



Submission to the Special Session of the General Assembly on Challenges and Measures to Prevent and Combat Corruption and Strengthen International Cooperation.

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Background:

Corruption in all its forms negatively impacts all countries and people and hampers efforts for the attainment of the Sustainable Development Goals and the 2030 Agenda. The impact of bribery, illicit financial flows (IFFs) and other forms of corruption harms institutions, good governance, resource mobilisation and human rights of people globally.¹ In crisis situations such as the COVID-19 pandemic, corruption can pose several risks to emergency response mechanisms and drain on efforts and resources to mitigate its effects. Fighting corruption has become more urgent, as it poses a threat both to States' immediate response to the COVID-19 pandemic and their longer-term recovery efforts.

Therefore, attainment of SDG target 16.5 to 'Substantially reduce corruption and bribery in all their forms' is vital for ensuring that sustainable development can take place, and to build fairer and better societies after the COVID-19 pandemic. This effort will require active international cooperation among States towards preventing corruption, enhancing transparency, ending impunity in corruption related crimes, enabling the recovery of stolen assets, and denying safe havens to offenders and their proceeds of crime.

Countries and their national institutions must actively meet the challenges in identifying, tracing and freezing proceeds of corruption, particularly by optimizing their cooperation and assistance mechanisms, especially in situations involving vast quantities of stolen assets. There is also a need for strengthening national capacities, maintaining an independent judiciary, access to justice,

¹ See: World Bank Group, "Enhancing Government Effectiveness and Transparency The Fight Against Corruption", Global Report (September 2020), pg. 1 in <https://documents1.worldbank.org/curated/en/235541600116631094/pdf/Enhancing-Government-Effectiveness-and-Transparency-The-Fight-Against-Corruption.pdf> (accessed 25.05.2021)



strengthening business responsible conduct and accountability, participatory decision-making at various levels with the inclusion of women and minorities, and ensuring the unconditional return of assets.

1. Corruption as an obstacle for financing for development

Corruption occurring through bribery, illicit financial flows, embezzlement etc. reduces the resources available to States to finance their development initiatives and to fight against poverty. In many countries, the resources lost to corruption, particularly through corporate IFFs, exceed the funds provided by development aid.² The effects of corruption not only distort the distribution and use of public resources, but also have the potential of affecting public welfare and devalue investments that otherwise could have brought important benefits for society.³

Corruption harms public finances directly and indirectly. On the one hand IFFs weaken State's capacity to collect tax revenues that could have been used for public investment and social protection measures, as well as overpaying goods and services.⁴ According to the World Bank, developing countries lose USD 20 to 40 billion each year because of corruption.⁵ On the other hand, corruption undermines the credibility and trust in governments and its institutions, creating a sense of general impunity and lack of accountability, which in turn might deter new investments and entrepreneurship into the country, creating a 'hidden tax' that increases prices and reduces the quality of services,⁶ particularly by limiting competition and innovation in the private sector.

Similarly, corruption poses challenges on debt sustainability, as government's financial stability is heavily threatened and must resort to external borrowing. In such cases, averting or reducing IFFs may become important tools to alleviate debt burden.⁷

² United Nations Development Programme, "Fighting Corruption in the Water Sector: Methods, Tools and Good Practices" in <https://www.undp.org/content/dam/undp/library/Democratic%20Governance/IP/Anticorruption%20Methods%20and%20Tools%20in%20Water%20Lo%20Res.pdf> (accessed 24.05.2021)

³ World Bank Group (2020), pg. 1

⁴ Paolo Mauro, Paulo Medas, and Jean-Marc Fournier, "The Cost of Corruption", Finance and Development, Vol. 56 No. 3 (September 2019) in <https://www.imf.org/external/pubs/ft/fandd/2019/09/the-true-cost-of-global-corruption-mauro.htm> (Accessed 23.05.2021)

⁵ See: Stephenson K, Gray L and Power R, *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action* (World Bank 2011) in [Barriers to Asset Recovery - ISBN: 9780821386606 \(unodc.org\)](https://www.unodc.org/documents/asset-recovery/Barriers_to_Asset_Recovery_-_ISBN_9780821386606.pdf) (accessed 26.05.2021).

