

# Grand Corruption, No Impunity and the Need for Innovation in the Fight against Corruption

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“A future without corruption” is the theme for this important gathering and it is a vision which we all share. For decades many of us have worked to make this vision a reality and many milestones have been achieved, but still we have yet to succeed in creating a world where corruption no longer exists. Although it can be said that is an ideal, it is, nevertheless, an ideal worth striving for. For the next three days, we will be sharing ideas, practices and strategies, tried and tested, by many actors across a range of countries and I am honoured that Transparency International has been invited to share our concerns, our strategy and our solutions.

Two years ago in 2013, Transparency International celebrated its 20<sup>th</sup> anniversary. From a small organization established in 1993 by a group of individuals, led by Peter Eigen, concerned by the adverse impact of corruption on human lives, Transparency International has now grown into a global movement with a presence in more than 100 jurisdictions. Today, corruption is no longer a ‘dirty word’, spoken in whispers, but shouted out loud by more and more people across the globe, calling governments and corporations into account.

But are we winning in the war against corruption? Indeed it depends on whom you ask but a look back over the past two decades will reveal important achievements. In the 1990s our main challenge was in raising awareness, highlighting the issue, getting people to acknowledge and talk about corruption. This was followed by a period roughly in the first decade of the century, during which we were looking for solutions. From seeking new or better legislation to trying innovative tech solutions, our efforts resulted in access to information laws, asset declarations, international conventions against corruption, e-government and the like. Citizens, CSOs were also becoming more engaged, taking part in monitoring their governments to ensure that they comply with anti-corruption conventions they had committed to.

Today corruption is recognized as a collective action problem and a global problem, not simply a matter of mismanagement by some governments or a matter of weak law enforcement. It is an issue which is now part of the public discourse globally. In 2003 we succeeded in convincing the UN General Assembly to adopt a legally binding international anti-corruption convention, the UNCAC, and it now has 173 State Parties which has led to stronger anti-corruption legislation and institutions around the globe. In 2006, TI co-convened the UNCAC Coalition which brings together more than 310 CSOs and individuals in over 100 countries to pressure government to ratify and comply with the UNCAC. The use of technology has opened up opportunities for innovation and for greater transparency in support of

improving governance and in fighting corruption. Yet despite these achievements, major challenges remain.

According to UNDP, corruption continues to be a major bottleneck for development in the Asia-Pacific region where the majority of the poor reside in the region's middle income countries; 700 million people still live without electricity; marginalized communities are denied essential services; and 40% of investments in electricity, water, and sanitation is estimated to be lost to corruption. TI has also found that public sector corruption is perceived as being significant in 64% of the countries in the region. More disturbing is that although 60% of countries in the region have developed an anti-corruption strategy, implementation is still lagging. Corruption continues to be rampant, becoming more sophisticated and complex.

### Grand corruption

Moreover, what we are witnessing today is not just administrative or petty corruption, but also grand corruption or political corruption, involving large sums of money and major interactions, such as one might find in large infrastructure projects, in defence projects, and in the extractive industries. If, according to the UNODC, petty corruption reflects specific weaknesses within different systems, grand corruption involves the distortion and exploitation of entire systems, marked by the massive redirection of public funds, for the benefit of private interests, often the political elite. It takes place at the level of policy formulation, creating unjust policies and rules, engendering major abuses of power; makes a mockery of the rule of law; and undermines public trust. Needless to say, grand corruption potentially violates basic human rights in many developing countries around the world and a case in Kenya illustrates this point clearly.

In 2012, the Kenyan government was allegedly deliberately withholding payment to the National Cereals and Produce Board to buy maize for the people, creating an artificial food shortage and forcing farmers to sell their produce at low prices to agents working with syndicates connected to government operatives. This case of grand corruption deprived the Kenyan people of the basic human right to be free of hunger.<sup>i</sup> When former Nigerian governor James Ibori was in office, he was suspected of stealing US\$250 million of public money, some of it spent on his ridiculously luxurious mansion in Nigeria and on investments overseas.<sup>ii</sup> Imagine what that amount of money would have meant for a country where, at the time, 61% of its population lived in absolute poverty on less than US\$1 a day. Is not having to bribe officials to access basic public services or being deprived of health and education, because the system has been subverted to benefit a few cronies or kleptocrats, a violation of human rights? We believe it is. In our globalized world, grand corruption becomes even more complex as illicit proceeds can be transferred quietly across different jurisdictions, with dirty money laundered through opaque financial schemes and through the purchase of assets such as property and luxury goods.

Unfortunately, not enough is being done to combat grand corruption as it involves powerful and politically connected individuals in very high places, often using secrecy jurisdictions to hide their assets. Impunity prevails because perpetrators could be both local or central government officials who abuse their position for financial gain; they could also be politicians and legislators, members of the military, paramilitary groups, and organized crime bosses; with transnational corporations also abetting such corruption.

