ANTI-CORRUPTION MEASURES

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CONTENTS

1. INTRODUCTION

The first meeting of the FACTI Panel highlighted the role of corruption as a structural impediment to sustainable development. The Panel suggested giving due attention to capacity for combating corruption both at the national level as well as improving the effectiveness of international legal instruments. As discussed in the FACTI Panel's first background paper, corruption is a complex social, political and economic phenomenon that affects all countries.[1] Further, corruption can power a vicious cycle antithetical to sustainable development: corruption detracts from development strategies, hurts small and medium sized enterprises (SMEs), and invites more corruption out of a sense of fatalism.[2] Corruption often involves entrenched power structures, systems of societal relations, and social norms, which together form a system of incentives that bind a network of actors into a governance arrangement that does not involve impersonal application of neutral rules.

The goal of this paper is to selectively describe the state of play in preventing corruption in both countries experiencing widespread corruption and countries that are more prone to be used as havens for the proceeds of foreign corruption offences. Given the complexity mentioned above, there is insufficient space for a comprehensive analysis of all aspects of corruption. Instead, this paper focuses on aspects of financial mechanisms for prevention and detection of corruption, as well as the associated laundering of these funds.

Section 2 of this paper will review trends in implementation of corruption prevention measures, including implementation of commitments undertaken by signatories to the UNCAC. Section 3 provides an assessment of some of the gaps and vulnerabilities in the current system that contribute to a lack of incentives for corruption prevention. Section 4 reviews impediments to effective implementation of existing anti-corruption systems and standards for financial institutions (especially banks), facilitators and other professional service providers, with particular focus on countries that are havens for the proceeds of foreign corruption offences. Section 5 suggests some proposals for addressing the gaps, vulnerabilities and impediments identified. A brief appendix reviews the existing partnerships, initiatives and instruments in strengthening public financial management and boosting fiscal transparency.

2. Review of corruption prevention implementation

In reviewing trends in legal and policy implementation, we rely both on country-by-country reviews by various inter-governmental organizations, particularly the United Nations Office on Drugs and Crime (UNODC), supplemented by reviews by non-governmental organisations (NGOs) and scholars, as well as the authors' previous research, including policy work but especially randomized controlled trials (RCTs) evaluating the effectiveness of financial transparency standards.

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[1] "Overview of Existing International Institutional and Legal Frameworks Related to Financial Accountability, Transparency and Integrity", FACTI Panel Background Paper 1, 6 April 2020, www.factipanel.org/documents/background-paper-1-overview-of-existing-international-institutional-and-legal-frameworks-related-to-financial-accountability-transparency-and-integrity

[2] Rose-Ackerman, Susan, and Bonnie J. Palifka. *Corruption and Government: Causes, Consequences, and Reform*. 2nd ed. New York, NY: University of Cambridge Press, 2016, page 30.

2.1 Chapters II and III: Preventive measures & criminalization and law enforcement

The first substantive chapter of UNCAC is dedicated to the prevention of corruption. Its text explicitly recognizes that corruption is a multifaceted phenomenon with global consequences; although the UN Secretary-General's foreword to the convention notes that the effects of corruption are most destructive in developing countries. In this section we focus our attention on trends in the formation and implementation of national anti-corruption strategies. We then discuss trends related to transparency initiatives.

2.1.1 Developing and implementing anti-corruption strategies

Together with the Implementation Review Group, the UNCAC Working Group on the Prevention of Corruption has been key in tracking progress in anti-corruption statutes. Created in 2009 by the UNCAC Conference of State Parties, the Working Group has met every year to assess implementation on select topics of the Convention. Most recently, the Working Group met in 2019 to review Resolutions 7/5 and 7/6, both focused on strengthening prevention measures. These countries highlighted self- and peer assessments as well as stakeholder meetings with private, public, and civil society groups as best practices for formulating their strategies.[3]

The Working Group also noted the importance of establishing policy coordination bodies and/or specialized coordination systems to best implement those national strategies. These coordination efforts align and streamline diverse government agencies, oversight responsibilities, and avoid duplicating responsibilities. Overall, the positive trend evident here is the prominence of national strategies and the utility of policy coordination efforts.[4]

The clearest positive trend over the past two decades charts the proliferation of national anti-corruption strategies and national laws criminalizing corruption, as called for by UNCAC Chapters II and III respectively.[5] A UNODC-led review of the first two rounds of the UNCAC Implementation Review Mechanism (IRM) process revealed that more than 60 per cent of Member States were found to have good practices in place in their existing anti-corruption prevention policies. The report notes that a quarter of all UNCAC parties have created an explicit national anti-corruption strategy as of 2019.[6] The UNODC's review of the first two rounds of the UNCAC peer review IRM process showed that, as of 2019, one-third of member states had taken specific action to strengthen whistle-blower safeguards.[7]

Our review of available reports from the latest IRM peer review cycle, focused on preventative measures, confirmed many of these earlier findings. These related to the adoption of national anti-corruption strategies, creation of policy-coordination bodies, the publishing of public procurement and spending data, and overall improvement of civil society participation and awareness of corruption. These trends were evident in reports on Bosnia-Herzegovina, Indonesia, Kenya, Malaysia, Mexico, Nigeria, Panama, and Senegal, among others.

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3 "Lessons Learned on the Development, Evaluation and Impact of Anti-Corruption Strategies (Article 5 of the United Nations Convention against Corruption)" (Conference of the States Parties to the United Nations Convention against Corruption, September 4, 2019).

4 Ibid.

5 UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation, 2nd ed. 2017.

6 *UNODC,* "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

7 *UNODC,* "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

Despite these successes, there are also prominent negative patterns. Many countries have yet to formalize their Convention commitments in domestic law.[8] After the first round of the UNCAC IRM process, 61 per cent of states received recommendations to strengthen provisions against bribery of national officials and 70 per cent were formally encouraged to fortify measures against bribing foreign officials.[9] Meaningful implementation and enforcement has often lagged. In general, a lack of effective enforcement has been the main weakness of anti-corruption policy.[10]

An oft-cited hurdle to effective implementation involves attaining appropriate law enforcement expertise and funding. Successfully investigating and prosecuting corruption cases, especially those with a cross-border aspect, can require a great deal of time, expertise and hence money. For example, the OECD reported the average duration of foreign bribery cases extended to more than seven years.[11] More generally, these negative trends reaffirm leading scholarship that recognizes broader structural reforms, not just stricter law enforcement, as the best pathway to reducing corruption.[12]

2.1.2   Anti-corruption education

The importance of improving education about corruption and its costs to society are another key aspect of prevention, as indicated in Article 6 of the Convention, as well as UNCAC Conference of State Parties Resolutions 5/5 and 6/10. Informed citizens, civil society, and private sector organizations can play a vital role in prevention by exerting pressure on governments to undertake anti-corruption reforms.[13]

The UNODC's Anti-Corruption Academic Initiative has promoted relevant research and education at more than 400 universities worldwide.[14] In addition, the UNCAC Civil Society Coalition serves as a resource by connecting partners, coordinating civil society anti-corruption resources, and disseminating information.

2.1.3   Improving transparency

Improving transparency is an essential aspect of anti-corruption efforts. The most recent Implementation Review Mechanism cycle assessing UNCAC Chapter II implementation revealed the need for further action in this area. Our review of these reports found that the most recommendations were aimed at Articles 9 (public procurement and public financial management) and 10 (public reporting), as detailed in figure 1. Of the 32 countries whose reports are public, many more received recommendations for further action and reform than praise for meeting or developing best practices.

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[8] UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation, 2nd ed. 2017; UNCAC COSP Implementation Review Group, "Updated Set of Non-binding Recommendations and Conclusions Based on Lessons Learned Regarding the Implementation of Chapters III and IV of the United Nations Convention Against Corruption," 27-29 May 2019.

[9] UNODC, "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

[10] UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation, 2nd ed. 2017, p.viii.

[11] OECD, OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (OECD, 2014), https://doi.org/10.1787/9789264226616-en.

[12] Rose-Ackerman, Susan, and Bonnie J. Palifka. *Corruption and Government: Causes, Consequences, and Reform*. 2nd ed. (New York: Cambridge University Press, 2016), p.40.

[13] Ibid, 38.

[14] "Report on the Meeting of the Open-Ended Intergovernmental Working Group on the Prevention of Corruption Held in Vienna from 4 to 6 September 2019" (Conference of the States Parties to the United Nations Convention against Corruption, September 16, 2019).

Figure 1: UNCAC IRM Chapter II – preventive measures for transparency
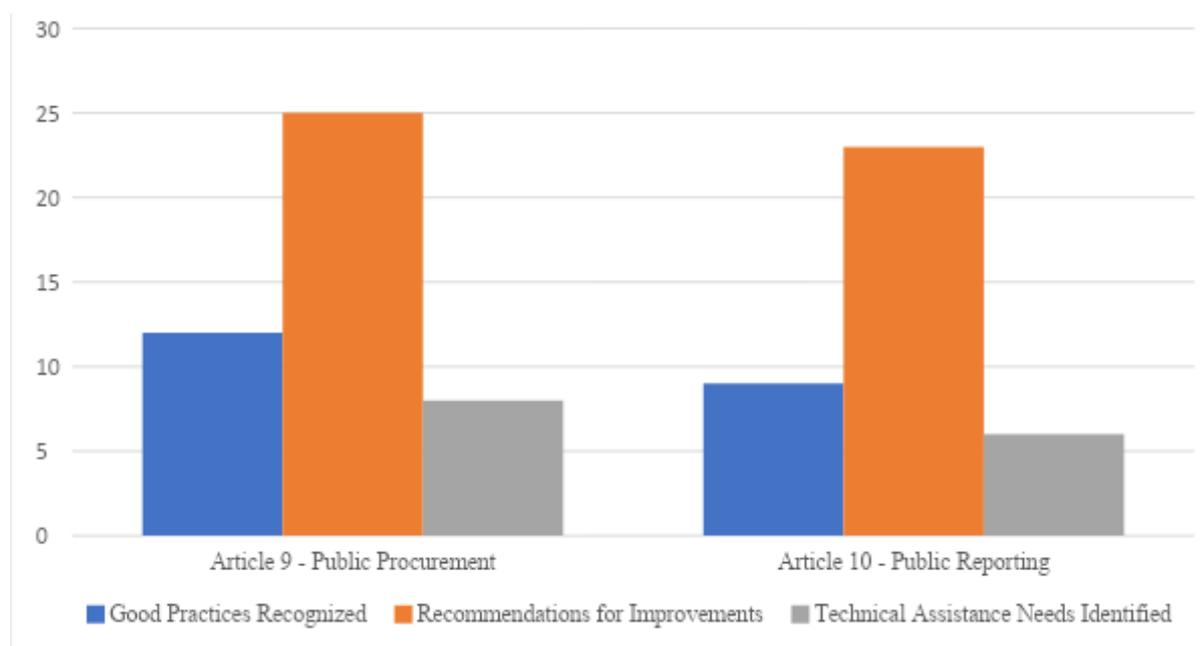
2.1.4 Good practices, recommendations, and technical assistance needs, UNCAC Articles 9-10

Beyond the UNCAC, the Open Government Partnership and the Open Contracting Partnership are two voluntary initiatives focused on creating and strengthening international transparency norms and practices. These organizations are particularly focused on government contracting and procurement, vitally important areas given that one-third of all public spending is devoted to those ends, offering large opportunities for corrupt officials.

