

Fighting corruption to restore trust in government and improve development prospects, 17 – 18 February 2021

Panel session on Corruption involving vast quantities of assets (VQA)/grand corruption

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Is a new anti-corruption court politically feasible?

What other ways are there to ensure justice and the restitution of stolen assets in cases of “grand corruption”?

Corruption with impunity is a major challenge. It is a self-reinforcing vicious cycle.

To effectively prevent and combat corruption, societies need an anti-corruption culture and legislation.

They need preventive measures and adequate control mechanisms to detect violations.

And they need strong bodies to investigate, prosecute, adjudicate, apply sanctions, and decide issues about compensation for the victims in corruption cases.

Auditors, investigators, prosecutors, judges, whistleblowers, and witnesses must be ensured independence, resources, access to information, and protection.

In return, we expect integrity, impartiality, and equality before the law.

Anti-corruption efforts must comply with the rule of law and respect for human rights.

In societies with high levels of corruption, the judicial system is likely to suffer from corruption, too.

Powerful elites in the public and private sectors sometimes plunder their societies with impunity because the justice systems have been captured, corrupted, or crippled by them and their allies.

The Oslo Statement (2019) contains 64 expert recommendations about preventing and combating corruption involving vast quantities of assets. The participating experts agreed that:

“Innovative ideas to end impunity should be explored. To this effect, some proposals could be further analysed and discussed in more detail, including, for example, the establishment of regional mechanisms for prosecution or international mechanisms, such as establishing an international ant-corruption court, with respect for the sovereignty of States.”

So, one proposed remedy is the creation of an International Anti-Corruption Court (IACC), modelled on, but distinct from the International Criminal Court (ICC). The IACC, like the ICC, would operate on the principle of ‘complementarity,’ meaning that the court would only have jurisdiction in those cases where the national systems are unwilling or incapable of engaging in good-faith investigations, prosecutions, and fair trials.

An IACC might help address grand corruption by strengthening deterrence, by motivating countries to improve their domestic justice systems, and by communicating a strong international disapproval of grand corruption. It may break the vicious corruption-impunity cycle.

However, there are several counter arguments to establish an IACC:

- Leaders who enjoy de facto impunity for grand corruption are unlikely to submit to the jurisdiction of an IACC.
- Coercive measures are unlikely to be feasible.
- An IACC may not have sufficient tools to be able to effectively prosecute grand corruption.

- Prosecutors at international tribunals depend almost entirely on cooperation from domestic agencies.
- An IACC may not be cost-effective.

In the Oslo Statement the experts also recommended that other innovative ideas could be further analysed and discussed such as:

- the establishment of an international special rapporteur for anti-corruption,
- the development of a protocol to the UNCAC on corruption involving vast quantities of assets,
- exploring the possibility of extending the jurisdiction of the International Criminal Court to include corruption involving vast quantities of assets
- creating international commissions against corruption and impunity,
- elevating the Jakarta Statement on Principles for Anti-Corruption Agencies (2012) to a more binding instrument.

Finally, on the issue of impunity, the experts recommended that “national audit institutions should strengthen their cooperation with national anti-corruption authorities, where appropriate, including by using the full potential of audits and ensuring appropriate follow-up action to their reports. As with other oversight bodies, measures should be put in place to ensure that their actions are in accordance with international standards.”

Whatever assessment one may have of the proposal to establish an IACC, the international community should continue to pursue efforts to address the corruption-impunity problem. Several approaches and measures have been identified. Some combination of these measures may provide either an effective alternative or a complement to the IACC, as part of a comprehensive strategy to prevent and combat grand corruption.

Norway would like to see the corruption-impunity challenge effectively addressed in the Political Declaration from the UN General

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