

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

FIGHTING GRAND CORRUPTION: CHALLENGES AND SUCCESSES

QUERY

Are there success stories or successful programmes that have addressed the fight against grand corruption? What have been their main focus (for example, transparency and internal controls or capacity building of institutions) in prosecution and/or forensic audits, and so on?

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Author(s):

Maíra Martini, Transparency International,
tihelpdesk@transparency.org

Reviewer(s):

Marie Chêne; Finn Heinrich, Dr., Transparency International

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SUMMARY

Grand corruption involves acts committed by individuals at a high level of government or executives in the private sector who have a significant impact on society by distorting policies or the functioning of the state, enabling leaders to benefit at the expense of the public good. Fighting grand corruption is extremely challenging, and progress so far has been very limited.

Fighting grand corruption requires a set of measures at the domestic level, where corruption takes place, and abroad, where stolen assets are often located. These measures range from the adoption of mechanisms and reforms to support prevention and detection of corruption, such as transparent public financial management systems and strong anti-money laundering rules, to the enforcement of laws and punishment of public officials, companies and senior executives involved in grand corruption schemes. It also requires measures to find and recover stolen assets.

Measures that have been partially successful in addressing this issue are those undertaken to overcome the challenges encountered in the fight against grand corruption. They include the establishment of specialised anti-corruption units, the use of alternative legal instruments to recover assets and seek damages, and public interest litigations, among others.

1 CHALLENGES INVOLVED IN FIGHTING GRAND CORRUPTION

Definition

There is not yet a widely accepted definition of grand corruption, but experts and organisations working on the issue emphasise that grand corruption differs from ordinary corruption not only due to its scale but also due to its effect and nature (GOPAC 2013). As such, grand corruption usually involves the following elements:

- act(s) committed by individuals at a high level of government that distorts policies or the functioning of the state, enabling leaders to benefit at the expense of the public good (Transparency International 2009)
- act(s) undertaken by high-level executives in the private sector that distorts policies and the functioning of the state (U4 Glossary)
- corruption, such as bribery, trading in influence, embezzlement, involving large sums of money, usually hundreds of millions of dollars
- systematic acts at the expense of the public good
- widespread harmful effects upon a country's economy and people, affecting citizens' fundamental rights

Moreover, grand corruption cases often involve an international dimension. Corrupt officials are likely to hide the proceeds of corruption in foreign bank accounts or acquire assets, such as real estate or other luxury goods, in foreign jurisdictions. For instance, a review of 32 grand corruption cases undertaken by the Financial Action Task Force (FATF) in 2011 found that in 84 per cent of the cases, the corrupt used foreign accounts to hide their ill-gotten gains. One study conducted by the Stolen Assets Recovery initiative (StAR) also show that a significant percentage of grand corruption cases involve cross-border illicit financial flows (StAR 2011).

Within this framework, examples of typical grand corruption cases include former Tunisia's leader Zine al-Abidine Ben Ali, who is suspected of having collected up to US\$13 billion¹ while in power, at the

expense of the Tunisian people. Funds allegedly linked to Ben Ali as well as luxury assets and properties have been seized in several countries, including Canada, EU, Italy, UK, and Switzerland (Transparency International 2014). Another example is Ferdinand Marcos, former president of the Philippines, who allegedly embezzled approximately US\$10 billion dollars. Marcos's family owns an extensive art collection, real estate, and other luxury goods while close to 30 per cent of people in the Philippines leave below poverty line (McGewon 2013).

Ukraine's former president, Yanukovych, Brazilian congressmen and former mayor, Paulo Maluf, Equatorial Guinea's President Obiang and Sarawak's Chief Minister Abdul Taib Mahmud in Malaysia are also examples of high-level politicians who allegedly abused their powers to embezzle public money to the detriment of the population and the country's economy. These cases also illustrate the challenges in effectively combating grand corruption. None of these high-level officials have been convicted for corruption in their countries.

This answer briefly discusses the main challenges involved in fighting grand corruption, provides an overview of the progress made so far and examples of successful approaches and initiatives that have been used to overcome these challenges and punish corrupt individuals involved in grand corruption and/or confiscate and repatriate their ill-gotten assets.