Since its founding in 2009, the Open Government Partnership has grown to include 78 member countries as well as 20 state and local governments. In joining, countries commit to improving openness, create two-year action plans, and receive recommendations from the Independent Reporting Mechanism, an OGP-specific expert panel. Thus far, countries participating the longest have completed five rounds of action plans and recommendations, many focused on transparency in state-owned enterprises, extractives, and beneficial ownership.[15]

The Open Contracting Partnership has advanced efforts in public contracting transparency through its Open Contracting Data Standard (OCDS). The OCP first assesses a jurisdiction's institutional framework and level of openness, and then issues recommendations. The OCDS process uses those recommendations to build awareness of how societies benefit from transparency, and provides implementation recommendations for publishing data from all stages of public contracts. Today eight jurisdictions have implemented the OCDS, while more than 30 others are either in the process or committed to do so. Through various partnerships with Transparency International and other anti-corruption groups, OCP and the OCDS have helped many countries, including in the developing world. For example, SMEs in Kenya have increased access to contract availability, and thus to business opportunities, and Paraguay now operates a website for public spending disclosures.[16]

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[15] "A Guide to Open Government and the Coronavirus: Public Procurement," Open Government Partnership, April 28, 2020, https://www.opengovpartnership.org/documents/a-guide-to-open-government-and-the-coronavirus-public-procurement/.
[16] "The State of Open Contracting," Open Contracting Partnership, November 2017, https://docs.google.com/document/d/1zlCioWAB3ZBt6ibJi7H7wEha8ajz8Xa5CIKrMN7jU4w/edit?usp=embed_facebook.

The Extractive Industries Transparency Initiative (EITI) has also advanced anti-corruption practices in its efforts to improve transparency in the highly corruption-prone resource, mining and hydro-carbon sectors. For example, in 2016, EITI called for beneficial ownership disclosures in the extractive industries of member countries for the first time.[17] In 2019, EITI initiated transparency requirements on the inclusion of information on the gender diversity of staff of companies in the extractives industry.[18]

2.2 Chapter IV: International cooperation

UNCAC's Chapter IV details measures for international legal co-operation in fighting corruption. The evidence on a select set of those issues suggests the results of implementation have been mixed. Positive aspects of implementation include effective extradition policies (Article 44), and the fact that more than half of member states have good practices for transferring criminal proceedings between jurisdictions (Article 47). Conversely, the IRM rounds revealed very few states had good practices in sharing special anti-corruption investigative techniques (Article 50) or transferring convicted persons (Article 45).[19]

Furthermore, a review of IRM reports revealed that mutual legal assistance among small and developing states was limited by the absence of extensive corruption laws.[20] This problem was a recurring theme our review of select IRM reports.[21] The requirement of dual criminality poses an impediment to broader international cooperation. The dual criminality requirement has proven to be a particularly important barrier to mutual legal assistance with regard to illicit enrichment given that many countries, including many haven countries that are home to major financial centres, do not have such an offence.[22]

To promote greater international cooperation, including informal and spontaneous exchange of information, and build networks among anti-corruption law enforcement officials, the OECD Working Group on Bribery twice annually convenes an Informal Meeting of Law Enforcement Officials from its 44 member countries. Every two years, the Working Group hosts the Global Network of Law Enforcement Practitioners against Transnational Bribery. The Working Group has also established regional networks of anti-corruption law enforcement authorities in Asia and the Pacific, Eastern Europe and Central Asia and Latin America. These networks provide practical support and a confidential forum for practitioners to discuss challenges and solutions in prosecuting transnational corruption cases.

Similarly, the OECD Working Party of Senior Public Integrity Officials promotes the design and implementation of integrity and anti-corruption policies that support good public governance. It meets twice a year and pays specific attention to emerging issues related to risk areas at the interface between the public and private sectors, including conflict of interest, lobbying, and the role of money and influence in decision making, but also integrity and accountability mechanisms, including internal and external control.

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[17] "EITI--Disclosing Critical Investment Information" (Extractives Industries Transparency Initiative, January, 2018), https://eiti.org/document/eiti-data-factsheet.

[18] "EITI launches 2019 EITI Standard" (Extractives Industries Transparency Initiative, June, 18, 2019), https://eiti.org/news/eiti-launches-2019-eiti-standard.

[19] UNODC, "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (United Nations Office on Drugs and Crime, 2019); UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation, 2nd ed. 2017.

[20] UNCAC IRM Executive Summary, Ghana. CAC/COSP/IRG/I/3/1/Add.18

[21] UNCAC IRM Executive Summary, Trinidad and Tobago. CAC/COSP/IRG/I/3/1/Add.5

[22] Lindy Muzila et al., *On the Take: Criminalizing Illicit Enrichment to Fight Corruption* (The World Bank, 2012), https://doi.org/10.1596/978-0-8213-9454-0.

The expansion of the Egmont Group of Financial Intelligence Units demonstrates the progress in international co-operation in information exchange to combat money laundering (including laundering the proceeds of corruption offences) and terrorist financing. Originally created in 1995 as a club of the FIUs of leading developed nations, the Egmont Group now has a membership of 164 FIUs from across the globe, including numerous developing nations.[23] The Group works in close consultation with the Financial Action Task Force (FATF). It provides a forum and protocol for its diverse membership to share information and offer technical assistance to peers.

2.3 Chapter V: Asset recovery

The importance of enhancing asset recovery is highlighted both by the proliferation of asset recovery mechanisms and repeated UNCAC Conference of the States Parties resolutions,[24] especially UNCAC COSP Resolution 4/4.[25] Contemporary asset recovery initiatives include the World Bank's Stolen Asset Recovery Initiative (StAR), the EU's CARIN, Africa's ARINSA, Latin America's RRAG, and the Asia-Pacific's ARIN-AP.[26] Despite IRM reports finding that many good practices have been implemented to recover and confiscate illicit proceeds, nevertheless 70 per cent of reviewed members received recommendations to further strengthen provisions regarding the detection and return of illicit proceeds.[27]

More specifically, a review of the public reports from the second cycle of the UNCAC IRM reveals Articles 52 (detection mechanisms), 54 (recovery of property through international cooperation), and 57 (the return and disposal of recovered assets) were the most frequent areas of recommendations, as indicated in Figure 2. Notably, these three articles are also those most commonly identified as those where technical assistance is needed. In response to these developments, there have been calls for more policy tools in this area.[28]

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[23] "About the Egmont Group" (Egmont Group, 2020), https://egmontgroup.org/.

[24] For example, Resolutions 1/4 , 2/3, 4/4, 5.3, 6/3 have been passed reaffirming the importance of asset recovery in every session of the UNCAC COSP. See *https://www.unodc.org/unodc/en/corruption/COSP/conference-of-the-states-parties.html*.

[25] "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

[26] Mason, Phil, "Twenty Years with Anti-Corruption. Part 3: The International Journey from Ambition to Ambivalence" *U4 Practitioner Experience Note* (2020): 2. https://www.u4.no/publications/twenty-years-with-anti-corruption-part-3

[27] *UNODC,* "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

[28] Hannes Hechler et al., "Can UNCAC Address Grand Corruption?" (U4 Anti-Corruption Resource Center, October 2011), https://www.u4.no/publications/can-uncac-address-grand-corruption.pdf.
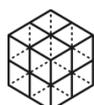
Figure 2: Results of IRM reviews on UNCAC Chapter V on asset recovery
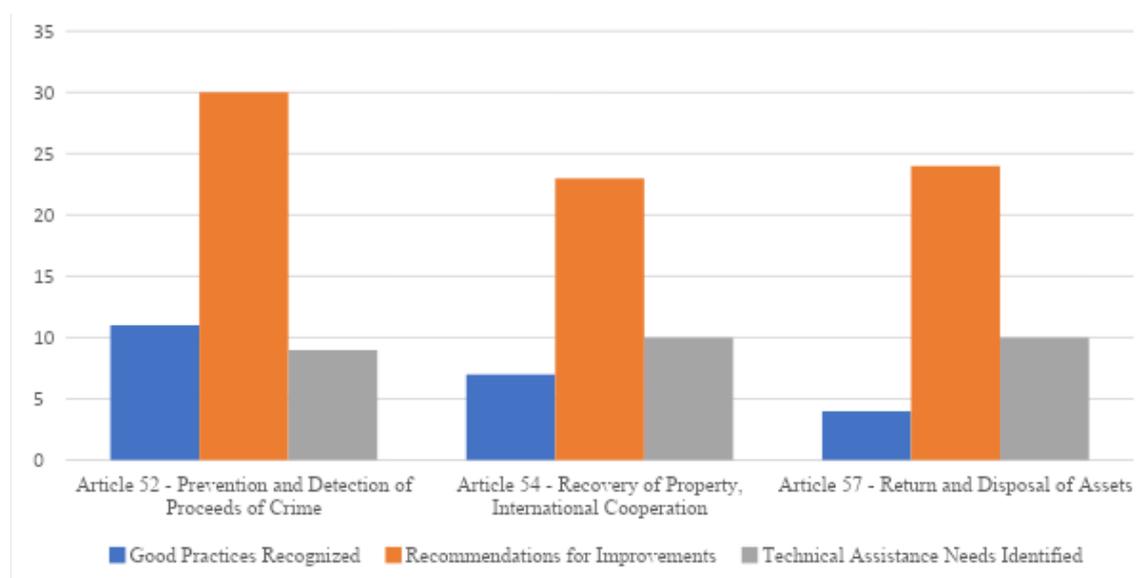
2.3.1 UNCAC IRM recommendations on asset recovery Articles

The increased use of settlements, non-conviction asset seizures, and insolvency proceedings is a welcome trend that has shown the utility of these non-traditional policy tools in imposing sanctions for corrupt conduct and recovering the proceeds of corruption.[29] Over the past decade, settlements and deferred prosecution agreements have increasingly been used to secure guilty pleas and penalize foreign bribery, particularly in the United States.[30] Settlements improve effectiveness by streamlining the legal processes and timelines involved with full trials. For a fuller discussion please see FACTI Background Paper 6.

The same can be said for asset seizures taking place according to non-conviction-based asset forfeiture, illicit enrichment offences or unexplained wealth orders. StAR has also issued guidance on the utility of using insolvency and bankruptcy proceedings to gain control of stolen assets.[31] Overall, these non-traditional methods are increasing the number of successful asset recovery cases while decreasing the time and amount of state resources spent in the efforts.

