**Intersessional panel discussion on challenges and good practices in the prevention of corruption, and the impact of corruption on the enjoyment of human rights in the context of the covid-19 pandemic**

**Tuesday, 15 February 2021, 11:00 -13:00, Teams**

Distinguished delegates, good morning/afternoon. Many thanks to the OHCHR for the opportunity to speak to you today on behalf of Transparency International on the important subjects addressed by this panel.

We welcome the latest Human Rights Council resolution on the negative impact of corruption on the enjoyment of human rights. We also welcome the work of the Human Rights Council, Geneva treaty bodies and special mandates as well as the Working Group on Business and Human Rights making the connection between corruption and human rights - the Center for Civil and Political Rights and the Geneva Academy have produced valuable information about this work.

At Transparency International, we have since our early days recognised that corruption may motivate, facilitate and cause negative impacts on all rights, political and civil; economic, social and cultural, often multiple rights at the same time. The experience of the Covid pandemic has shown that the opportunities and risks for corruption and its negative impact increased. Indeed, preventing corruption can be a matter of life and death in pandemic and other emergency situations.

I will focus here on two key clusters of issues namely 1) rights essential for anti-corruption efforts; and 2) addressing the most egregious form of corruption, grand corruption.

Rights essential for anti-corruption efforts

One area for increased collaboration between Geneva and Vienna concerns the rights that the Human Rights Council has identified as essential for anti-corruption efforts. These include the rights to information, freedom of expression and assembly, an independent and impartial judiciary and participation in public affairs. The resolution adopted last year also mentions good governance, democracy and rule of law as essential.

There is some partial complementary language in the UNCAC prevention chapter, with an anti-corruption framing. It is strongest on access to information, with numerous references to transparency – including in procurement and public sector financial management and there is also an article on integrity in the judiciary and prosecution services and some language on participation. In practice, the UNCAC work in Vienna tends not to treat participation and some forms of access to information as essential”. The reviews This is perhaps best exemplified by the exclusion of civil society observers from UNCAC subsidiary bodies; the optional nature of civil society participation in the UNCAC review process; and the option for states not to publish their full UNCAC review reports.

More generally, there are alarming trends around the world restricting the rights essential to anti-corruption and this calls for intense coordination between Geneva and Vienna. Recent studies have found that democracy continued its precipitous decline in 2021[[1]](#footnote-1) and that civic space is in a downward spiral around the world[[2]](#footnote-2) – in both cases the Covid crisis has exacerbated existing trends, although despite increasing restrictions on civil liberties protests have increased.[[3]](#footnote-3) Civil society activists and journalists in many countries face state intimidation and violence, including in their efforts to expose corruption and even more so in the context of the Covid pandemic. Moreover, according to recent studies, during the pandemic, transparency and accountability in procurement declined and there has been a lack of transparency and accountability in relation to the massive government spending.[[4]](#footnote-4)

**Addressing the most egregious forms of corruption**

Geneva and Vienna bodies should also give urgent attention to ways to counter and remedy the most egregious form of corruption, grand corruption.

Grand corruption is an aggravated form of corruption involving high-level officials and their associates in large scale schemes – generally cross-border[[5]](#footnote-5) - It results in significant financial losses to the state and extensive human rights violations. [[6]](#footnote-6) It often benefits from impunity over long periods. Studies have shown how high-level officials and powerful associates are able to exert undue influence over state executive, legislative and justice branches, not only to enrich themselves but also to stymie corruption prevention, detection and enforcement.[[7]](#footnote-7) It is generally associated with violations of all the essential rights discussed earlier, as well as denial of other rights.

Knowledge of this problem is not new. The preparatory documents for this meeting include a Commission on Human Rights resolution from1992 referring to “Fraudulent enrichment of top State officials prejudicial to the public interest and also referring to the agents involved in all countries in such fraudulent enrichment”. More recently, grand corruption was the subject of an UNCAC CoSP resolution at its session in 2017 as well as subsequent recommendations from a UN expert group convened in Oslo.[[8]](#footnote-8) It was also referred to in the joint statement on corruption and human rights issued by six human rights committees in 2021.

Grand corruption networks and schemes are particularly damaging in crisis and emergency circumstances. A U4 study has cited numerous examples of grand corruption during the Covid pandemic – and those are only the ones that have been uncovered.

One way to approach the grand corruption problem is through special national and international enforcement measures, As a basis for such measures, Transparency International has developed a legal definition of grand corruption recognising human rights violations as part of grand corruption.

Another approach is to tackle the international laundering of the proceeds of grand corruption, laundering that is made easier by system weaknesses. A key weakness is lack of beneficial ownership transparency which also poses obstacles to asset recovery. This was the focus of a recent UNCAC resolution tabled by Nigeria and could be considered in the context of Geneva discussions of the negative human rights impact of the non-repatriation of illicit assets.