Fighting grand corruption: main challenges

The nature of grand corruption itself poses several challenges to effectively address it. The fact that it involves widespread and systemic acts of corruption committed by high-level officials who are/were in charge of decision making in the country (such as presidents, governors, and prime ministers) and that it usually involves complex mechanisms to hide and launder the proceeds of corruption in several foreign jurisdictions make it difficult to investigate and build the necessary evidence to ensure the punishment of those involved.

The involvement of high-level officials as perpetrators of grand corruption makes prosecution more difficult as: (i) normal checks and balances mechanisms in

¹ Note: Transparency International takes billion to refer to one thousand million (1,000,000,000).

the country are likely to be ineffective or capture the political elite; (ii) prosecutors and judges may be influenced or corrupt, hampering the possibility of fair investigations and trials; (iii) those in power may have “legalised” their corruption making it difficult to collect evidence of wrongdoing; (iv) corrupt officials may enjoy immunity as public officials obstructing any possibility of prosecution.

Overall, in countries where corruption is endemic, state capacity is rather weak and the rule of law is often not respected. Law enforcement agencies and the judiciary often lack autonomy, technical capacity and funds to pursue investigations, prosecute and sanction the corrupt. The political elite frequently benefits from this lack of enforcement and has little incentive or political will to provide for effective mechanisms to investigate and punish corrupt individuals (Pavletic 2009). Enforcement authorities in these countries may also lack physical protection to pursue grand corruption cases.

Investigation of grand corruption cases are often more complex than regular corruption cases. Because of their politically sensitive nature, the investigation and prosecution of grand corruption cases require considerable resources and careful planning. Finding evidence requires complex financial investigations, and usually requires cooperation with several foreign jurisdictions through mutual legal assistance and other informal means. Locating and freezing assets and often extraditing officials involved is a difficult and long-term endeavour.

Fighting grand corruption: what is necessary?

Fighting grand corruption requires a set of measures both domestically, where the act of corruption takes place, and abroad, where stolen assets are located. These measures include the adoption of mechanisms and reforms to support prevention and detection of corruption, the enforcement of laws, punishment of public officials, companies and senior executives involved, and the recovery of stolen assets.

Preventing and detecting corruption

Approaches to prevent and detect grand corruption, can involve a wide range of measures, including:

- strengthening public financial management (PFM) systems: PFM is a central element of a functioning administration as it covers the mechanisms through which resources are collected, allocated, spent and accounted for, including the whole budget cycle, public procurement, audit practices and revenue collection. Sound, transparent and accountable public financial management is therefore crucial to prevent corruption and make it more difficult for high-level public officials to embezzle public money and distort government priorities to favour their own interests².
- ensuring the proactive disclosure of reliable and accurate public information: citizens should be able to access public information in an easy manner. Freedom of information laws and their effective implementation can therefore be instrumental for the media and the public to detect wrongdoings.
- ensuring high-level officials regularly declare their assets and interests. Asset and interest declaration is seen as a key tool in the fight against corruption as they can help identify illicit enrichment and conflicts of interest. It is therefore important that all officials in high-level positions and those with extensive decision-making powers are required to regularly report on their assets, income, liabilities and interests. These declarations need to be verified by an independent body with access to sufficient resources to review the information disclosed. Declarations should also be made available to the public so that citizens, civil society and the media can help scrutinise them (Martini 2013).
- strengthening anti-money laundering rules: money laundering allows corrupt public officials and other criminals to hide the proceeds of corruption and re-integrate them into the global financial network in a manner that does not raise suspicion. In the case of grand corruption, where high-level officials are involved, ensuring strict rules with regard to how easily these officials and their family members can open accounts abroad and acquire assets is instrumental. Financial institutions, real estate agents and

² For more information on measures to prevent corruption in public financial management, please refer to the Transparency International Topic Guide on PFM available at: http://www.transparency.org/files/content/corruptionqas/Topic_guide_on_public_financial_management_2014.pdf

other dealers in luxury goods should thus be required to perform enhanced due diligence and monitoring of accounts/transactions that fall within this category (Transparency International 2014).