While these policy tools have shown promise, however, many asset recovery experts are cognizant of their limits. StAR has issued calls to standardize the legal procedures so that the settlement process is better understood. The currently opaque system can lead onlookers to question how settlements are reached, especially when they forestall full criminal prosecution. An example is the SNC Lavalin scandal in Canada, where the firm itself successfully lobbied the Prime Minister for a deferred prosecution agreement to evade a criminal prosecution for foreign bribery offences which may have been the more appropriate sanction.[32] Increased publicity surrounding settlements and clear, standardized procedures could help more jurisdictions better understand and employ settlements as an effective policy tool. While settlements have helped increase accountability, the totals are still very modest in light of the presumed magnitude of the cross-border flow of corruption funds.[33]

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[29] Jean-Pierre Brun and Molly Silver, "Going for Broke: Insolvency Tools to Support Cross-Border Asset Recovery in Corruption Cases" (World Bank StAR, November 18, 2019), https://doi.org/10.1596/978-1-4648-1438-9.
[30] Anyango Oduor et al., "Left Out of the Bargain", 2014.
[31] Brun and Silver, "Going for Broke", 2019.
[32] https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/TrudeauIIReport-RapportTrudeauII.aspx
[33] StAR, Few and Far: The Hard Facts about Asset Recovery, 2014

2.4 Chapter VI: Training and technical assistance

UNCAC Chapter VI focuses on the facilitation of anti-corruption efforts through training and technical assistance. As of 2019, UNCAC training has been held in 32 countries with attendees from 177 jurisdictions. African and Asia-Pacific member parties have demonstrated particular interest, with more than 100 delegations represented at these training sessions between the two regions.[34] The UNODC has hosted ten global and seven regional training sessions since the close of the second round of the IRM. Two examples held in August 2018 give a flavour of these events. The first, jointly hosted by the Maldives and Sri Lanka, focused on financial investigation techniques. In the second, 26 law enforcement officers from across Latin America were trained in identifying corruption and enforcing anti-corruption measures.[35]

Broadly, there has been a high level of openness to technical advice from UNCAC signatories, with 92 per cent of member parties open to a country visit during their reviews.[36] A 2019 internal review noted that during the first cycle of the IRM, the peer-learning aspect of the mechanism became increasingly important, often resulting in immediate responses to technical assistance needs and the establishment of contacts for future study tours and training opportunities.[37] As of 2019, 140 countries received substantive UNODC assistance in areas such as legislative drafting, financial-crime prosecution, establishing anti-corruption agencies, conflict of interest regulations, procurement procedures creating asset-declaration systems, and training in ethics for police forces.[38] Countries including Cabo Verde, Ivory Coast, Ecuador, and Haiti also received focused technical assistance on the judiciary and criminal justice sector.[39] A majority of technical assistance needs were related to capacity building.[40]

The UNODC has supported regional anti-corruption bodies in Africa, Southeast Asia, Latin America, and the Caribbean. Taken in concert with the training and technical assistance from regional groups and other international organizations such as the IMF, there is a goal of bringing about "the creation of a global community of anti-corruption experts."[41]

2.5 Corruption and economic and gender inequality

Impoverished communities feel corruption's effects most strongly for three reasons. First, access to health care, schooling, and other public goods may be restricted by corrupt public officials. The poor are most likely to suffer in these cases, being most in need of these public

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[34] *UNODC,* "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

[35] UNCAC Implementation Review Group, "Performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption" (Conference of the States Parties to the United Nations Convention against Corruption, 27 May 2020), https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1901704e.pdf

[36] UNCAC Implementation Review Group, "Performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption"

[37] UNCAC Implementation Review Group, "Technical assistance in support of the implementation of the United Nations Convention against Corruption, including analysis of technical assistance needs emerging from the country reviews" (Conference of the States Parties to the United Nations Convention against Corruption, 27 May 2020), https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/V1901917e.pdf

[38] *UNODC,* "Celebrating 10 Years Of The UNCAC Implementation Review Mechanism" (*United Nations Office on Drugs and Crime*, 2019).

[39] "Report on the Meeting of the Open-Ended Intergovernmental Working Group on the Prevention of Corruption Held in Vienna from 4 to 6 September 2019" (Conference of the States Parties to the United Nations Convention against Corruption, September 16, 2019).

[40] UNCAC Implementation Review Group, "Technical assistance in support of the implementation of the United Nations Convention against Corruption, including analysis of technical assistance needs emerging from the country reviews."

[41] UNCAC Implementation Review Group, "Performance of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption."

services and least able to pay bribes that allow access.[42] This dynamic thus drains the funds of poor communities doubly in losing access to the public goods and having to reallocate scarce resources to bribe payments.[43] Funds earmarked for marginalized communities disproportionately experience high rates of misappropriation and diversion.[44] Economic growth and gains from competition decrease when nepotism or cronyism is the main avenue for political, economic, or social advancement.[45]

Corruption reinforces existing inequalities,[46] especially along gender lines. Early studies about women and corruption focused on the effect of female leadership on reducing corruption. While these results provided a strong argument in favour of electing women, subsequent research has indicated that this trend is more likely due to confounding effects, e.g. liberal democracies likely to elect women are also less likely to have corruption.

Other research has concluded that women are disproportionately affected by corrupt systems.[47] Women are more likely to require the use of public services, especially as primary caretakers.[48] They have to ensure access to those public services for themselves and their children, but are least likely to have the resources to pay bribes.[49] This may create a trend of sexual extortion along gendered lines.[50]

2.6 Implementation trends: Evidence from randomized controlled trials

In addition to the extensive reports and reviews issued by international bodies and non-governmental actors, randomized evaluations and particularly randomized control trials (RCTs) can shed more precise light on the extent of corruption and the effectiveness of information about its effects. RCTs randomly assign subjects to treatment groups and compare their effects to control groups without the intervention as in medical trials. They can offer specific insights into the implementation and effectiveness of anti-corruption policy.

Multiple studies in Latin American countries have examined the impact of corruption education efforts. Credible disclosures of misappropriation of public funds have shown that fiscal transparency mechanisms can reduce incentives of corruption through electoral punishment.[51] However, further studies have generated mixed or null findings. Providing voters information about budget corruption changed Ugandan citizens' votes for lower-level provincial councillors but had no effect on votes for the provincial executive.[52] A five-country, six-study meta-analysis of coordinated trials that included this Uganda study found that, overall, voter-education campaigns – most involving information about corruption – had no meaningful net effect on

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[42] UNIFEM, "Corruption, Accountability and Gender: Understanding the Connections," 2010.

[43] Faith Wambura Ngunjiri, "Corruption and the Feminization of Poverty in Sub-Saharan Africa," Jenda 12 (2008).

[44] Farzana Nawaz, "State of Research on Gender and Corruption" (U4, 2009), https://www.u4.no/publications/state-of-research-on-gender-and-corruption.pdf

[45] Pak Hung Mo, "Corruption and Economic Growth," Journal of Comparative Economics 29, no. 1 (2001): pp. 66-79, https://doi.org/10.1006/jcec.2000.1703.

[46] Afroza Chowdhury, "Effects of Property Rights and Corruption on Gender Development" (dissertation, 2008).

[47] UNODC, "Corruption and Gender," 2018.

[48] Wilson Center, "Link Between Corruption and Inequality," 2020

[49] UNIFEM, "Corruption, Accountability and Gender: Understanding the Connections," 2010.

[50] Mary-Ann Ajayi and Emeka Polycap Amechi, "Corruption in Nigeria: Protection of Women and Children," *African Journal of Criminal Law and Jurisprudence* 3 (2018).

[51] Ferraz, Claudio, and Frederico Finan. "Exposing Corrupt Politicians: The Effects of Brazil's Publicly Released Audits on Electoral Outcomes." *Quarterly Journal of Economics* 123, no. 2 (2008): 703-745.

[52] Buntaine, Mark T., Ryan Jablonski, Daniel L. Nielson, and Paula M. Pickering, "SMS Texts on Corruption Help Ugandan Voters Hold Elected Councillors Accountable at the Polls," *Proceedings of the National Academy of Sciences* 115, no. 26 (2018): 6668-6673.

votes for incumbents,[53] indicating that conventional corruption-education campaigns for voters are ineffective at changing electoral outcomes despite the optimism generated by the early studies in Latin America. Moreover, incorrectly framed disclosures of political corruption can have the counter-intuitive effect of eroding trust in the entire political system rather than serving as an accountability mechanism.[54]

Additional studies of more direct corruption-education measures have produced similarly nuanced results. For example, a study of the effects of budgetary transparency workshops in Peru found that increased understanding of how to detect corruption in areas of low performing budget execution (an indicator of local corruption) meant that the public was less likely to call for increased scrutiny of the budget process than to disengage from the budget process and call for the resignation of the local mayor. On the other hand, districts with functioning local governance undergoing the workshops were likely to further increase budget execution measures.[55] A study of Tajik businesses variably trained in a tax e-filing system demonstrated that private-sector adoption of optional digital tax administration systems can reduce both tax evasion and bribery on the part of tax officials.[56]

Our own research tests global beneficial ownership standards adopted jointly by a wide range of international organizations for the purposes of combating money laundering, terrorist financing, tax evasion, bribery and other financial crimes.[57] Our tests are based on solicitations probing corporate service providers' (CSP) and banks' adherence to crucial customer due-diligence standards. These involve email solicitations to over 7,000 CSPs and 5,000 banks in more than 170 countries.[58] The results shed light on three broad areas: overall global compliance with corporate and banking transparency standards; relative sensitivity to different kinds of customer risk profiles; and identification of compliant and non-compliant jurisdictions, allowing for an evidence-based determination of haven jurisdictions for criminal assets. Specifically, the studies analyse bank and financial intermediary compliance with international rules mandating that banks verify the true owners of companies opening corporate bank accounts and incorporating new business entities.

These experiments set up shell companies with varying risk profiles and randomly assign them to be used in email inquiries to thousands of banks and intermediaries around the world. The emails request corporate bank accounts and/or shell-company incorporation. We vary the risk profile of the companies used in the experiment in two ways: by the jurisdiction of incorporation (e.g., some countries with a high perceived risk of corruption versus others with a low perceived risk), and by varying the language in our approach emails to banks (e.g., providing more or less information as to the rules banks and intermediaries should be applying). The outcomes of interest in the experiments are whether banks and intermediaries are willing to open a corporate bank account and/or facilitate incorporation, and what, if any, identification documents they require.

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[53] Dunning, Thad, Guy Grossman, Macartan Humphreys, Susan D. Hyde, Craig McIntosh, Gareth Nellis, Claire L. Adida et al., "Voter Information Campaigns and Political Accountability: Cumulative Findings from a Preregistered Meta-Analysis of Coordinated Trials," *Science Advances* 5, no. 7 (2019): eaaw2612.

[54] Chong, Alberto, Ana L. De La O, Dean Karlan, and Leonard Wantchekon. "Does Corruption Information Inspire the Fight or Quash the Hope? A Field Experiment in Mexico on Voter Turnout, Choice, and Party Identification." *Journal of Politics* 77, no. 1 (2015): 55-71.

[55] Sexton, Renard. The Perverse Effects of Civic Education: Evidence from a Field Experiment in Peru. Working Paper, 2017.