⁶ See: United Nations Office on Drugs and Crime and United Nations Development Programme, "Corruption and development" in

⁷ See: Juan Pablo Bohoslavsky, "Final Study on Illicit financial flows, human rights and the 2030 Agenda for Sustainable Development of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights", UN Doc. A/HRC/31/61 (2016), par. 35 in <https://www.undocs.org/A/HRC/31/61> (accessed 20.05.2021)



Developing countries should make all efforts towards not only preventing corruption, but also avoiding that proceeds of this crime are transferred abroad using IFFs methods or identifying such assets to repatriate them. Nevertheless, onerous requirements for mutual legal assistance, banking secrecy, lack of non-conviction-based recovery procedures and restrictive evidentiary and procedural legislation create legal and operational barriers for such efforts.

As highlighted by the High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, corruption is entrenched in power structures and social norms.⁸ Therefore, combatting corruption for the attainment of the SDGs will require strengthening and improving the regulatory framework and enforcement mechanisms of States, not only concerning anti-corruption specific legislation, but also reinforcing efforts towards building more open and participatory governments, responsible business practices and effective international standards to fight against financial crimes, illicit financial flow and cross-border corruption cases.

2. Corruption impedes the effective realization of human rights

Resources being lost to corruption could be used for providing essential services such as food, shelter, access to water, education, among others. Those resources are necessary for building better and dignified life for people and help realize their human rights, including their right to development. The United Nations Human Rights Council (UNHRC) has recognised the negative impact of corruption on the enjoyment of human rights.⁹ Disadvantaged and vulnerable persons suffer disproportionately from corruption, and there is also a strong correlation between corruption, poverty, and inequality, given that, as mentioned above, corruption erodes financing of public goods and services that are required for combating poverty and inequality.

Corruption not only limits the efforts towards the realization of economic, social, and cultural rights, but it also impacts the full enjoyment of all human rights, including civil and political rights. Lack of credibility and trust on tribunals and courts, and lack of transparency in legal and administrative process will significantly limit the right to access to justice.¹⁰

⁸ See: High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, “Financial Integrity for Sustainable Development”, Report (February 2021) in https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf (accessed 26.05.2021).

⁹ See: United Nations Human Right Council, The negative impact of corruption on the enjoyment of human rights (UNHRC Res 23/9), UN Doc. A/HRC/RES/23/9

¹⁰ See: Juan Pablo Bohoslavsky (2016), par. 21.

Limitations in access to information will also require further protection for whistle-blowers, the press, and human rights defenders.¹¹ Guaranteeing access to information and participation in all processes affecting human rights and fundamental freedoms would enhance transparency, and thereby empowers citizen's participation in public life, which results in greater accountability, and more effective tools and services for the fulfilment of all human rights.¹²

Similarly, the lack of accountability resulting from corruption can lead to systemic business-related human rights abuses in various types of commercial activities.¹³ The human rights violations and abuses caused by business-related corruption requires accountability of business enterprises, and particularly large transnational corporations. Efforts towards building more effective mechanisms for remedy and accountability in business related human rights violations and abuses will require identifying where the benefits deriving from such abuses fall. In such cases, bolstering transparency on beneficial ownership and participation in global value chains is required for guaranteeing access to justice and remedy based on obligations stemming from international human rights law.¹⁴

Finally, the progression of human rights due diligence standards for business should also require strengthening the 'preventive' character of such requirements through effectively implementing the principle of transparency to ensure oversight by competent authorities, and as a matter of good corporate governance by establishing the duty of care of the parent companies of transnational corporations through mandatory declarations of beneficial ownership.¹⁵

3. Corruption hampers response and recovery from crises

Despite the many measures adopted by States to contain and fight against the spread of the COVID-19 pandemic, the situation has escalated up to a human crisis affecting all social groups. However, its effects have not been felt equally among all the sections of society; in fact, it has exacerbated the profound economic and social inequalities affecting the most vulnerable.