In December last year, for instance, Alstom, the global engineering firm headquartered in France, plead guilty and agreed to pay US\$772 million in fines imposed by the US Department of Justice to resolve charges of bribery in countries around the globe, including in my own country, Indonesia. In the words of Deputy Attorney General Cole, “Alstom’s corruption scheme was sustained over more than a decade and across several continents....it was astounding in its breadth, its brazenness and its worldwide consequences.” Much of the illicit work was done in their US office in Connecticut, violating the US FCPA by falsifying its books, records, and failing to implement adequate internal controls but through their executives and employees, the company paid bribes to government officials in connection with large infrastructure projects. In Indonesia, a high-ranking member of Parliament and senior executives of the state-owned power company accepted bribes in exchange for securing contracts worth approximately US\$375 million. In total, Alstom spent more than US\$75 million to secure contracts around the world worth US\$4 billion for a profit of approximately US\$300 million.<sup>iii</sup>

Another example is the case of BNP Paribas which in July last year pleaded guilty to violating US sanctions regarding its clients in Sudan, Iran and Cuba. It was alleged that between 2002 and 2009, its Geneva office devised financial schemes to bring in US\$30 billion into the US on behalf of these countries and hide the true owners of the cash. Some of the money was traced to public officials in Sudan, whose president, Omar Hassan Ahmad al-Bashir has allegedly amassed more than US\$9 billion. BNP Paribas paid a fine in almost that same amount, US\$ 8.9 billion, under an agreement with the US Department of Justice. Another example is HSBC who paid a US\$1.92 billion fine and money laundering settlement with the US DoJ after it was found laundering money for Mexican drug cartels and other unsavoury gangsters.<sup>iv</sup>

These examples underline the fact that grand corruption knows no borders and, in the words of Jose Ugaz, TI’s Chair, “grand corruption kills, makes poverty worse, and impacts development.”

### No Impunity

According to Global Financial Integrity, the amount of illicit money flowing out of developing and emerging countries each year facilitated by secrecy in the global financial system exceeds the inflow of money from FDI and net official development assistance combined. In its December 2014 report, “Illicit Financial Flows from the Developing World: 2003-2012”, it is stated that US\$6.6 trillion was lost, with illicit outflows increasing at an average rate of 9.4% per annum – growing at about twice as fast as global GDP.<sup>v</sup> In 2003, illicit financial outflows, which includes trade mis-invoicing and illicit money outflows, stood at US\$297,411. By 2012, it had steadily increased to US\$991.2 billion, more than the US\$879 billion received from FDI and ODA. Regionally, sub-Saharan Africa suffered the most, losing an average of 5.53% of its GDP annually to illicit financial outflows. In Asia it stands at 3.75%.

Given the immensity of the sums involved and the damaging impact grand corruption has on the economies of so many developing countries, Transparency International aims to deal with the impunity of grand corruptors. In cooperation with other organizations, we want to close the loopholes which allow the corrupt to stash and enjoy their ill-gotten wealth by taking advantage of the international financial system which, with the complicity of countries and banking centres, enables illicit financial flows to cross borders.

One way to stop grand corruption requires financial institutions to prevent illicit flows from entering the system by identifying perspective investors and clients as potential PEPs – politically exposed persons – and doing the necessary due diligence to ensure that they are free of corruption. Gatekeepers such as lawyers, accountants, tax consultants must do their part whilst governments must ensure that they are compliant. Unfortunately, according to a 2011 report by the UK financial regulators, more than a third of banks inspected did not have effective measures to identify customers as PEPs or to deal with high risk situations. This is further complicated by the lack of clarity of who is meant by a PEP and whether family members and close associates of such persons should be included.

Governments and their enforcement authorities across the world need to join forces in ending the impunity of money launderers. Imposing fines on banks such as BNP Paribas and HSBC mentioned above is not enough and governments should assign the highest priority to prosecuting individuals and banks where there is clear evidence of their involvement in illicit financial transactions. Public registers of beneficial ownership information of companies need to be made available. A report by TI-UK published in March, for example, analysed data from the Land Registry and Metropolitan Police Proceeds of Corruption Unit and found that 36,342 London properties covering an area of 2.25 sq miles are in the name of hidden companies registered in offshore havens and that 75% of properties, whose owners are under investigation for corruption, used offshore corporate secrecy to hide their identities. The same thing is happening in New York City. The New York Times recently published a series of reports on the use of shell companies to buy property which concealed the identity of the owners and their sources of wealth, some of which are allegedly linked to corruption.<sup>vi</sup>

At the G20 in Brisbane last year, TI was very much involved in pushing for the transparency of beneficial ownership and we are happy to note that the Anti-corruption Working Group agreed to High Level Principles which outline concrete actions to ensure legal entities are transparent and are not being misused for illicit purposes. The ACWG also endorsed asset disclosure profiles for its members and finalized a review of G20 Good Practices in Asset Disclosure Systems. In the 2015-2016 Anti-corruption Action Plan, beneficial ownership transparency is one of the priorities along with bribery, public and private sector transparency and integrity, greater international cooperation and highlighting high risk sectors prone to corruption. G20 countries have committed to more effective implementation of the standards on beneficial ownership set by the Financial Action Task Force and this includes taking concrete action and sharing steps to implement the High Level Principles. We need to ensure that these commitments are implemented.