- establishing beneficial ownership registries: a beneficial owner is an individual who ultimately owns, controls, or benefits from a company and the income it generates. Corrupt officials frequently use complex corporate structures to hide their identities and easily evade taxes and/or launder the proceeds of corruption or other crimes. It is therefore essential that states collect (and verify) data on who the real owners of companies registered in their territory are so that corrupt officials can no longer hide. Financial institutions and dealers in luxury goods should also be prohibited from entering into business transactions with clients without properly identifying the natural person who has the real control over the company or other legal arrangement (Transparency International 2014).
- strengthening civil society and the media: civil society and the media can play a key role as watchdogs, helping to hold public officials to account and identify wrongdoings. Governments should ensure that they have freedom to operate and an enabling environment to function effectively.
- ensuring the protection of whistleblowers: these are well-placed people who have detected corruption cases inside their companies and organisations, and therefore both the public and the private sector should provide a mechanism to encourage them to report wrongdoing and protect them after they come forward³.
- boosting the capacity of investigative bodies and the judiciary: independent and well-resourced investigative bodies are essential to fight grand corruption. Investigators and prosecutors should have access to special investigative techniques to be able to detect as well as collect timely and reliable evidence through undercover operations and electronic surveillance, among others. A fair and impartial judiciary is also instrumental to

fight impunity and ensure corrupt high-level officials are punished⁴.

While the existence of these measures may not yield results in the short term, especially in contexts where public institutions are captured by those involved in grand corruption as discussed above, they are fundamental to ensure corruption is uncovered and that the country has the necessary long-term capacities to effectively prevent and curb corruption at all levels.

Prosecuting and recovering assets

Another important stream in the fight against grand corruption includes ensuring adequate criminal and/or civil prosecution of high-level officials and companies involved, as well as the recovery of the assets stolen. The punishment of high-level officials and companies creates a strong deterrent effect and helps to rebuild society's confidence and trust in government.

As such, these areas are of great importance when analysing progress in the fight against corruption. Therefore, in spite of the importance of measures aimed at preventing and detecting corruption discussed above, this answer focuses on measures that are more directly aimed at ending impunity for grand corruption and where progress is usually more visible, such as the prosecution of those involved in grand corruption and the recovery of stolen assets.

2 SUCCESSFUL EXAMPLES: WHERE AND HOW HAS THE FIGHT AGAINST GRAND CORRUPTION HAD POSITIVE RESULTS

Progress in fighting grand corruption has been limited so far⁵. Detection, investigation and prosecution of

⁴ More information on anti-corruption measures in the judiciary is available at:
http://www.transparency.org/whatwedo/answer/fighting_judicial_corruption_topic_guide

⁵ Given the challenges to effectively punish individuals involved in grand corruption, several experts and organisations are currently debating alternative mechanisms to ensure the prosecution of perpetrators of grand corruption and recovery of stolen assets. Recently, discussions have taken place regarding whether grand corruption should be considered an international crime or a crime against humanity, which would allow offenders to be prosecuted at the international level. Several scholars have been defending this idea saying that, according to the Rome Statute, corruption could

³ More information on whistleblower protection law is available at:
http://www.transparency.org/files/content/corruptionqas/Trends_in_whistleblower_protection_legislation.pdf

corruption in countries where the act occurred are rare and in many cases where high-level corrupt individuals were brought to court they ended up being acquitted either due to weak evidence linking their assets to illegal activities or political influence. Often, investigations and measures to recover stolen assets only start when the political elite involved has been replaced.

Against this backdrop, several measures and approaches have been undertaken to overcome the challenges encountered in the fight against grand corruption. Measures that have had some level of positive results were often undertaken by a foreign jurisdiction rather than by the jurisdiction where the act of corruption occurred.

This does not mean that the international community is doing enough in the fight against grand corruption. In fact, as mentioned above, much more can be done to stop the corrupt from finding a safe haven for their illicitly acquired assets and to speed up the recovery and repatriation of stolen money stashed abroad⁶.