Last but not least, is the related subject of victims’ remedies in international grand corruption cases – compensation is very rare. Despite relevant international standards in the human rights and anti-corruption fields[[9]](#footnote-9), compensation of victims is very rare in these cases, denying justice to victims and failing to provide deterrence.[[10]](#footnote-10) The issue was recently discussed in the OECD WGB which conducts monitoring of the OECD Anti-Bribery Convention but that body could not reach agreement to address the issue in a recommendation on improving foreign bribery enforcement. As with money laundering, this is also relevant for asset recovery discussions and also warrants joint attention by Geneva and Vienna bodies.

**Recommendations going forward**

1. We urge UN member states and the UN secretariat offices in Geneva and Vienna to hold discussions on “essential rights” in the UNCAC Working Group on Prevention and the UNGASS against Corruption follow-up session planned for 2022 or 2023.
2. Likewise, we urge joint work in the two UN centres on grand corruption and victims’ remedies and we also encourage consideration of beneficial ownership transparency and other anti-money laundering issues in the context of Geneva discussions on repatriation of assets.
3. In view of the linkages between corruption and human rights, we encourage member states to create a mandate for a Special Rapporteur on Corruption and Human Rights, who could help focus and advance the work in this area.[[11]](#footnote-11)
1. <https://www.economist.com/graphic-detail/2022/02/09/a-new-low-for-global-democracy>. [↑](#footnote-ref-1)
2. https://findings2020.monitor.civicus.org/downward-spiral.html [↑](#footnote-ref-2)
3. The Varieties of Democracy (V-Dem) Pandemic Backsliding Project, which captures the extent to which state responses to COVID-19 violate democratic standards, reports multiple [violations against media freedom](https://www.v-dem.net/en/analysis/PanDem/), infractions on non-derogable rights and violent enforcement of emergency rules by the police and the military. International IDEA’s Global State of Democracy Report 2021 found that the Covid-19 pandemic has exacerbated a trend of increasing authoritarianism, across the globe, with many countries sliding back down the democratic scale. <https://www.idea.int/gsod/global-report> [↑](#footnote-ref-3)
4. <https://blogs.lse.ac.uk/covid19/2022/02/07/transparency-and-accountability-fell-sharply-for-covid-related-public-procurement/> and <https://internationalbudget.org/covid/wp-content/uploads/2021/05/Report_English-2.pdf> [↑](#footnote-ref-4)
5. Cooley et al. provide a definition of transnational kleptocracy: “the cross-border ties, typically in the form of non-state networks, by which authoritarian elites gain and keep power and wealth”. See Alexander Cooley, John Heathershaw, and J.C. Sharman, [*“The Rise of Kleptocracy: Laundering Cash, Whitewashing Reputations.”* Journal of Democracy 29, no. 1 (2018): 39–53.](http://www.journalofdemocracy.org/articles/the-rise-of-kleptocracy-laundering-cash-whitewashing-reputations/) [↑](#footnote-ref-5)
6. One legal scholar has written in relation to grand corruption of a “collective compensation entitlement that differs from all other forms of criminal reparation… since with regard to crimes such as corruption that culminate in extreme poverty and famine it is not possible to determine cause and harm on the basis of ordinary tort law.” Ilias Bantekas, *Corruption as an International Crime and a Crime against Humanity: An Outline of Supplementary Criminal Justice Policies*, Journal of International Criminal Justice (July 2006) [↑](#footnote-ref-6)
7. In its most extreme form it is a government that is, as Sarah Chayes has put it, a vertically-integrated, criminal

organization bent on stealing money and resources for private gain, …using the tools of state power to further those ends.

Sarah Chayes, Thieves of State (2015), cited in: PRI, [*Here is why government corruption can spawn religious extremism around the globe*](https://www.pri.org/stories/2015-01-28/bribery-fraud-spawn-religious-extremism-worldwide-author-says)(28 January

2015). See also: Sarah Chayes*,* [*The Structure of Corruption: A Systemic Analysis Using Eurasian Cases*](https://carnegieendowment.org/files/CP274_Chayes_EurasianCorruptionStructure_final1.pdf) (June 2016) [↑](#footnote-ref-7)
8. The Oslo Statement on Corruption Involving Vast Quantities of Assets [↑](#footnote-ref-8)
9. The UN General Assembly’s 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; the UN Convention against Corruption’s Article 35 on victims compensation and the UN Guiding Principles on Business and Human Rights Pillar III on Access to Remedy. [↑](#footnote-ref-9)
10. This is despite the UN General Assembly’s 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; despite the UN Convention against Corruption’s Article 35 on victims compensation and despite the UN Guiding Principles on Business and Human Rights Pillar III on Access to Remedy. [↑](#footnote-ref-10)
11. Such a mandate should have a range of tasks including production of reports, responding to communications and could also could strengthen the connections between anti-corruption and human rights mechanisms globally, regionally and nationally in order to strengthen conceptual links and working relations. It could report not only to the Human Rights Council but also to the UNCAC Conference of States Parties and the UN General Assembly. And it could also have the assignment of increasing public awareness of the linkages between corruption and human rights. [↑](#footnote-ref-11)