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Addressing the nexus between transnational corruption and transnational organized crime

Submission by Transparency International and Global Initiative on Transnational Organized Crime
to the 9th Session of the UNCAC Conference of States Parties

Introduction:

What we commonly understand as organized crime takes many forms, from a small street gang to international cartels. The same is true of corruption, which ranges from extortion of small sums by low-level officials to large-scale embezzlement and bribery involving high-level officials.

In today's globalized world both phenomena take place on a transnational scale, and are often interconnected. Indeed, not only do transnational corruption and transnational organized crime (TOC) often go hand in hand, they are sometimes one and the same. This can be understood as 'transnational organized corruption' - a blend of organized criminal methods and high-level corruption, which creates a crooked ecosystem that enriches and protects those with access to power.¹ Discussion of both transnational corruption and TOC is only complete if the other is considered.

As Ghada Waly, Executive Director of the UNODC has said, referring to the link between organized crime and corruption, 'The nexus is obvious, and you cannot address one without tackling the other.'²

To tackle these phenomena it is crucial to understand how they interact, and the consequent harms that they have on society by undermining the rule of law, democracy and the legitimacy of states; degrading the environment; undermining public safety and security, and life chances; and causing the breakdown of service delivery and the economy.³

Manifestations:

The corruption-organized crime nexus has several dimensions. In some cases, structured organized crime groups use corruption of public officials to enable and escape punishment for illicit activities like domestic and cross-border trafficking in humans, drugs, and weapons.

Arms trafficking facilitated by corrupt police officers In one region, a diverse range of criminal networks – some of them transnational - are consumers of illicit firearms. Corrupt state officials have collaborated with members of those networks to put guns into the hands of gangs. In one country alone, during 2020, police arrested 28 people, including high-ranking police officers and underworld figures, for their involvement in the fraudulent procurement of weapons licences. These organized corrupt networks have over the years been instrumental in providing weapons used in criminal violence across the region.

In other cases, there are political criminal features, with the "traditional" organized crime enterprise gaining protection for illicit activities by corrupting high-level decision-makers and infiltrating state institutions, including political, security and judiciary – this may go as far as complete capture of the institutions. In a few extreme cases, the whole state is controlled by a group dedicated to criminal activities, a so-called "mafia state". The GI-TOC 2020 Global Organized Crime Index emphasized once

¹ Uglješa Ugi Zvekić and Sunčana Roksanđić: [Infrastructure of Integrity](#), Global Initiative Against Transnational Organized Crime, March 2021

² Ghada Waly, Speech to the G20 Anti-Corruption Ministerial Meeting, November 2020. See also, [G20 High-Level Principles on Corruption Related to Organized Crime](#), 2021

³ Transparency International, [Transnational Corruption, Economic and Organised Crime: G20 Position Paper](#), March 2021

more the predominant role of state actors in facilitating illicit economies and inhibiting resilience to organized crime.⁴

Capture of the state by organized crime: In one country an oligarchic mafia has used corruption and intimidation to capture the state and has extended its reach deep into institutions such as the judiciary, media and security services. The ruling mafia has gained ownership of key national industries, has organized smuggling of arms and narcotics and channels state revenues and foreign assistance into its own private offshore bank accounts. None of the top politicians or mafia leaders involved have ever been convicted and instead the judiciary is misused as a vehicle for shaking down businesspeople.

And then there are grand corruption schemes, large, sophisticated conspiracies where corruption itself is the main criminal activity, a collective enterprise carried out by networks inside and outside the state, extending across borders. These schemes involve public officials, companies, financial institutions and professional enablers and as with other organized crime, part of the scheme is to subvert oversight and justice institutions.⁵

Grand corruption schemes: In Nigeria, in the period 1993-1998, the military dictator Sani Abacha embezzled vast quantities of public assets and engaged in extensive bribery and kickback schemes, together with family members and associates. Some of the world's largest commercial banks enabled the laundering of the funds into offshore accounts and several well-known multinational companies were involved in some of the bribery schemes.⁶ In Switzerland, in a landmark confiscation proceeding in 2005, the Federal Court found that "the structure set up by Sani Abacha and his accomplices constitutes a criminal organization since its object was to embezzle funds from the Central Bank of Nigeria for private purposes and to profit from corrupt transactions".⁷

