whether as sites for grand corruption schemes, and/or as hosts for a network of enablers facilitating corruption in other countries.

In all cases where funds are snatched away from sustainable development efforts, citizens are deprived of fundamental human rights such as the rights to education, health, an adequate standard of living and, in some cases, the right to life¹⁰. Often there is gross misappropriation of public funds or gross violations of human rights.

Oslo Statement Recommendations

The 2019 Oslo Statement on Corruption involving VQAs provides a broad set of valuable recommendations, several of which directly address the problems highlighted by our case studies. These include increasing the sanctions for those implicated in grand corruption; providing enhanced protections for investigators, judges and prosecutors of corruption cases and whistleblowers; targeting intermediaries by strengthening the supervision of banks; and improving international cooperation, including around the return of assets¹¹. All State parties must prioritise and implement these recommendations.

⁹ For further discussion of the impact of state capture on climate change see also UNDP, *Staying on track: tackling corruption risks in climate change*, 2010

¹⁰ Barkhouse, Hoyland and Limon, *Corruption: a human rights impact assessment*", 2018

¹¹ Global Expert Group Meeting on Corruption involving Vast Quantities of Assets, "Oslo Statement on Corruption involving Vast Quantities of Assets", Oslo, June 2019

The Oslo statement further recommended that dedicated strategies to reduce the risks of corruption involving VQAs be developed for corruption-prone sectors, including several that are at the heart of the sustainable development agenda, such as education, energy, foreign aid, infrastructure and health. Specific sectoral strategies targeting grand corruption can improve SDG delivery as well as the increase the prospect of sustainable development targets being achieved.

Recommendations

To help support the accomplishment of the SDGs, we call on States parties to

- Explicitly recognise grand corruption as a threat to the achievement of the 2030 Sustainable Development Agenda;
- Prioritise the prevention of and responses to grand corruption (as prescribed in the Oslo statement) due to its developmental consequences,;
- Initiate discussions about a definition of grand corruption and an Optional Protocol to the UNCAC on Grand Corruption;
- Commit to further research on the impact of grand corruption on sustainable development to identify effective strategies to counter this problem, and convene an Expert Group Meeting on this subject.

With respect to the negative impact of all forms of corruption on the SDGs, we urge States parties to

- Publish national strategies and track their progress against plans to meet targets 16.4 and 16.5 to reduce illicit financial flows and corruption
- Integrate anti-corruption strategies on a sector-by-sector basis into core programmes intended to deliver the SDGs.

We ask the UNCAC CoSP to adopt resolution language at its eighth session encouraging States parties to take these steps. We also call on the CoSP to put the issue of grand corruption and the SDGs on the agenda of the UN General Assembly Special Session on Corruption due to take place in 2021.

5 December 2019
