

Grand Corruption Cases – What schemes and what consequences?

Side event at the 10th resumed session of the

Implementation Review Group

Tuesday, 3 September 2019, 13:30 – 15:00

Vienna International Center

- Organisers:** Transparency International and UNCAC Coalition
- Moderator:** **Gillian DELL**, Transparency International Secretariat
- Panellists:** **Cynthia GABRIEL**, Member of the UNCAC Coalition's Coordination Committee, Center to Combat Corruption and Cronyism (C4 Center)
Andrew FEINSTEIN, Corruption Watch UK
Fabiano ANGELICO, Consultant and Researcher, Transparency International Brazil
Gladwell OTIENO, Executive Director, Africa Centre for Open Governance (AfriCOG), Kenya

This side event aimed to advance discussions on grand corruption by reflecting on the lessons learned from several major cases, including with respect to the role of the financial sector and shell companies. It also presented and sought feedback on the elements of a definition of the criminal offence of grand corruption.

- **Lise Stensrud from the Norwegian Agency for Development Cooperation (NORAD)** welcomed the recent expert meetings in Lima and Oslo arranged by UNODC, in which civil society participated together with experts and representatives from governments to come up with suggestions for more knowledge, standards and innovative ways to counteract grand corruption. She said the role of civil society could not be stressed enough as journalists, media and academics contribute too much of what we know today about corruption. She mentioned proposals for ending impunity, an international anti-corruption court and the establishment of international special rapporteurs. The meetings produced findings on transparency and political financing and suggested better definitions on legal

privilege, ways to facilitate access to information, the work of independent agencies and beneficial ownership. Norway has granted ca. five million US dollars to UNODC.

- **Gillian Dell** stressed that not enough is being done to counter grand corruption which is wrecking untold harm. She shared a draft definition of the criminal offence of grand corruption: *'Grand corruption means the commission of any of the offences in UNCAC articles 15-25 as part of a scheme that 1) involves a high level public official and 2) results in or is intended to result in a gross misappropriation of public funds or resources, or gross violations of the human rights of a substantial part of the population or of a vulnerable group.'* Cases of grand corruption often involve companies, aided and abetted by networks of major financial institutions and shell companies, not just public officials. In grand corruption cases, domestic enforcement authorities are often unable to bring perpetrators to justice despite having mechanisms to do so. Perpetrators are often able to shield themselves from the rule of law. Solutions need to be found to this problem of impunity.

Schemes of Grand Corruption

- **Cynthia Gabriel** presented the case of 1MDB in Malaysia, which has been called the 'largest heist of the century'. The sovereign wealth fund, which intended to draw in investments from all over the world and bring wealth back into the country, involved vast tranches of money being transferred to shell companies and the former prime minister's personal bank accounts.
- **Andrew Feinstein** presented on BAE weapons sales. BAE systems conducted two arms deals that took place 14 years apart but exhibited systemic schemes that were basically replicated. Probably nine or ten other similar cases took place over the term of 15 years. He highlighted that the arms trade is fairly unique in that companies are incredibly close to governments. Everything that takes place in this business takes place behind a veil of national security and national interest. For 43 billion pounds of weaponry that were sold to Saudi Arabia, six billion pounds of commissions or bribes were paid. BAE would move money through UK high street banks to the British Virgin Islands and from there would utilise shell companies in offshore jurisdictions. The Saudi Arabian deal used two other mechanisms, including massive over-invoicing of oils sales to Britain and slush funds. Prime minister Thatcher was intimately involved in negotiating the contract with the Saudi

Arabian Ambassador to the US who was also the son of the Saudi defence minister. Thatcher's son also received a twelve-million-pound payment. The defence minister and permanent secretary of the ministry of defence admitted they knew of the corruption.

- **Gladwell Otieno:** In Kenya, the case of Anglo Leasing was very prominent. The responsibility could be traced up to the president and many other high-level officials. Many real estate companies are shell companies to launder money.