### Need for Innovation

In our twenty-year experience, TI has learnt that we cannot rely on governments taking on bold reforms without pressure from the public. In today's inter-connected world, governments need to engage and listen to the aspirations of their citizens. For such engagement to be effective, we need citizens to have an informed, stronger and bolder voice, particularly in demanding integrity in the public and private sectors and in demanding an end to corruption. In many places around the globe, individuals are not just angry but are going beyond merely demanding corporate leaders, politicians and government leaders to be clean: they want to act and they want to be agents of change. This is manifested in their participation in social media campaigns, making donations in time and money to support causes, demonstrating in the streets to end corruption and the like. More and more citizens want to be part of

the change. Hence, the demand for an end to corruption is no longer confined to CSOs but to individual citizens and groups of citizens. With the help of new technologies, open data, an increasingly borderless world, 'awareness' has stepped up to becoming 'action'. What we are witnessing today is the development of global bottom-up, civic anti-corruption activism. The people want to see corruptors being sanctioned, be it legally or socially.

Governments need to realize this and to accommodate it, lest the people abandon their support for the government and public distrust ensues. Governments need to abide by their commitments and ensure that anti-corruption measures are being effectively implemented. The independence of anti-corruption agencies and oversight bodies must be protected and shielded from undue influence and political interference and developments, so that what we are witnessing in Indonesia right now, where the political oligarchy is undermining the anti-corruption movement, is a lesson to be learnt.

If governments fail to fulfil these expectations, civil society will rise up as we have seen in the Arab Spring Movement. With technology, civilians are able to monitor developments and information can be spread far and wide with a click of a button whenever abuse of power occurs. In many places, the media – both traditional and digital – play a crucial role. Investigative journalism can shed light on many of the murky dealings of politically exposed people and their collusion with financial institutions.

Transparency International foresees that this demand for ending corruption and sanctioning the corrupt will become stronger in the coming years. We hope to play a leadership role in harnessing this activism, direct it, support and protect it, so that it is effective in communicating with those in power in order to affect change. We need new, innovative tools to be able to play this leadership role.

In our effort to put an end to impunity and stop the corrupt from hiding their identity and illegal activities, Transparency International recently launched the 'Unmask the Corrupt' campaign. It is a campaign about exposing politically exposed persons, monitoring and watching them more closely and preventing them from travelling freely around the globe and escape justice to enjoy their illicit wealth, stolen from the people and taxpayers. Citizens must demand their right to know who is cheating them and for the corrupt to be brought to justice and be punished. We are calling on citizens to get involved and take action and we are providing the tools and campaign resources to enable them to do so. We are also using social media to spread the word and support the campaign. Technology allows us to adopt new forms of interaction and collaboration, as well as the means to better scrutinize public and private action. For example, we are running a contest using social media to select the world's 10 worst cases of grand corruption, identify the people behind them and campaign against them. Another innovation under development is a digital platform for sharing ideas and tactics for social sanctioning when legal sanctioning fails. Some of the actions taken by citizens are naming and shaming corrupt officials, boycotting products from corrupt companies, refusing to vote for corrupt officials and the like.

At the moment we are working on our strategy for the next 5 years and we will continue to develop and sharpen our work on grand corruption and impunity to find creative and innovative ways to engage citizens and calling on them to take action. The next 5 years will be no less challenging than the last as we witness the complexities of corruption and illicit transactions in a globalized world; as political oligarchies continue to prevail and in some places strengthen; as we see law enforcement weaken; and as we see the space for civil society diminish in many parts of the world. Our Strategy 2020 Task Force has thus far identified some key issues to highlight which include restoring public trust in institutions and in ensuring that integrity, justice and human rights are values which are given top priority by the

global community. The challenges are daunting but not insurmountable. TI will continue to take an holistic approach in advocating for a corruption-free world, to work with governments, the private sector and like-minded CSOs but, more importantly, we need to be bolder and more creative in engaging the people, the citizens around the world, because ultimately we, the people, are the victims of corruption and the victims of impunity.

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<sup>i</sup> <http://asiapacific.anu.edu.au/regarding-rights/2015/03/27/when-corruption-violates-human-rights-the-right-to-food-in-kenya/>

<sup>ii</sup> <http://www.dailymail.co.uk/news/article-2107280/Nigerian-state-governor-funded-international-playboy-lifestyle-50million-fraud-rose-humble-roots-working-London-DIY-store.html>

<sup>iii</sup> <http://www.justice.gov/opa/pr/alstom-pleads-guilty-and-agrees-pay-772-million-criminal-penalty-resolve-foreign-bribery>

<sup>iv</sup> <http://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial>

<sup>v</sup> [www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/](http://www.gfintegrity.org/report/2014-global-report-illicit-financial-flows-from-developing-countries-2003-2012/)

<sup>vi</sup> [http://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?\\_r=0](http://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html?_r=0)