

**Presentation by Adetokunbo Mumuni, Executive Director
Socio-Economic Rights & Accountability Project (SERAP)
for the discussion panel on ‘Special Measures against grand corruption’
at the UNCAC Implementation Review Group Briefing for NGOs
in Vienna, Austria on 4 June 2015**

1. I want to thank Transparency International for the opportunity to be part of this very important event. I am particularly grateful to Gillian Dell and Ruth Witt for their support for SERAP over the years.
2. Permit me to say a few words about our organization. SERAP is a human rights non-governmental organization whose mandate includes the promotion of transparency and accountability in the public and private sectors through human rights. In 2008, SERAP was nominated by the DFID for the UN Civil Society Award, coordinated by the UNODC in Abuja. SERAP was also nominated for the Ford Foundation *Jubilee* Transparency Award for 2011. SERAP received the Professor Wole Soyinka Anti-Corruption Defender Award for 2014. SERAP is also a key member of the UNCAC Coalition, which is a global anti-corruption network of over 310 civil society organisations (CSOs) in over 100 countries. SERAP has observer status with the African Commission on Human and Peoples’ Rights in Banjul, The Gambia. SERAP is also a member of the UN Global Compact.
3. I will focus on two key issues: firstly, I will talk briefly on the role of NGOs in initiating legal actions against corruption where anticorruption institutions fail to do so, and suggest the legal principle that can help us achieve this. Secondly, I will reiterate SERAP’s absolute support for the establishment of an International Anticorruption Court to try grand corruption and facilitate repatriation of stolen funds to victim states.

A. Levelling the playing field: The Role of NGOs in initiating legal actions against corruption where anticorruption institutions fail to do so:

1. Corruption especially grand corruption is clearly morally repugnant and inimical to development, the welfare of citizens, breeds cynicism among citizens, damages government legitimacy, corrodes the integrity of the private sector, and ultimately undermines the rule of law and the notion of human rights and human dignity.
2. Yet, many governments, especially in developing world such as Africa continue to pay lip service to the idea that fighting corruption is in both their own interest and the interest of the global good. The question is: How can NGOs push them to act when they are failing to do so or, better still, take legal actions themselves to combat corruption that governments are refusing and/or failing to address?

3. NGOs can play a key role in ensuring the effective enforcement of anticorruption legislation and conventions such as the UN Convention against Corruption by pushing anticorruption institutions (through legal actions) to properly investigate and prosecute corruption cases.
4. NGOs can utilise a uniquely judicial mechanism known as public interest litigation to pursue corruption cases where anticorruption institutions are failing to do so. Public interest litigation is a special type of lawsuit which is brought to the court by an individual, organisation or agency to prevent harmful behaviour which may unreasonably damage public social or personal interests. Grand corruption clearly falls within these categories.
5. SERAP has consistently used public interest litigation as a legal tool to advance its anti-corruption work, including regarding our celebrated ECOWAS Court case on the right to education, where the court acknowledged that corruption violates the right to education. Dismissing the government's argument on locus standi, the Court stated: "The authorities cited by both the government and SERAP support the viewpoints canvassed by them. However, we think that the arguments presented by SERAP are more persuasive for the following reasons: first, the doctrine of 'Actio Popularis' developed under Roman law to allow any citizen to challenge a breach of public right in Court was a way of ensuring that the restrictive approach to the issue of standing would not prevent public spirited individuals from challenging a breach of a public right in Court. Second, SERAP cited authorities from around the globe which all concur in the view that in a human rights violation the plaintiff need not be personally affected or have any special interest worthy of protection."
6. The Court stated that while steps are taken to recover funds and/or prosecute the suspects, the Nigerian government should provide the funds necessary to cover the shortfall (due to corruption) in order to avoid denying any of its people the right to education.
7. More recently, with support from the Ford Foundation SERAP has put together a project to undertake public interest litigation to compel the new government of President Muhammadu Buhari to take concrete and effective actions on completed investigations on corruption which the anticorruption institutions have not been able to prosecute.
8. SERAP strongly believes that with proper systems in place to relax the legal requirement of legal standing (*locus standi*) to allow citizens and NGOs access in corruption cases without the need to prove any direct interest in those cases, public interest litigation can be an effective mechanism to prevent and combat grand corruption.
9. It is therefore important to campaign for legal reforms to relax standing for NGOs in cases of grand corruption, and to encourage courts to accept public interest litigation in corruption cases. It is time to embrace public interest litigation as a

legal tool to both compel states to take effective action in grand corruption cases and to achieve effective remedies for victims.

B. International Anticorruption Court is an idea whose time has come:

1. SERAP has backed Judge Mark Wolf's initiative on the establishment of a multilateral body to probe allegations of grand corruption, and is currently consulting with CSOs to put together a Nigerian Working Group on IACC to persuade the Muhammadu Buhari government to support the initiative.
2. Given that many Nigerians (and indeed Africans) have lost faith in the ability of successive governments to combat high-level official corruption, an IACC could erode the widespread culture of impunity, and help to address the challenges undermining effective repatriation of stolen assets to victim states.
3. Some statistics provide that majority of those indicted for international crimes by the International Criminal Court are in custody, facing trial, or have already been convicted. There is no reason to doubt that an International Anti-Corruption Court couldn't do as well, and by doing so it would make a big difference in the efforts to combat corruption in Nigeria and indeed many parts of the world.
4. As noted earlier, large-scale official corruption is so harmful and antithetical to the idea of a law-based society. It erodes public trust in government and permeates critical institutions of governance. But it is increasingly becoming clear that this kind of corruption is beyond government capacity to prosecute. It is thus appropriate for the world nations to look at how international law can be engaged as a major component of the efforts to address the problem.
5. In Nigeria for example, corrupt officials generally are not deterred by the threat of prosecution. Establishing an international court to prosecute such cases will deter would-be corrupt officials from turning public office into a maximising unit or business enterprise to make money at the expense of the interest of the public.
6. SERAP urges this meeting to support the IACC as a complementary tool to fight grand corruption. There is absolutely no way the establishment of this court can be counter-productive to the fight against corruption. Grand corruption is a complex problem causing severe human suffering, and as such requires novel solutions like the IACC. Some of us living in Africa have experienced (and continue to experience) the devastating effects of grand corruption. It is a problem that affects real people. That is why SERAP applauds Judge Wolf for this excellent initiative and will do everything within its mandate to facilitate the establishment of an IACC.
7. Thank you for your kind attention.