[56] Okunogbe, Oyebola, and Victor Pouliquen. Technology, Taxation, and Corruption: Evidence from the Introduction of Electronic Tax Filing. World Bank, 2018.

[57] StAR The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About It, 2011; FATF/Egmont Group, Concealment of Beneficial Ownership, 2018; UNODC/StAR Concealing Beneficial Ownership: How to Prevent Abuse of Legal Professional Privilege, 2018.

[58] For a sample of results, see www.globalshellgames.com

In the course of the experiments from 2011 to the present, we have been able to observe differences over time in patterns of compliance with international standards. The largest differences from the early 2010s to now are seen among CSPs based in OECD countries (see figure 3). While in 2011-12, roughly half of OECD-based firms responded to requests for incorporation from our alias identities,[59] in the most recent round of inquiries completed in April and May of 2020, less than a third responded, suggesting that CSPs in OECD countries may now be more inclined toward "soft compliance" by screening out potentially risky customers through non-response. We found that on average fewer than 10 solicitation to OECD-based CSPs were needed to find a business willing to incorporate anonymously. In developing countries, 12 solicitations were necessary on average to find a similarly willing CSP. Meanwhile, that number more than doubles in traditional tax haven jurisdictions; it took 25 contacts on average to find a CSP ready to incorporate anonymously.[60]

Directly confounding conventional wisdom on the subject, in both time periods, it was CSPs based in offshore jurisdictions that were the most likely to attempt to verify beneficial owners' identity. However, it is notable that the offshore jurisdictions were significantly less likely to verify beneficial owners in 2020 compared to 2011-12. Across all countries both the 2011-12 results and the 2020 findings suggest that it remains relatively easy to obtain an anonymous shell corporation, including in many OECD states. This confirms the relatively low level of effectiveness in implementing beneficial ownership standards revealed by successive FATF Mutual Evaluation Reviews.[61]

Figure 3: Corporate service provider responses across time

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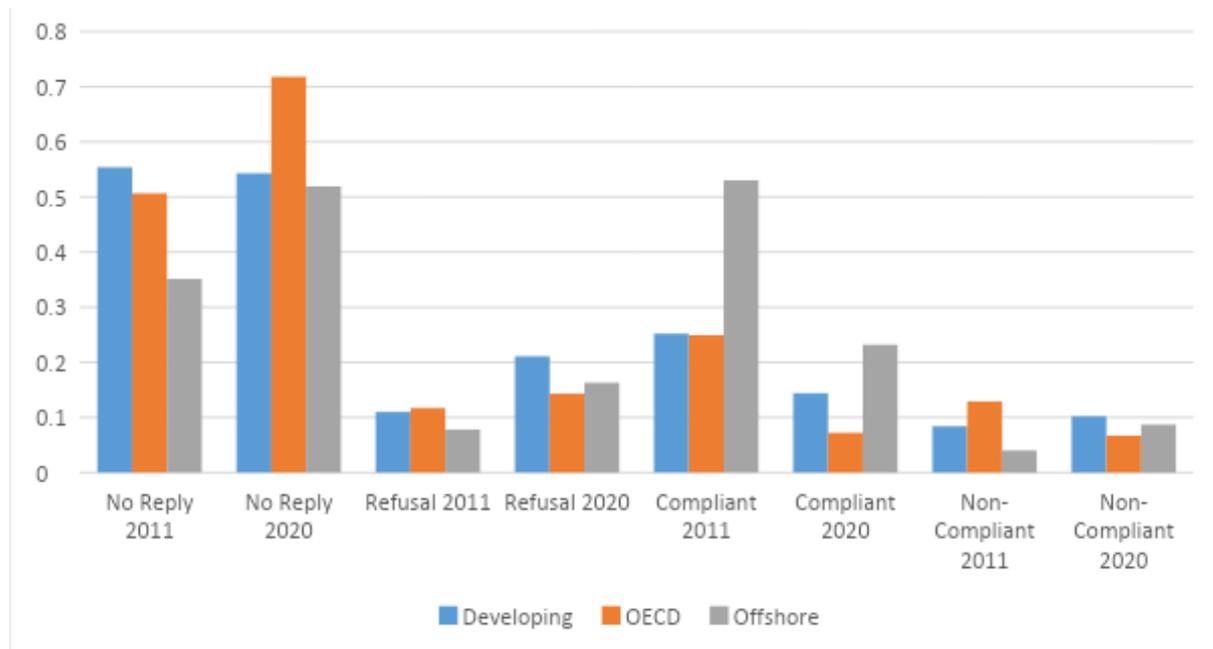
[59] Findley, et. al. Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism. Cambridge University Press, 2014.

[60] Findley, et. al. Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism Cambridge University Press, 2014, p. 75.

[61] FATF/Egmont Group, "Concealment of Beneficial Ownership," 2018.

3. Gaps and vulnerabilities contributing to a lack of incentives for public sector corruption prevention

3.1 Proceeds from public-sector corruption in source countries

The fundamental paradox of anti-corruption policy is that because corruption generally arises from public officials abusing their positions, if government officials could be trusted to implement anti-corruption policies diligently and effectively, there would be no need for such policies in the first place. This problem of guarding the guardians extends to all levels of those entrusted with power to fight crime, especially law enforcement, prosecutors and the judiciary, all of whom are commonly implicated in public-sector corruption.[62] This paradox is a particularly acute problem in source countries, but it also applies to varying extents in some haven countries as well. By source countries, we refer to the home country of corrupt public officials seeking to hide the proceeds of their corruption, with haven countries being those most likely to play host to the proceeds of foreign corruption. Roughly speaking, and as explained further below, the former are more likely to be developing countries while the latter are more likely to be developed countries hosting major financial centres.

The process of recovering the proceeds of such public-sector corruption, especially once it crosses borders, is made all the more difficult when source countries have little capacity, and in some circumstances even little inclination, to provide the detailed admissible evidence necessary to successfully prosecute such cases. As the governments seeking the return of stolen assets after the Arab Spring discovered, the expense and uncertainty of asset recovery efforts can actually leave already impoverished countries poorer than when they started. An example is Egypt, where almost all asset recovery efforts failed, yet the government was nevertheless left to pay substantial legal costs to foreign law firms.[63] Developing source countries also tend to be excluded from the proceeds of OECD country foreign bribery settlements, deferred prosecution agreements, and the like, even when these source countries suffered from the corrupt conduct in question.[64]

An earlier example from Haiti shows the same difficulty for source countries seeking the recovery of stolen assets. Despairing of the indifference of the Haitian government in seeking to recover funds looted by the Duvalier family, the government's own lawyer wrote: "The behaviour of your ministers leaves us no alternative except to conclude that your ministers apparently want our efforts on behalf of Haiti to fail, are not concerned that Haiti will lose the substantial investment it has made in pursuing the Duvaliers, and want the Duvaliers to keep the money they stole." The Duvalier family did keep the money, and all the Haitian government got was a $1.2 million legal bill.[65]

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[62] Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*, Cambridge: Cambridge University Press, 1999, pp.114-115.

[63] *Economist* "Recovering Stolen Assets: Making a Hash of Recovering the Cash," 11 May 2013;
Ahmed Saad, Urs Feller, Marcel Frey, Kamal Shah and Charlotte Welsh, "Recovering Stolen Assets: The Egyptian Experience," pp.17-26 in Gretta Fenner Zinkernagel, Charles Monteith and Pedro Gomez Pereira (Eds) *Emerging Trends in Asset Recovery*, Bern: Peter Lang 2013.

[64] StAR, Left Out of the Bargain, 2013.

[65] Mark V. Vlasic and Gregory Cooper, "Beyond the Duvalier Legacy: What New 'Arab Spring' Governments Can Lean from Haiti and the Benefits of Stolen Asset Recovery" *Northwestern Journal of International Human Rights* 2011 Vol.10 (1): 19-26).

NGOs can be quite effective in both monitoring and enforcing rules to counter cross-border corruption, money laundering, tax evasion, etc. (see Section 6 below on recommendations.) However, there are also definite limits to some common NGO strategies. One concerns the limits of transparency, especially in source countries.

An important implicit assumption behind initiatives like Publish What You Pay and the Extractive Industries Transparency Initiative has been that collecting and publicizing financial information from particularly corruption-prone industries (e.g. the oil industry) would be sufficient to both enhance accountability and reduce corruption. In fact, the relationship between more transparency and less corruption has tended to be much more attenuated than was initially hoped.[66] Even if civil-society actors know or reasonably suspect that government or private-sector figures are engaged in corruption, it has proven very difficult to turn this knowledge into concrete enforcement action, even in democratic societies with a reasonable adherence to the rule of law. Even where credible accusations have been widely circulated in the media, senior officials often find it easy to prevent or sabotage investigation and legal action, brushing off such accusation as "fake news." Pictures of the Bulgarian Prime Minister asleep next to a drawer full of gold bullion and €500 notes topped by a Glock pistol is only one lurid example.[67] High level governmental corruption becomes an open secret.

A prominent example might be the 1MDB case in Malaysia. Despite the corrupt diversion of hundreds of millions of dollars from the country's sovereign wealth fund into the Prime Minister's personal bank account being widely publicized and the subject of international law enforcement investigations, until a change of government occurred, the guilty parties were able to quash or sabotage local investigations.[68] Developed country havens are not immune from the same dynamic. When the Reserve Bank of Australia (the country's central bank) was found to be complicit in bribing government officials in 16 countries to the value of $50 million through two subsidiary companies, a combination of government indifference and incompetence meant that none of the key players, including the Reserve Bank itself, were held to account.[69] The British government's repeated moves to sabotage investigations into arms firm BAE's bribes to senior Saudi Arabian government officials in the Al-Yamamah scandal shows the same dynamic at work even more blatantly.[70]

3.2 Misidentification of haven countries

One of the most important obstacles to the fight against corruption and related financial crimes is the systematic tendency to inaccurately identify the countries most likely to act as havens for the proceeds of foreign corruption, as well as those posing the greatest risk of facilitating tax avoidance, tax evasion, and money laundering. In practice, these havens tend to be the OECD countries hosting the world's largest financial centres. Yet existing risk assessments instead mistakenly direct policy attention to small developing countries. Correcting this mistake necessitates moving away from biased blacklists drawn up by clubs of developed states whereby outsiders are stigmatized and labelled according to standards that those designing and applying blacklists may not themselves actually reach. Recent tax-avoidance and anti-money-

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[66] Maya Forstater, "Beneficial Openness? Weighing the Costs and Benefits of Financial Transparency." CMI Working Paper, 2017.

[67] https://www.bloomberg.com/news/articles/2020-06-18/a-gun-on-a-nightstand-and-wads-of-cash-escalate-bulgarian-feud

[68] United States District Court for the Central District of California Forfeiture *In Rem*, 15 June 2017; Tom Wright and Bradley Hope, *Billion Dollar Whale: The Man Who Fooled Wall Street, Hollywood and the World*, New York: Hachette, 2018.

[69] J.C. Sharman, The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption (Ithaca: Cornell University Press, 2017).