Examples of partially successful initiatives to fight grand corruption include measures aimed at ensuring: (i) the prosecution of corrupt officials; (ii) punishment at the supply side of corruption (such as companies and senior executives); and (iii) the location, confiscation and recovery of stolen assets. These measures include investment in specialised

be considered a crime against humanity and as such prosecuted by the International Criminal Court (ICC). Others believe (see McCarthy, for example) that, while corruption is a very serious crime with serious consequences, it cannot be classified as a crime against humanity according to the Rome Statute as it does not satisfy the legal standards. There is also another line of thought that proposes the establishment of an independent anti-corruption court with universal jurisdiction to deal with grand corruption cases (see Mark Wolf and GOPAC). Others believe, however, that this is not a feasible approach as countries are unlikely to agree to universal jurisdiction for grand corruption cases (See annex literature review).

⁶ For more information on the role of the international community in combating illicit financial flows please refer to a previous Helpdesk answer available at:

http://www.transparency.org/whatwedo/answer/combating_illicit_financial_flows_the_role_of_the_international_community. For more information on asset recovery and the role of foreign jurisdictions, see for example

http://www.transparency.org/whatwedo/answer/lessons learnt_in_recovering_assets_from_egypt_libya_and_tunisia and

<http://www.transparency.org/our-work/publications/15-publications/900-briefing-note-corrupt-capital-from-ukraine-and-russia>

anti-corruption units, investment in practitioners' networks, enforcement of the OECD Anti-Bribery Convention, establishment of alternative legal mechanisms to confiscate stolen assets, such as civil forfeiture, and ensuring victims of corruption are compensated (civil law suits), among others.

Investment in specialised anti-corruption units

Specialised anti-corruption units to investigate and prosecute corruption are considered essential to effectively combat corruption. The United Nations Conventions against Corruption (UNCAC Article 36) specifies that countries should have units or individuals within law enforcement bodies specialised in corruption investigation.

As such, almost all UNCAC signatory countries have established one or more bodies or specialised units to fight corruption through law enforcement (Transparency International 2013). In fact, some countries have established designated anti-corruption units specialised in grand corruption cases. For instance, in Romania, the National Anti-corruption Directorate is responsible for the investigation and prosecution of medium and high-level corruption (that is, cases where the damage caused by the offence exceeds €200,000 or the value of the bribe exceeds €100,000) that involve high-level officials.

In Peru, following Fujimori's resignation due to a corruption scandal involving the former intelligence police chief, Montesinos, the interim government established an ad hoc prosecution office staffed with attorneys hired from a respected law firm, specialised anti-corruption courts and simplified judicial procedures. These reforms helped advance the investigations as well as the repatriation of part of the stolen assets (StAR 2007).

While there is still limited evidence of the impact of such initiatives on combating grand corruption, the success of such units depends to a great extent on the unit having a clear mandate, autonomy to conduct investigations, access to a wide range of investigative techniques, resources and adequate technical capacity, among others⁷. As mentioned, in

⁷ For more information on specialised anti-corruption bodies please see a previous Anti-Corruption Helpdesk answer:

many countries where grand corruption is prevalent, specialised and regular law enforcement bodies do not have these elements. This negatively affects the country's ability to investigate grand corruption cases and build the necessary evidence to hold those involved to account, even if the required political will exists.

In these circumstances, development cooperation agencies have also tried to support the process by providing the financial and technical resources to developing countries in asset recovery cases. For instance, the Swiss Agency for Development and Cooperation paid for a lawyer to represent Mali in requesting the return of diverted funds. This approach has been successful in some cases, but has failed in others (Conference of the States Parties 2013).

Another approach that although still limited has shown positive results is the establishment of specialised anti-corruption units in developed countries with the goal of supporting law enforcement authorities in other countries to locate assets and build the necessary evidence to prosecute those involved and recover stolen funds (Messick 2015).

For instance, as part of its development cooperation, the UK, through its Department of International Development (DFID), has been financing the UK Metropolitan Police's Proceeds of Corruption Unit to investigate allegations of corrupt foreign politicians or officials laundering money through the UK.