All these forms of organized crime share some common methods including the neutralization of state oversight and enforcement and the use of international networks to launder the crime proceeds across borders. In each of these scenarios private sector actors play a role, in particular by facilitating and colluding in illicit financial flows into the legal banking and economic system (either legally or through corruption). Legal and other professional service providers supply their know-how to organized criminal schemes, helping to establish anonymous shell and 'legitimate' companies that enable illicit activities and laundering on a transnational scale.⁸

The Conventions

The UNCAC lacks the focus of UNTOC on transnational networked crime. While it includes participation offences, these do not have the central importance they have in the UNTOC. It is also missing some of the definitions in UNTOC, such as of "organized criminal group", "serious crime" and "transnational". On the other hand, UNTOC does not include many of the preventive, criminalization and asset recovery measures found in UNCAC.

⁴ GI-TOC, [Global Organized Crime Index](#), 2021

⁵ FATF, [Laundering the Proceeds of Corruption](#), July 2011

⁶ Transparency International, [Progress Report on OECD Convention Enforcement](#), 2011, pp. 73-78

⁷ Swiss Tribunal fédéral, decision of 7 February 2005 [1A.215/2004 /col](#)), par. 9.1. See also, UNODC, [Digest of Asset Recovery Cases](#), 2015, p. 65

⁸ FATF, [Professional Money Laundering](#), July 2018

And given that the offenders use some of the same methods and international networks of professionals to launder the proceeds of corruption and other crime across borders, there are potential synergies from combining preventive and enforcement efforts against corruption and organized crime. They use these methods to ensure that loopholes are maintained, prosecutions are not pursued, offences are overlooked, money is moved, officials are paid off, threats to power in the form of journalists and activists are silenced, and meaningful evaluation and enforcement of international measures are not prioritized by states.

On paper at least, the need to tackle these phenomena is accepted by governments and the international system, including through the almost universal adoption of the UNTOC and UNCAC. The range of other international organizations, frameworks, agreements and action plans dealing with it is immense.

But cooperation between the two Conferences of States Parties (COSPs) is not common and where it occurs does not focus on strategic issues, especially since the secretariats of the two conferences were split at an early stage in their histories. The two conferences also remain separate from the two substantive governing bodies of UNODC – the Commission on Narcotic Drugs (CND) and the Commission on Crime Prevention and Criminal Justice (CCPCJ).

One thing both Convention processes have in common is restricted access for civil society, whose inputs and expertise is vital to effective responses to both organized crime and corruption.

What can we do better? A transnational organized response to transnational organized corruption?

Faced with a coordinated transnational threat of this nature, we can only respond with an approach which is more networked and strategic, rather than disjointed. We suggest, in this context, the following recommendations to improve the effectiveness of the multilateral element of our response to transnational organized corruption

1. Introduce regular, joint meetings of the UNTOC and UNCAC COSPs, their working groups and their implementation review mechanism processes.
2. Make use of the CCPCJ, the coordination body for the UN on crime prevention and criminal justice issues, to be a forum for some of these joint discussions, for example by convening a coordination body or structure to lead work on common issues under the two conventions – such as prevention, criminalization and definitions.
3. Such a body should include regional and other multilateral bodies, and civil society registered observers for the UN Crime Congress, the UNTOC and UNCAC COSPs, as well as ECOSOC NGOs. The Alliance of NGOs on Crime Prevention and Criminal Justice and the UNCAC Coalition could hold joint meetings as part of the process.
4. This body should report back to the COSPs and make recommendations to them to improve policy coordination.
5. Enable access for civil society to all COSP subsidiary bodies of both Conventions. In addition, there should be space for participants to discuss cases about specific countries, as is common in other UN settings, to allow for deeper and clearer discussions of the challenges of transnational organized corruption.

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