[70] **Error! Main Document Only.**Jo-Anne Gilbert and J.C. Sharman, "Turning a Blind Eye to Bribery: Explaining Failures to Comply with the International Anti-Corruption Regime," *Political Studies* 64 (March 2016), 74-89.
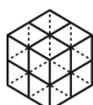
laundering blacklists by regional clubs of developed states provide particularly egregious examples of double-standards.[71]

For example, major developed country centres of tax avoidance have blacklisted small, financially marginal developing countries while exempting themselves from equivalent scrutiny and standards.[72] The leading economist researching tax avoidance identifies the most important facilitator jurisdictions as including the Netherlands, Ireland, Luxembourg and Switzerland.[73] The blacklists compiled by organizations including these states have studiously excluded these countries, however, instead concentrating on jurisdictions like Fiji, Oman, and Palau.[74] No credible objective study regards any of these latter countries or their tiny finance sectors as posing a risk of substantial tax avoidance.

Similarly, unilateral tax information exchange agreements whereby major developed country governments demand financial information from developing countries but refuse to reciprocate by opting out of the Common Reporting Standard appear to many to be plainly indefensible and an obvious marker of a haven jurisdiction.[75] For example, one of the authors of this report (who is not a US tax resident) will receive his consultancy fee into a US bank account. Because the United States receives but does not send tax information automatically, this would provide a perfect opportunity to use the United States as a tax haven and engage in tax evasion by not declaring   the foreign income to the government where he is tax resident.

The misidentification of haven countries is also apparent in the blacklists and greylists created under FATF money laundering and OECD/Global Forum tax standards. Jurisdictions end up on these lists for failing to implement a set of international standards, not necessarily because they pose actual money laundering or tax evasion/avoidance threats. As a result, there is a tenuous relationship between actual risk and the propensity to end up on such lists. Scrutiny of these lists reveals an unlikely collection of small, developing states with little significance for either legal or illegal finance. For example, according to the OECD, the world's most problematic jurisdictions for tax compliance are Guatemala and Trinidad and Tobago,[76] small jurisdictions with very limited engagement in global finance. No objective or risk-based analysis would suggest that these jurisdictions are where global policy attention should be concentrated in trying to improve international tax compliance. Similarly, the FATF currently blacklists Iran and North Korea, mainly for geo-political reasons to do with their nuclear programs.[77] Due to extensive economic sanctions, such countries have very little relevance for cross-border finance and attract little in the way of foreign funds, legal or illegal.

To the contrary, on the best available evidence, most criminal funds crossing borders, whether corruption funds, money generated from other for-profit crimes, or tax evasion, ends up with

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[71] Oxfam, "Blacklist or Whitewash? What a Real EU Blacklist of Tax Havens Should Look Like," 2017; Tax Justice Network, "Paradise Lost? Who Will Feature on the Common EU Blacklist of Non-Co-operative Tax Jurisdictions?" 2017.

[72] Transparency International, "Just for Show? Reviewing G20 Promises on Beneficial Ownership," 2015; International Tax and Investment Organisation, *Towards a Level Playing Field: Regulating Corporate Vehicles in Cross-Border Transactions*, 2002; Maya Forstater, "Beneficial Openness? Weighing the Costs and Benefits of Financial Transparency" CMI, 2017.

[73] Gabriel Zucman (2014) "Taxing Across Borders: Tracking Personal Wealth and Corporate Profits." *Journal of Economic Perspectives* 28 (4), 121-148; Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens*. Chicago: University of Chicago Press, 2015; see also Shafik Hebous and Niels Johannesen, "At Your Service! The Role of Tax Havens in International Trade with Services." 31 March 2016 unpublished paper

[74] https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/

[75] Lukas Hakleburg, *Hypocritical Hegemon: How the United States Shapes Global Rules Against Tax Evasion and Avoidance*. Ithaca: Cornel University Press, 2020; Lukas Hakelburg and Max Schaub; "The Redistributive Impact of Hypocrisy in International Taxation," *Regulation and Governance* 2018 12: 353-370; J.C. Sharman, "Shopping for Anonymous Shell Companies: An Audit Study of Financial Anonymity and Crime," *Journal of Economic Perspectives* 24 (Fall 2010), 127-140; https://www.anaford.com/wp-content/uploads/2017/03/Trusts-Trustees-2015-Cotorceanu-tandt_ttv178.pdf

[76] http://www.oecd.org/tax/transparency/documents/exchange-of-information-on-request-ratings.htm

[77] Juan C. Zarate, Treasury's War: The Unleashing of a New Era of Financial Warfare, New York: Public Affairs, 2013.

major banks in a few of the world's largest financial centres.[78] For example, the three leading banking havens for hosting the proceeds of grand corruption identified by StAR are the United States, Switzerland, and the United Kingdom.[79] It seems that the financial centres and countries that hold the largest sums of legal wealth are also the main havens for illegally acquired wealth.[80] Contrary to oft-repeated but seldom substantiated claims, hosting dirty money does not endanger the stability or the reputation of either financial centres or major financial firms,[81] which is why flows of illicit funds have generally continued to take the same paths to the same havens over the decades. As discussed below, neither the relevant governments nor these firms have much of an incentive to block the inward flow of criminal proceeds from source countries.

According to a 2018 Transparency International report, half of the G20 countries have average or below-average frameworks for beneficial ownership information disclosure and collection. This fact shows that global leaders and those with the most resources to make positive change are not leading by example.[82] The Tax Justice Network's Financial Secrecy Index confirms that the US and EU countries like the Netherlands and Luxembourg are some of the leading sources of financial secrecy.[83]

Further evidence of the systematic misidentification of havens for corruption comes from the case of Isabel dos Santos, the daughter of the former Angolan president. Despite the ruling family's corruption being an open secret for many years, this proved no obstacle to dos Santos setting up a financial network spanning 41 jurisdictions, but centred on EU countries, including owning a 42 per cent share of a major bank in Portugal. Typically, action against dos Santos was taken thanks to civil society and journalists, especially the International Consortium of Investigative Journalists. Regulators, law enforcement and the financial intelligence apparatus in the world's leading financial centres followed rather than led the process. An analysis of her financial network showed that the more highly rated the jurisdiction by the FATF, the *more* likely it was to host the proceeds of her corruption, exactly the opposite result that should obtain if these ratings were valid. Conversely, those jurisdictions with lower FATF Mutual Evaluation Review scores were less likely to hold these corruption proceeds. The same inverse relationship is evident in the multi-billion-dollar Troika Laundromat scandal.[84] This has been referred to as the "money laundering paradox": major developed countries with the highest scores for AML compliance are the havens that launder the most corruption funds.[85] This

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[78] Global Witness, Undue Diligence: How Banks do Business with Corrupt Regimes, 2009; Global Witness, International Thief Thief: How British Banks are Complicit in Nigerian Corruption, 2010; StAR, The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About It, 2011; Frank Vogl, Waging War on Corruption: Inside the Movement Fighting the Abuse of Power, Lanham MD: Rowman and Littlefield, 2012 p.91; J.C. Sharman, The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption (Ithaca: Cornell University Press, 2017); Terrence Halliday, Michael Levi and Peter Reuter, "Why Do Transnational Legal Orders Persist: The Curious Case of Money Laundering Controls" Transnational Legal Ordering of Criminal Justice edited by Gregory Shaffer and Ely Aaronsen Cambridge: Cambridge University Press 2020, pp.59-60.

[79] StAR, *The Puppet Masters*, 2011, p.122.

[80] Levi, Michael, and Peter Reuter, "Money Laundering." In *Crime and Justice: A Review of Research*, edited by M. Tony, 289-375. Chicago: Chicago University Press, 2006.

[81] Gordon notes: "Actually demonstrating such reputational risk has proven difficult… stock price fluctuations following news stories on the use of banks by money launderers show no change in stock price from those stories" (Richard K. Gordon, "Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing." *Duke Journal of Comparative and International Law* 2011 21, p.553); see also J.C. Sharman, *The Money Laundry: Regulating Criminal Finance in the Global Economy*, Ithaca: Cornell University Press, 2012.

[82] Martini, M., and M. Murphy, "G20 Leaders or Laggards? Reviewing G20 Promises on Ending Anonymous Companies." (Transparency International, 2018).

[83] Jansky et. al. "Financial Secrecy Affecting the European Union: Patterns across Member States, and What to Do About It." (Tax Justice Network, 2018).

[84] https://www.occrp.org/en/troikalaundromat/

[85] Matthew Collin, "Angola and the Money Laundering Paradox," Brookings Institution, accessed July 9, 2020, https://www.brookings.edu/blog/up-front/2020/01/28/angola-and-the-money-laundering-paradox/.

conclusion is echoed in our own research, specifically the field experiment described in section 2.6 above.

Once criminal funds have been moved across borders into haven countries, local law enforcement agencies, prosecutors and governments have few incentives to pursue the long, expensive, and uncertain investigations that, even if successful, would see funds returned elsewhere.[86] Despite commitments under UNCAC, most developed countries have done little to investigate foreign corruption proceeds within their financial systems.[87] Only a few countries (the United States, United Kingdom and Switzerland) have a track record of returning stolen assets, and even in these cases the suspicion is that repatriated funds are only a small fraction of total looted wealth they host.[88]

A final gap in both source and haven countries involves the anti-corruption, anti-money laundering, and tax agencies that could bring complementary skills to the investigation of complex cross-border financial crime.[89] These authorities often face bureaucratic disincentives to co-operate outside of their narrowly defined area. Calls for getting rid of "silos" or employing a "whole-of-government approach" have become something of a ritualistic and clichéd appeal. Although it is beyond the scope of this report, rather than simply repeating such platitudes, it is necessary to look hard at why they are so often made and, apparently, so seldom successfully practised.[90] Why have previous efforts failed, and what needs to be done differently?

4. Anti-corruption measures in the financial system: banks and professions

4.1 Facilitators and service providers

As noted, a fundamental problem in the response against cross-border flows of corruption proceeds, laundered funds and tax evasion is the misdiagnosis of the problem that obscures the central role of major banks and other key enablers in a small number of developed haven countries which play a central role in cross-border flows of corruption proceeds. The fight against cross-border corruption and related crimes has long suffered from an intellectual and related policy bias: developing countries are assessed as having serious corruption problems, whereas developed country havens are seen as largely corruption-free. Such portrayals ignore

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[86] James Maton and Tim Daniel, "The Kleptocrat's Portfolio Decisions." in *Draining Development? Controlling the Flows of Illicit Funds from Developing Countries* edited by Peter Reuter, World Bank, 2012, pp.415-443; J.C. Sharman, *The Despot's Guide to Wealth Management: On the International Campaign against Grand Corruption* (Ithaca: Cornell University Press, 2017).

[87] OECD/StAR, "Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action," 2011; Mark Pieth, "Preface: Are We Recovering Assets Yet?" in Gretta Fenner Zinkernagel, Charles Monteith and Pedro Gomes Pereira (Eds) *Emerging Trends in Asset Recovery*, Bern: Peter Lang 2013; OECD, *Measuring OECD Responses to Illicit Financial Flows from Developing Countries*, 2013;

StAR, *Few and Far: The Hard Facts About Asset Recovery*, 2014; CIFAR, "Stolen Asset Recovery Between Germany and Developing Countries," 2019.