Times of crises and emergency require the quick dispatch of public services and goods necessary to respond to crises. The necessary speed required to respond to these needs might increase the risk of corruption by lowering the standards of accountability and independent oversight of public

¹¹ See: Juan Pablo Bohoslavsky (2016), par. 21.

¹² See: World Bank (2020), pg. 179 – 180.

¹³ Working Group on the issue of human rights and transnational corporations and other business enterprise, Report on Connecting the business and human rights and the anti-corruption agenda

¹⁴ See: Daniel Uribe and Danish, "Designing an International Legally Binding Instrument on Business and Human Rights", South Centre (2020) in <https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights.pdf> (accessed 17.05.2021).

¹⁵ Ibid. pg. 22.

procurement. The fight against corruption by public institutions may require enhanced accountability and oversight of its actions.

While the risk of corruption might increase in times of crises, the overall consequences of systemic corruption could lower the effectiveness of governments' response and recovery from crises. For example, the diversion of funds from essential public services and goods towards private interests could have extreme and harmful consequences in people's live and livelihoods in times of crises.¹⁶

Spending mismanagement could also increase the need to resort to external financing of public services, which in turn produces high risk of debt unsustainability. Therefore, facing the economic downturn resulting from crises will require the establishment of strong and independent oversight mechanisms that limit undue influence from private interests and corruption risks.¹⁷

4. International cooperation is needed to fight against corruption

There is an urgent need to harness and strengthen international cooperation within the framework of *inter alia* the UN Convention against Corruption, the Stolen Asset Recovery Initiative for preventing and combating corruption. Transparency initiatives and mutual legal assistance in corruption cases are vital tools in this regard.

International cooperation should ensure that national, regional and international strategies are designed towards supporting States' efforts for combating corruption. Such mechanisms should aim not only at the prevention of corruption, but also at the identification and recovery of its proceeds, the collection of evidence and the identification of assets, and particularly strengthening accountability and transparency through exchange of information and data, including beneficial ownership.

The role of the private and, particularly, of the financial sector in facilitating corruption should also be considered. Sharing good national and regional State practices on the fight against corruption and the outcomes of the Implementation Review Mechanism (IRM) of the UNCAC could provide important tools in the fight against corruption.¹⁸

¹⁶ Jon Vrushi and Roberto Martínez B. Kukutschka, "Why fighting corruption matters in times of COVID-19," Transparency International (2021) in <https://www.transparency.org/en/news/cpi-2020-research-analysis-why-fighting-corruption-matters-in-times-of-covid-19#> (accessed 24.05.2021)

¹⁷ See: World Bank, "Ensuring integrity in Governments' response to COVID-19" in https://openknowledge.worldbank.org/bitstream/handle/10986/33705/Ensuring_Integrity_in_the_Government_Response_to_COVID19-April%202020.pdf?sequence=7 (accessed 21.05.2021)

¹⁸ South Centre, "Comments to the FACTI Panel Interim Report" in <https://www.southcentre.int/wp-content/uploads/2020/12/FACTI-Submission-Interim-Report-REV-2-1-1.pdf> (accessed 26.05.2021)

5. Recommendations:

- Mainstreaming anti-corruption practices and efforts throughout all legislative, policy and administrative initiatives should have a priority in States' efforts in combating corruption. Bolstering participatory and inclusive frameworks to strengthen access to information and transparency should not only be limited to public institutions, but also consider the private sector.
- Strong inter-institutional and cross-sectorial coordination are necessary toward building more effective and open government tools in the fight against corruption, particularly in times of crises. Periodical assessment of existing policies and legislative frameworks against corruption might increase effectiveness of governments' response in emergency scenarios. The establishment of interim public commissions of independent oversight in times of crises might strengthen those efforts.
- States should actively engage in current discussions for the adoption of a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, in order to promote a regulatory framework that strengthens transparency, access to information and accountability of business entities. Similarly, the recommendations issued by the High-Level Panel on Integrity Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda should be followed up the UNGA as a means to support States' effort to combat corruption.
- International cooperation should play a fundamental role in encouraging training and capacity building towards ensuring that public and private actors promote responsible practices and due diligence in preventing to and fighting against corruption.