As of 2013, there had been eight successful prosecutions and over £100 million (US\$157 million) had been identified and is being recovered or held pending investigation (DFID 2013). The unit also plays a proactive role in starting investigations and supporting investigators in developing countries. One of the most remarkable cases investigated by the unit was against former Nigerian governor, James Ibori, who systematically embezzled public funds, hid them in bank accounts across the world and bought properties and luxury goods, including in the UK.

The UK Proceeds of Corruption Unit started investigating Ibori in 2005. In 2012, the former

http://www.transparency.org/whatwedo/answer/anti_corruption_specialisation_law_enforcement_and_courts

governor pleaded guilty in the UK to offences relating to conspiracy to launder funds from the state and substantive counts of money laundering, receiving a 13-year jail sentence. James Ibori is currently in prison in London.

In Nigeria, however, Ibori was acquitted by a Delta state court in 2009, and until now the case is pending in the court of appeals (Economic and Financial Crimes Commission 2014). Asset recovery cases are also pending in other foreign jurisdictions (StAR 2014).

Enforcement of crime of bribery of foreign public officials

Effectively fighting grand corruption also includes mechanisms to address the supply side of corruption, that is those who actively commit the act of bribery or other type of corruption, usually legal entities and their senior representatives. In compliance with the OECD Convention on Combating Foreign Bribery and the UNCAC, several countries have recently adopted laws criminalising bribery of foreign public officials.

Enforcement of these laws, however, is still limited or non-existent in the majority of countries (Transparency International 2014). A few countries, including the US, UK, Germany and Switzerland, have had active enforcement of foreign bribery provisions in recent years, with an increasing number of high-level (major) cases of foreign corruption being investigated and concluded (Transparency International 2014).

Overall, while improvements with regard to the number of investigations and reasoning for settlements, among others, are still necessary, an increase in investigations and prosecutions of foreign bribery has positively contributed to improvements in companies' anti-corruption programmes and compliance systems.

The enforcement of foreign bribery rules can also be an initial step in supporting the prosecution of public officials involved in corruption (the demand side). While the prosecution of foreign officials for violating the FCPA is not possible, evidence gathered in these cases can be used to seek prosecution at the domestic level. This is certainly an area that

deserves further exploration. To date, very little information regarding concluded foreign bribery cases is used to build the evidence for criminal and/or civil law suits against corrupt individuals (Harvard Law 2015).

Introduction of alternative legal instruments to support asset recovery

Fighting grand corruption should also include measures to ensure that stolen assets are recovered and the victims of corruption compensated. However, due to the nature of grand corruption and the fact that assets are often hidden in several foreign jurisdictions, recovering assets is also very challenging.

It is unlikely that the jurisdiction where the assets are hidden will confiscate or repatriate assets to the country of origin without sufficient evidence linking them with an illegal activity (Lasich 2009). Criminal forfeiture of allegedly stolen assets, for instance, will require a conviction for the underlying offence in the country of origin. In some jurisdictions, even the request for mutual legal assistance and subsequent actions to temporarily freeze the assets and share information will only be provided if criminal charges have been already initiated in the country of origin.

In grand corruption cases, these are real impediments to the confiscation, recovery and eventual repatriation of assets as a conviction or even criminal charges at the domestic level are often very unlikely.

The adoption of alternative legal mechanisms to guarantee that assets can be frozen and eventually recovered without having to wait for a criminal conviction in the country where corruption took place is considered a promising mechanism (StAR 2014), at least to guarantee some sort of compensation to the victims of corruption. Such alternative instruments include procedures allowing for the recovery of assets through non-conviction based forfeiture, civil proceedings and administrative proceedings. These mechanisms should not however substitute the criminal prosecution of grand corruption but used in parallel as a swift solution to freeze and/or secure assets or as an alternative when criminal prosecution is not possible (StAR 2014). To respect the principles of due process and

presumption of innocence, the mechanism should be used with care and should not be applied indiscriminately in all corruption cases.

