

Impunity for grand corruption

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FACTI ISSUES NOTE

The FACTI Panel published its [interim report](#) on 24 September 2020.

The FACTI Panel will hold a series of high-level virtual regional consultations with global stakeholders from 9 to 23 November 2020. The consultations aim to discuss possible means to address the shortcomings identified in the interim report. To orient the consultations a series of short issues papers are being presented along with guiding questions for the consultations.

INTRODUCTION

In many countries the details of serious corruption are public knowledge, but knowledge does not translate into accountability. In fact, a corrupt regime can undermine investigations and enforcement by attacking the independence of the judiciary, derailing prosecutions, hamstringing or subverting independent anti-corruption agencies and workers, persecuting whistle-blowers, and closing down independent media. As long as powerful corrupt people control the government or sabotage investigations, they can enjoy impunity.

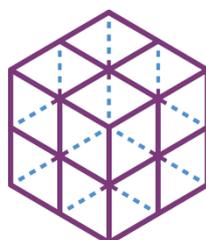
This is the reason why domestic prosecution usually happens after a regime change in the country. In practice, this means a delay of years, even decades, and longer still for recovery and return of stolen assets that have been transferred to other jurisdictions.

The prevalence of impunity, and the associated scale of resources diverted from investment in sustainable development, not to mention the inevitable violations of fundamental human rights, motivates many advocates to call for innovative ideas to try to end impunity. In fact, the issue of corruption involving vast quantities of assets, also called grand corruption, has

been a core concern of Member States in negotiating the UN Convention Against Corruption (UNCAC).

In 2017, the Conference of the States Parties to UNCAC further urged Member States to increase their efforts to prevent and counter corruption, giving the necessary focus to acts of corruption involving vast quantities of assets. A subsequent 2018 experts' meeting organized to follow-up on the resolution, stressed the importance "of fighting impunity and ensuring that crime does not pay." Another 2019 meeting noted that grand corruption continues to make headlines around the world and recommended exploring "innovative ideas to end impunity".

UNCAC contains key provisions encouraging the pursuit of foreign corruption and the recovery of related proceeds. The aim of these provisions was to end impunity and safe haven. Though corrupt officials might be safe in their own countries, their money-laundering activities could be pursued abroad. Non-conviction-based confiscation can be used against the property itself, rather than the person who owns or controls



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it, to overcome the difficulty of getting a criminal conviction in asset recovery cases.

In practice, however, the immunity of foreign officials is a major obstacle to such proactive enforcement actions which are quite exceptional in grand corruption cases. Many former kleptocrats managed to escape justice and to enjoy their illicit wealth with almost total impunity.

LOOKING FORWARD

Given that impunity for grand corruption is a serious threat to accountability and integrity, the Panel would like to examine ideas for the international community to

address it. The Panel will look carefully at which ideas meet the criteria of technical feasibility and political viability.

Guiding question for the consultations:

- **What could be done at the international level to address the impunity of high-level public officials involved in grand corruption?**
- **How could the use of non-conviction-based confiscation be enhanced to prevent perpetrators of grand corruption from enjoying the proceeds of their crimes?**

Further details on the high-level regional consultations can be found on the FACTI Panel website: <http://www.factipanel.org/events>.