[88] David Chaikin, "Policy and Legal Obstacles in Recovering Dictator's Plunder," *Bond Law Review* 2005 17 (2): 27-46; US Senate Permanent Subcommittee on Investigations, *Keeping Foreign Corruption out of the United States: Four Case Histories*, 2010; Global Witness, *Lowering the Bar: How US Lawyers Told Us How to Funnel Suspect Funds into the United States*, 2016; House of Common Foreign Affairs Committee. "Moscow's Gold: Russian Corruption in the UK," 2018; Transparency International-UK, *At Your Service: Investigating how UK Businesses and Institutions Help Corrupt Individuals and Regimes Launder their Money and Reputations*, 2019.

[89] StAR, *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*, 2011; Pedro Gomes Pereira and Alessandra Fontana, "Using Money Laundering Investigations to Fight Corruption in Developing Countries: Domestic Obstacles and Strategies to Overcome Them," International Centre for Asset Recovery, 2018; David Chaikin and J.C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship,* Palgrave, 2009.

[90] UNODC, State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Co-operation, 2nd ed. 2017, p.viii; UNCAC COSP Implementation Review Group, "Updated Set of Non-binding Recommendations and Conclusions Based on Lessons Learned Regarding the Implementation of Chapters III and IV of the United Nations Convention Against Corruption," 27-29 May 2019, pp.7-8.

Figure 4: League table of compliance with global transparency standards by corporate service providers across jurisdictions
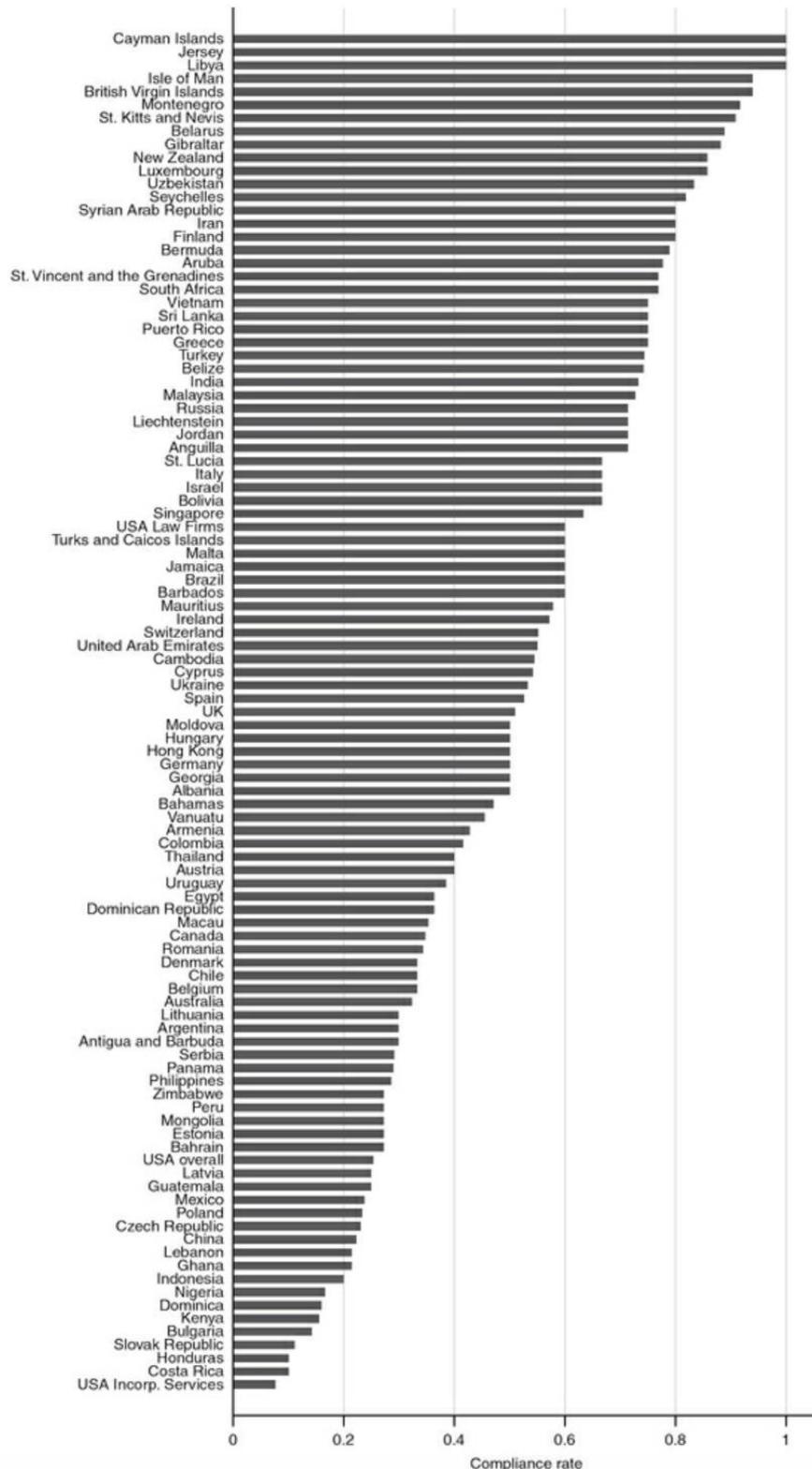
the transnational nature of a great deal of corruption, tax evasion, and money laundering, and the symbiotic relationship in which developed state havens receive flows of criminal and tax-

avoidance money from the developing world.[91] Corruption perception rankings capture corruption risk in source countries, but systematically ignore the havens for corruption proceeds.

Figure 4 displays the league table of countries ranked by full compliance with transparency standards from our 2011-12 RCT study on CSPs compliance with global know-your-customer standards. While the ordering of some of the countries has changed in the interim, the broad pattern persists: on the whole, firms in OECD countries are the least likely on average to respond in compliance with global rules on beneficial ownership. CSPs in the United States remain at the bottom of the list.

Despite the ubiquity of national risk assessments for money laundering, regulators and law enforcement agencies at the international and domestic level have very little idea of where the money-laundering risks are within their countries, or even in principle how such risk would be assessed.[92] For example, although FATF standards are ostensibly centred on a risk-based approach, risk itself is left undefined, and basic tenets of risk assessment are foreign to the anti-corruption and AML policy communities.[93] Experts informally refer to anti-money laundering policy as an "evidence-free zone." A stark illustration of this problem is that currently there are no grounds for judging whether the conviction of many officials for corruption is evidence of low effectiveness (because there must be a great deal of corruption) or high (because there are many successful prosecutions).

Relatedly, local and international regulators have little idea of policy effectiveness, tending to measure inputs (e.g. number of training seminars given) or proxies (number of suspicious transaction reports lodged), rather than valid measures of outcomes.[94] Reliable evidence of effectiveness indicates a potential misallocation of attention and resources. For example, our evidence from global RCTs shows that banks and those forming shell companies have little or no sensitivity to even obvious corruption risks, which are relatively common, while being disproportionately sensitive to terrorism financing threats, which are much rarer (see figure 5). Alas, the global community seems to have altered course minimally in addressing these known challenges in the anti-corruption regime.

It is almost unheard of for key enabler professions (law, accountancy, real estate, shell company providers) to face meaningful sanctions even when there is strong evidence of their complicity

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[91] Daniel Scher, "Asset Recovery: Repatriating Africa's Looted Billions," African Security Review 2005 14 (4): 17-26; StAR, Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan, 2007; Global Witness, Undue Diligence: How Banks do Business with Corrupt Regimes, 2009; Peter Reuter (Ed.) Draining Development? Controlling the Flows of Illicit Funds from Developing Countries, World Bank, 2012; Gretta Fenner Zinkernagel, Charles Monteith and Pedro Gomes Pereira (Eds) Emerging Trends in Asset Recovery, Bern: Peter Lang 2013; AU/ECA, Illicit Financial Flows: Report of the High Level Panel on Illicit Financial Flows from Africa, 2015.

[92] Terrence Halliday, Michael Levi, Peter Reuter "Assessing the Assessors: How Well do the International Monetary Fund and Financial Action Task Force Evaluate National Efforts to Control Money Laundering?" International Monetary Fund, 2014; Michael Levi, Peter Reuter and Terrence Halliday, "Can the AML System be Evaluated without Better Data?" *Crime Law and Social Change* 2018 69: 307-328; Michael Levi, "Evaluating the Control of Money Laundering and Its Underlying Offences: The Search for Meaningful Data." *Asian Journal of Criminology*, 2020.

[93] John Chevis, *National Risk Assessment Handbook for Second Generation National Risk Assessments*, UNODC, 2019; Joras Ferwarda and Peter Reuter, "National Assessments of Money Laundering Risks: Do Governments Understand Risk Well Enough to Implement a Risk Based Approach?" 2020.

[94] Terrence Halliday, "Plausible Folk Theories: Throwing Veils of Plausibility Over Zones of Ignorance in Global Governance," *British Journal of Sociology* 2018; Terrence Halliday, Michael Levi and Peter Reuter, "Why Do Transnational Legal Orders Persist: The Curious Case of Money Laundering Controls" in *Transnational Legal Ordering of Criminal Justice* edited by Gregory Shaffer and Ely Aaronsen, Cambridge: Cambridge University Press, 2020; J.C. Sharman, *The Money Laundry: Regulating Criminal Finance in the Global Economy*, Ithaca: Cornell University Press, 2012.

in laundering suspect funds.[95] Thus a recent FATF/Egmont review concluded: "The Horizontal Study demonstrated that, even where professional intermediaries are subject to AML/CFT requirements, supervisory mechanisms remain weak due to capacity issues and the lack of a consistent approach for different types of professions. Enforcement actions are also rare."[96] In some major developed jurisdictions (including the United States and Canada) such professions may not be included in the anti-money laundering reporting regime at all.