Non-conviction based forfeiture

Non-conviction based forfeiture or civil forfeiture is a legal proceeding against the asset itself and not against a person. It should be processed in parallel to criminal proceedings, when possible. This type of procedure does not require a conviction for the underlying criminal offence in order to proceed or reach a judgment (StAR 2010).

Provisions on civil asset forfeiture are not mandatory in the UNCAC, and few countries have adopted legislation allowing this type of procedure, but there has been progress in this regard (StAR 2014). Countries with non-conviction based forfeiture rules in place include Italy, the Netherlands, US, UK, the Philippines, Australia, Canada and Colombia (Council of Europe 2013). Nevertheless, research conducted by the StAR initiative shows that between January 2010 and June 2012, almost US\$60 million of US\$146.2 million in proceeds returned were captured pursuant to non-conviction based confiscation actions.

Civil forfeiture may be particularly advantageous in grand corruption cases as it helps to overcome many of the challenges encountered when trying to locate, seize and recover stolen assets. Firstly, as a criminal conviction is not a precedent condition, the confiscation of assets through civil forfeiture cannot be frustrated by immunities, the inability to extradite the high-level officials involved or in the event of the death of the official. Secondly, it allows for confiscation where difficulties have been encountered in trying to mount a criminal prosecution because of political or high-level interference in the criminal justice system (Council of Europe 2013). In many cases, those involved in corruption are “so powerful that a criminal investigation or prosecution is unrealistic or impossible” (StAR 2010).

Moreover, as civil forfeiture is about the asset, it has a lower standard of proof than criminal proceedings. Generally, criminal conduct must be established on a balance of probabilities standard of proof. This eases the burden on the government and means that it may be possible to obtain forfeiture when there is

insufficient evidence to support a criminal conviction where the standard of proof is much higher (Council of Europe 2013; StAR 2009).

Civil forfeiture was successfully used in Switzerland, for example, to confiscate and repatriate to the Philippines part of the money (US\$ 2 billion) stolen by Ferdinand Marcos. Former president Marcos died without being convicted for the crimes he allegedly committed.

Civil proceedings

Countries should also seek to put in place measures allowing other states to take civil action in their courts to establish the ownership of property acquired through criminal means or to seek damages (UNCAC Article 53 and 35). Civil proceedings also do not require a criminal conviction and thus could be used in circumstances where a conviction for corruption seems difficult or unlikely (StAR 2010).

In most jurisdictions, the general rule is that any person or entity that has suffered loss as a result of corruption or entered into contracts tainted by corruption may bring a claim and an action for damages. Therefore, authorities seeking to recover the proceeds of corruption often have the option to initiate civil proceedings in domestic or foreign civil courts in the same way as private citizens (StAR 2014).

For instance, a civil action was also used in the case of former Zambian president Chiluba. He was accused of embezzlement in the Zambian courts in 2003 but acquitted in 2009. Later, a civil action was brought in the UK by the government of Zambia. Chiluba and his associates were found liable for having diverted public funds, conspiring and breaching their fiduciary duties, with Chiluba personally liable for approximately US\$46 million (Conference of the States Party 2013).

The Alcatel case in Costa Rica is one example of how compensation for social damages can be used in corruption cases through civil proceedings. In 2000, executives of entities related to the French company Alcatel made payments to Costa Rican officials to secure contracts worth more than US\$300 million. Payments were made through intermediaries to the former president Miguel Rodriguez Echeverria

and to directors and officials of the public agency responsible for the contract. The scheme involved consultancy contracts for fictitious services and payments, with their payment channelled through bank accounts in Switzerland, the Netherlands and the Bahamas (Olaya et al. 2010).

Criminal and civil sanctions were initiated in Costa Rica against the officials involved, including the former president and Alcatel. The Costa Rican attorney general's office filed a civil claim in 2004 seeking compensation for damages amounting to US\$52 million (Olaya et al. 2010).

Alcatel-Lucent, the successor entity to Alcatel-CIT, entered into an agreement with the Costa Rican attorney general to settle claims for social damage to Costa Rican society by payment of approximately US\$10 million. The settlement only covered the civil claim against Alcatel-Lucent, but criminal and civil proceedings against the other eleven individuals have not yet been decided.