Shell Companies and Intermediaries

- **Andrew Feinstein:** Political leaders regularly advocate for national defence companies, e.g. former UK prime minister Tony Blair and Prince Andrew. Grand corruption is not just a problem of the global south, but there is interdependence with the global north. There are organisations that act as nominees for shell companies and laws that do pertain to organisations like this in the UK are not properly enforced. Large financial auditors are not picking up bribes of extortionate sums in large defence companies. Either something is wrong with laws that govern roles and responsibilities with auditors or the nature of the relationship between auditors and clients are a miss.
- **Fabiano Angelico** presented on Lava Jato or Operation Car Wash which involved major Brazilian infrastructure companies and high-level officials diverting funds from Petrobras, a giant Brazilian state-owned enterprise. Brazilian political leaders allegedly recommended other governments, from Latin America and Africa, that they should hire Brazilian infrastructure companies. Bribes were apparently received by foreign officials to contract those Brazilian infrastructure companies. Bribes would also be paid via gaps at the political financing system – Brazilian companies would pay for political communication campaigns using shell companies in other countries. The bribery scheme was very complex and sophisticated. A Brazilian company even bought an Austrian Bank branch in the Caribbean to process bribes without having their financial institution asking too many questions. A crucial point in the corruption scheme are the top executives of Petrobras, because they were the ones who would effectively execute the corruption scheme via public contracts won by Brazilian infrastructure companies.

- **Gladwell Otieno** presented examples on state capture such as shell companies, companies that submitted unsolicited bids for procurement contracts that directly adhere to the unpublished ToRs and reverse financing conducted by senior political operatives.

Consequences

- **Cynthia Gabriel:** Even though 1MDB was a huge financial scandal and other scandals took place that involved the prime minister and directly impacted on people, there were no legal pursuits while the government was still in power. There is a strong need for advocacy internationally.
- **Andrew Feinstein:** Consequences do depend on who is in power. In South Africa, the president who engineered the arms deal allowed the prosecution to pursue his political opponents. His opponent then dropped the charges against him when he gained power. In the UK, the investigation that happened under the Conservative government was closed down by Labour party leader Blair. This reflects the impunity that takes place in corruption in the defence sector. There are three levels of harm from the arms deals. Firstly, some weapons are still used by Saudi Arabia today in the conflict in Yemen. Secondly, it undermines democracy and the Rule of Law. Thirdly, there is an immediate human cost. The decision in South Africa to spend money on weapons because of bribes rather than provide antiretroviral medication was found to have resulted in avoidable deaths of 365,000 South Africans and the birth of HIV babies.
- **Fabiano Angelico** identified key consequences as harm against institutions and confidence in these institutions. He highlighted that it was no coincidence Bolsonaro's rise came at a low ebb of public trust. Corruption harms democracy.

Recommendations

- **Cynthia Gabriel** recommended to link cases of grand corruption to a human rights narrative. She proposed a mechanism is needed to look at corruption across borders and not just in one country and, in the long run, an international anti-corruption court. An international mechanism is needed over and above institutional reforms.

- **Gladwell Otieno** identified that in Kenya, there is already a comparatively elaborate and robust framework against corruption. The problem is not the laws and the institutions. The problem is that petty corruption is so significant that they have ended up with a state that is captured by corruption. The president signals the rest of the state that corruption is acceptable.
- **Fabiano Angelico** recommended that grand corruption cases should focus more on private sector interests, and the private sector needs to be held more accountable. He agreed a special rapporteur would be useful and political finance is another area for work. There are no international standards for political finance transparency and accountability. Operation Car Wash is a success story and a result of constitutional development. A key element is the autonomy of the prosecutor's office, but there shouldn't be a lot of autonomy with no accountability.
- **Andrew Feinstein** also endorsed the idea of a special rapporteur and recommended to build into public procurement law that the role of any intermediaries in major public procurements has to be made public, e.g. all brokers, agents, with the amounts of money they are paid and what work they do. In South Africa, a supposed agent of BAE systems, who was the political adviser to the defence minister, was paid 38 million dollars for a sham two-page report.