Figure 5: Corporate service provider responsiveness to risk across experimental conditions in randomized control trial, April-May 2020
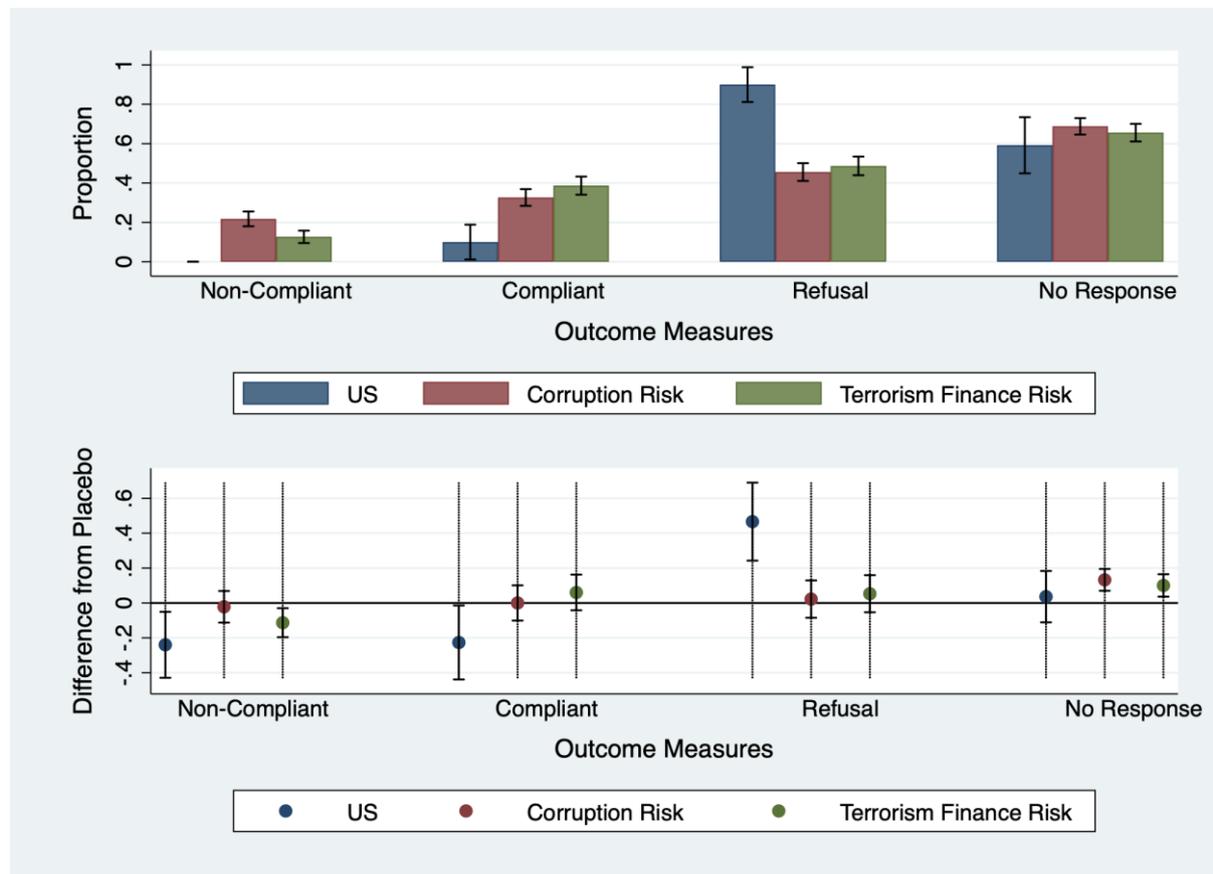
4.2 Financial institutions

Major cross-border financial crimes today look much the same as they did late last century, with illicit funds being transferred and hidden through shell companies and inter-bank wire transfers. This continuity indicates that the apparatus that has arisen to tackle such crimes in this period has been largely ineffective. In reading reports on cross-border financial crime produced over the last 20 years by international organizations, including the United Nations, it is striking how little the mechanisms of cross-border corruption and laundering have changed

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[95] Karin Svedberg Helgesson and Ulrike Morth "Involuntary Public Policy-making by For-Profit Professionals: European Lawyers on Anti-Money Laundering and Terrorism Financing." *Journal of Common Market Studies* 2016; Global Witness, *Lowering the Bar: How US Lawyers Told Us How to Funnel Suspect Funds into the United States*, 2016; Transparency International-UK, *At Your Service: Investigating how UK Businesses and Institutions Help Corrupt Individuals and Regimes Launder their Money and Reputations*, 2019; Transparency International UK, "Don't Look, Won't Find: Weaknesses in the Supervision of UK Anti-Money Laundering Rules," 2015.
[96] FATF/Egmont Group, "Concealment of Beneficial Ownership," 2018.

in this time, despite all the policy and regulatory innovation.[97] Supporting this conclusion, the increase in compliance spending in the public, but much more so in the private sector[98], has not been matched with any observable reduction in financial crime, corruption or money laundering. As the head of FATF succinctly put it in a 2020 interview, in anti-money laundering policy "everyone is doing badly."[99]

Despite the conventional wisdom to the contrary propagated by governments, regulators and banks themselves, banks and other reporting entities do not suffer appreciably from taking corruption funds or laundering money. Instead, they benefit from taking tainted funds largely in the same way as they do from clean funds. The idea that reputational concerns mean that banks have an incentive to avoid criminal money even absent formal sanctions is not supported by evidence.[100] Every member of the Wolfsberg Group of systematically important banks has been ensnared in a major scandal to do with hosting corruption funds or laundered money, or participating in sanctions-busting or market-rigging (or often some combination of these crimes). When every major bank is tainted and complicit, none is likely to suffer reputational damage relative to the rest of the sector.

Banks do not have an incentive to avoid receiving criminal money, only to avoid sanctions for receiving criminal money. This is reflected in the fact that often banks' due diligence procedures are designed less to detect and screen out criminal funds, and more to convince regulators that they are following the rules. The form of customer due diligence in the financial sector often becomes more important than its function, a problem of anti-money laundering policy more generally.[101]

This divergence in incentives is particularly important because in most jurisdictions, despite having had anti-money laundering laws on the books for 30 years, until recently banks have not been assessed any meaningful penalties. With the important exception of the United States, only in the last few years have developed countries imposed substantial (more than $100 million) fines and penalties on banks (e.g., Standard Chartered and Deutsche Bank in Great Britain, HSBC in France and Belgium, Commonwealth Bank in Australia, Danske Bank in Denmark, and Swedbank in Sweden). At time of writing, the evidence is not yet available to determine the impact of these fines on the overall effectiveness of efforts to keep criminal funds out of the international financial system. It is still rare for individual bankers to be prosecuted. Even in the United States, foreign banks have been penalized more heavily than local banks, and fines have disproportionately involved sanctions violations rather than corruption, tax evasion or money laundering offences.

Another group of actors that typically falls outside of countries' AML/CFT requirements is commodity trading firms. This is concerning, given the increasing relevance of these privately-

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[97] UN Office for Drug Control and Crime Prevention, Financial Havens, Banking Secrecy and Money Laundering, 1998; OECD, Behind the Corporate Veil: The Misuse of Corporate Entities for Illicit Purposes, 2001; FATF, "The Misuse of Corporate Vehicles, Including Trust and Corporate Service Providers," 2006; StAR, The Puppet Masters: How the Corrupt Use Legal Structures to Hide their Stolen Assets and What to do About It, 2011; OECD, Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Officials, 2014; FATF/Egmont Group, "Concealment of Beneficial Ownership," 2018; UNODC/StAR "Concealing Beneficial Ownership: How to Prevent Abuse of Legal Professional Privilege," 2018

[98] KPMG, Global Anti-Money Laundering Survey, 2011.

[99] See https://www.icij.org/investigations/panama-papers/everyone-is-doing-badly-anti-money-laundering-czar-warns/; This judgment also mirrors the academic consensus, see for example Michael Levi, Peter Reuter and Terrence Halliday, "Can the AML System be Evaluated without Better Data?" *Crime Law and Social Change* 2018 69: 307-328.

[100] Jackie Harvey, "Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost Benefit Study," *Journal of Money Laundering Control,* 2004, 333-346; Richard K. Gordon, "Losing the War against Dirty Money: Rethinking Global Standards on Preventing Money Laundering and Terrorism Financing." *Duke Journal of Comparative and International Law* 2011 21, p.553.

[101] **Error! Main Document Only.**J.C. Sharman, *The Money Laundry: Regulating Criminal Finance in the Global Economy* (Ithaca: Cornell University Press, 2011).
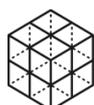
owned firms in providing financial services, including commodity-backed loans, to resource-rich developing countries, as demonstrated in on-going work at the OECD Development Co-operation Directorate. Even when regulation or corporate governance systems are in place, these companies' excessively complex corporate structures render external or internal oversight extremely difficult, consequently significantly elevating the risk of misconduct.

Given the incentives above, it is not surprising that many major instances of non-compliance by financial institutions are a problem of complicity or negligence rather than a lack of capacity or bad luck.[102] For example, compliance departments in major banks flag patterns of transactions or customers as risky or suspicious before major scandals become public, but these warning are often deliberately ignored or over-ruled at more senior levels.[103]

Systematic studies are unfortunately rare (underlining the point made earlier about a lack of even quite simple data on effectiveness), but a 2011 survey of UK banks by the British regulator provides some evidence to back up the claims above, especially with regards to foreign politically-exposed persons (PEPs).[104] It found that roughly one third of banks were willing to accept clients despite a very high money-laundering risk, and that these banks dismissed serious allegations about clients without further investigation. Over half failed to conduct the required enhanced due diligence for high-risk customers, and more than three-quarters failed to establish the legality of their clients' wealth. Given these unflattering results at a time when no UK bank had ever received a substantial penalty for money laundering, and the questions these facts raise about the regulator, it is disappointing but perhaps not surprising that the survey has never been repeated.

It is noteworthy that these widespread and systemic failings occurred a decade after a major scandal in which many British banks were revealed to have hosted money stolen by the former leader of Nigeria, Sani Abacha, and after which standards had supposedly been tightened.[105] It is also notable that these sobering results came from a jurisdiction routinely awarded high marks in formal inter-governmental reviews of financial and anti-money laundering regulations and that is assessed in international corruption perception indices as not having a corruption problem.[106]

More recently, investigative journalists revealed that banks from Scandinavian countries that are routinely ranked as being the least corrupt in the world competed amongst themselves for blatantly high money-laundering-risk customers, even those who had been expelled from other banks precisely because they were suspected of money laundering.[107] These same banks failed to establish the identity of beneficial owners or the source of funds, ignored clear indications of criminal risk, and then transferred tens of billions of euros without the proper checks and safeguards.[108] Significantly, and typically, these revelations did not originate with law

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[102] Global Witness, Undue Diligence: How Banks do Business with Corrupt Regimes, 2009.

[103] For example, United States Senate Permanent Subcommittee on Investigations, *US Vulnerabilities to Money Laundering, Drugs and Terrorist Financing: HSBC Case History*, 2012; United States Senate Permanent Subcommittee on Investigations, *Offshore Tax Evasion: The Effort to Collect Taxes on Billions Hidden in Offshore Accounts*, 2014.

[104] Financial Services Authority, Banks' Management of High Money Laundering Risk Situations, 2011, p.4.

[105] Global Witness, *International Thief Thief: How British Banks are Complicit in Nigerian Corruption*, 2010; Tim Daniel and James Maton, 'Recovering the Proceeds of Corruption: General Sani Abacha–A Nation's Thief' 63-78 in Mark Pieth (Ed.) *Recovering Stolen Assets* (Bern: Peter Lang, 2008).

[106] Though see the Transparency International UK reports cited in this paper for a very different view.

[107] https://www.occrp.org/en/component/tags/tag/danske-bank; https://www.occrp.org/en/laundromat/the-russian-laundromat-exposed/; Clifford Chance, "Report of Investigation of Swedbank," 2020.