Administrative confiscation

Administrative confiscation has also been successfully used to ensure the freeze and confiscation of assets in situations where a criminal investigation of those involved seems very unlikely.

Canada and Switzerland are among the countries that adopted dedicated legislation allowing for the administrative freezing of assets in cases of corruption involving high-level officials.

In the case of Switzerland, the Federal Act on the Restitution of Assets of Politically Exposed Persons (PEPs) Obtained by Unlawful Means, known as Lex Duvalier, was adopted in 2011 and states that in cases where the state is incapable of cooperating fully in the asset recovery process, due to the collapse or non-availability of the judicial system, the burden of proof will be reversed, meaning that PEPs have to prove that the assets identified were acquired by legal means. If the PEP fails to provide proof, the assets can be repatriated without a criminal conviction in the country of origin (The Economist 2013).

In Canada, the Freezing Assets of Corrupt Foreign Officials Act and the Freezing Assets of Corrupt

Foreign Officials (Tunisia and Egypt) Regulations, requires banks, companies, and other entities to freeze the assets of allegedly corrupt individuals. The legislation, however, does not address confiscation or repatriation of assets (Conference of the States Parties 2013).

Regional courts

Another innovative approach to prosecuting grand corruption and seeking the recovery of stolen assets includes the use of regional courts. Regional courts tasked with the enforcement of regional human rights conventions have played significant roles in the affairs of their subscribing states, and in recent years, some regional courts have successfully tried cases analogous to crimes of grand corruption (GOPAC 2013).

For example, in 2010, the Nigerian NGO Socio-Economic Rights and Accountability Project (SERAP) successfully brought a grand corruption case to the Economic Community of West African States (ECOWAS) Community Court of Justice. SERAP argued that Nigerians' right to education were breached by massive corruption in the public education budget, and cited an international convention, the African Charter on Human and Peoples' Rights, as the applicable law.

This case marks the first time that a regional human rights court has explicitly considered corruption as a violation of human rights. The case also resulted in the recovery of 3.4 billion naira (US\$17 million) stolen from the education budget (GOPAC 2013).

There are, nevertheless, some challenges in using regional courts in the fight against grand corruption. One of them relates to the fact that regional courts often have little power and mechanisms to enforce their decisions (GOPAC 2013).

Public interest litigation

Public interest litigation, which refers to legal actions aimed at achieving change in the interest of the public, can also be considered an alternative to overcome or circumvent some of the challenges faced in grand corruption cases. Civil society can play an important role stimulating corruption-related litigation, be it criminal investigations or private actions for damages (Messick 2014).

While public interest litigation is still uncommon in corruption cases, international conventions, such as the UNCAC and the Council of Europe Civil Convention on Corruption, have opened the discussion to the possibilities of citizens and civil society organisations using civil or criminal law in the fight against corruption. UNCAC Article 35 requires state parties to take all "measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation".

For instance, Transparency International France and the non-governmental organisation SHERPA opened precedent for other civil society organisations to litigate in corruption cases, more specifically in cases involving the recovery of assets, after a ruling by the French supreme court acknowledged that the organisations have suffered direct or personal prejudice and therefore could take action against perpetrators of corruption⁸.

In 2007, TI-France and SHERPA took several measures to seek a criminal investigation of the corrupt activities of leaders of Gabon, the Republic of the Congo, and Equatorial Guinea, all thought to have assets hidden in France. The failure from prosecutors to proceed with the case encouraged TI-France and SHERPA to file a criminal case themselves. The case was dismissed by the court who stated that, as non-profits, the organisations did not suffer actual damages from corruption and were therefore not authorised to bring such actions.

In November 2010, France's highest court acknowledged the admissibility of TI-France's lawsuit given the organisation's mission as well as resources invested in the fight against corruption. It was also acknowledged that the alleged offences damaged the collective interest defended by TI-France (TI-France 2011).

⁸ Since French legislation does not have any legal provision allowing civil society organisations to litigate on behalf of someone else or a group or persons in cases of corruption, this specific case was filed based upon provisions of the UNCAC.

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