[108] Elisabetta Bjerregaard and Tom Kirschmaier, "The Danske Bank Money Laundering Scandal: A Case Study." Copenhagen Business School, 2019; Bruun and Hjejle, "Report on Non-Resident Portfolio at Danske Bank's Estonian Branch," 2018.

enforcement or regulators.[109] The same European countries that hosted and are responsible for regulating these banks have then applied blacklists to vulnerable developing countries including Botswana, Jamaica, Mongolia, Uganda and Yemen on the grounds that these countries do not meet acceptable anti-money laundering standards.[110] These EU blacklists exclude all EU countries by fiat.

Banks and financial institutions in the developing world may face problems of misaligned incentives given that they must operate in accord with standards that have been designed in, by and for developed countries.[111] This mismatch appears in matters large and small, from the prevalence of cash over electronic transactions, the size of the informal economy, the share of the population that is unbanked, and the fact that many will not have an official residential address. Especially in relation to the application and assessment of anti-money laundering and countering the finance of terrorism rules, the international policy community has been reluctant to allow developing countries to adapt global regulations to local circumstances.[112] Some developing countries have then suffered additionally through formal practice of blacklisting by clubs of rich states (as noted above) or through informal practices of de-risking, whereby banks sever correspondent banking ties with such countries.[113]

4.3 Defeating the race to the bottom

One area of prominent regulatory success early in the twenty-first century has been the extinction of shell banks, i.e. companies holding a bank licence but without any physical presence in any jurisdiction. Such shell banks were a major money laundering vulnerability, commonly being sold and owned by those who at best had a high tolerance for customer risk, and at worst were outright criminals. At a time when globalization-induced worries about a regulatory "race to the bottom" were prominent, the forceful and unilateral intervention of the United States from October 2001 to exclude such institutions from key banking networks, combined with later systematic action from FATF, completely eliminated this point of vulnerability.

4.4 Information, information sharing and effectiveness

As a result of automatic exchange of tax information through the Common Reporting System, but also as a product of reforms from know your customer requirements, suspicious transaction reporting, and asset and beneficial ownership registries, governments have vastly more information on the domestic and foreign financial affairs of their citizens and firms than ever before. Yet the step-change in information does not seem to have translated into a step-change in effectiveness in the effort to combat various types of financial crime.

It is important not to lose sight of the fact that more information is a means to an end, not an end in itself – a point sometimes lost by a process of bureaucratic displacement whereby means become goals in and of themselves. To the extent that information is low quality ("junk" suspicious transaction reports, unverified and inaccurate information in beneficial ownership registries), more of it can be a hindrance rather than a help. There is no necessary progression

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[109] Michael Levi, **"**Evaluating the Control of Money Laundering and Its Underlying Offences: the Search for Meaningful Data," *Asian Journal of Criminology* 2020 pp.2-3.

[110] For the money laundering list, see https://ec.europa.eu/commission/presscorner/detail/en/IP_19_781; for the tax list, see https://ec.europa.eu/taxation_customs/tax-common-eu-list_en

[111] J.C. Sharman, The Money Laundry: Regulating Criminal Finance in the Global Economy (Ithaca: Cornell University Press, 2011).

[112] Center for Global Development, Unintended Consequences of Anti-Money Laundering Law for Poor Countries, 2015.

[113] Center for Global Development, "Impact of Anti-Money Laundering Regulation on Payment Flows: Evidence from SWIFT Data." Working paper 445, 2016.

from having more information to engaging in more enforcement, and hence improving effectiveness.

More specific failures of the suspicious transaction reporting system include perverse incentives leading to excessive and defensive filing of low-quality reports, the lack of articulation between agencies receiving the reports and investigators, the fact that such reports are intelligence not admissible evidence, and that reports are uninformative where customer due diligence is inadequate. Despite the vast number of reports submitted, and the huge and expensive reporting apparatus constructed,[114] very few corruption, money laundering or other cross-border financial crimes have been broken or uncovered via such reports.[115]

In thinking about scandals – from the Russian, Troika and Azerbaijani Laundromats, the Panama Papers, Paradise Papers, Lux Leaks, Luanda Leaks, Offshore Leaks, and cases like 1MDB, HSBC, UBS, Riggs Bank, Danske Bank, Swedbank, *Biens Mal Acquis* and many others – it was journalists, NGOs and whistle-blowers who first detected foul play. Regulators and law enforcement were just as likely to ignore or sabotage these actors' investigations as to assist them. Even when particular instances of corruption were an open secret (e.g. Angola's former ruling family), it was notable that haven countries took no action against corrupt assets until media coverage, sometimes combined with pressure from source countries, forced their hand. Conversely, it is difficult to think of many major instances where the reports to the FIU initiated major successful corruption investigations (the investigation leading to the conviction of Gulnara Karimova, daughter of Uzbekistan's former ruler who once again held corrupt assets in the United States, Britain and Switzerland, is one exception[116]).

Where the number of suspicious activity reports becomes a proxy for regulatory compliance, either at the level of firms, sectors, or whole countries, it is not surprising that the system becomes flooded with a large number of low-quality reports ("junk reports").[117] A related problem is when firms believe (rightly or wrongly) that if they report certain suspicious business they are indemnified should this business later turn out to be criminal (a "safe harbour"). This can lead to pre-emptively filing a very large volume of reports (defensive filing), and in the aggregate overwhelming the capacity of the financial intelligence unit to process and analyse the volume of reports received, possibly numbering in the millions. Banks and other firms may continue processing transactions even when there is very strong evidence that these involve the proceeds of crime. This may occur either on the cynical grounds that banks believe they are immunized against the consequences of continuing to process such transactions by their earlier reports, or because they fear violating the prohibition against "tipping off" suspicious customers by freezing their funds or stopping services.[118]

It is important to realize that in most jurisdictions such reports are intelligence, but not admissible evidence, especially if they are exchanged with overseas counterparts outside the

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[114] Donato Masciandaro and Raffaella Barone, "Worldwide Anti-Money Laundering Regulation: Estimating Costs and Benefits" Paolo Baffi Working Paper, 2007.

[115] Michael Levi, **"Evaluating the Control of Money Laundering and Its Underlying Offences: the Search for Meaningful Data,"** *Asian Journal of Criminology* 2020 pp.2-3

[116] US Department of Justice, "VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme", 18 February 2016, https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million; US Department of Justice, "Former Uzbek Government Official And Uzbek Telecommunications Executive Charged In Bribery And Money Laundering Scheme Involving The Payment Of Nearly $1 Billion In Bribes", 7 March 2019, https://www.justice.gov/usao-sdny/pr/former-uzbek-government-official-and-uzbek-telecommunications-executive-charged-bribery.

[117] Elod Takats, "A Theory of 'Crying Wolf': The Economics of Money Laundering Enforcement," IMF Working Paper 2007

[118] For example one bank in Australia lodged over 100 Suspicious Transaction Reports on a single customer, but continued to process transactions. Much later the individual was found to be a criminal laundering money.

channels of formal mutual legal assistance. For this reason, those involved in prosecution or preparing cases for prosecution may be relatively uninterested in suspicious-activity reports.[119]

5. Proposals and recommendations

By all indications, the vast majority of money laundering and cross-border corruption proceeds are never detected, let alone stopped or confiscated. Attempts to put a number on the cross-border flows of the proceeds of corruption, tax evasion, and laundered funds tend to be plagued by serious methodological problems,[120] but they converge on the conclusion that the funds intercepted are a tiny fraction of the total flows. For example, a 2011 UNODC report suggested that perhaps around 1 per cent of such funds are detected by authorities, and only a fifth of this figure seized.[121] Even among the EU countries that have had anti-money laundering and confiscation provisions in place for up to 30 years effectiveness is similarly low: a Europol report estimates that only 2 per cent of criminal funds are frozen, and only 1 per cent actually confiscated.[122] Minor reforms are unlikely to substantially change this unsatisfactory situation, though increased enforcement of existing laws can be expected to deliver greater improvements than piling yet more laws on top of existing ones. The section below briefly suggests some measures to enhance effectiveness, and it notes their technical and political feasibility.

5.1 Re-thinking how risk and effectiveness are measured

Most measures and assessments of anti-corruption policies and policies in cognate areas, including those surveyed above, focus on easy-to-measure but largely uninformative metrics like the number of states ratifying treaties and legislation introduced, or policy inputs, from training seminars conducted to cash transaction reports lodged. The solution is to open up previously closed, isolated policy communities to professional risk assessors and re-write the procedures for assessing risk in these areas in line with basic accepted risk-assessment concepts, e.g. ISO 3100. This should be both technically and politically easy.

For measuring effectiveness, there should be much greater reliance on the sort of RCTs that have long been standard in assessing the effectiveness of development policy, health policy, labour policy, and policy in a growing range of other areas. As discussed in detail above, this is a cheap, practical and far more scientifically valid means of assessing policy effectiveness than current practice. Once again, this should be technically and politically easy, and it should cost less than the existing inferior measures.

5.2 Re-focusing the fight on haven countries

The fight against cross-border corruption, money laundering, and tax evasion has long suffered from the bias whereby developing countries are portrayed as having serious corruption problems, while developed country havens are seen as largely corruption-free. While many developing countries do indeed have serious corruption problems, this is in significant part because many developed country financial centres play host to the resulting looted assets.

The solution is to change both the metrics and the policy responses to spotlight haven countries. Such a shift requires moving away from corruption perception indices that identify source

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[119] Matthew H. Fleming, UK Law Enforcement Agency Use and Management of Suspicious Activity Reports, 2005.
[120] Peter Reuter, "Introduction and Overview: The Dynamics of Illicit Flows" in Peter Reuter (Ed.) *Draining Development? Controlling Flows of Illicit Funds from Developing Countries*, World Bank, 2012; Maya Forstater, Illicit Financial Flows, Trade Misinvoicing, and Multinational Tax Avoidance: The Same or Different?" Center for Global Development, 2018; Alex Cobham and Petr Jansky, *Estimating Illicit Financial Flows: A Critical Guide to the Data Methodology and Findings*, Oxford University Press, 2020.
[121] UNODC, Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Crimes, 2011.
[122] Europol, "Does Crime Still Pay? Criminal Asset Recovery in the EU," 2016, p.4.
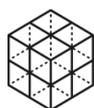
countries while neglecting havens. It also requires shifting away from biased money-laundering and tax blacklists designed by clubs of developed states whereby outsiders may be stigmatized and labelled according to standards that those applying the blacklists themselves do not reach. A first step would be the basic expectation that major developed haven countries are held to standards that are at least as rigorous as those expected of developing source countries, a seemingly obvious principle that is nevertheless routinely violated currently.

Finally, blacklists should be focused on jurisdictions that pose actual objective risk in terms of transnational financial crime, not just those that have been unable to introduce international standards (which may not be suitable for local conditions in any case). Although evidence is far from conclusive, it suggests that the proceeds of most cross-border financial crime ends up in a few large, developed haven countries. Developing countries that are poorly integrated with international financial systems are unlikely to pose such a risk of facilitating crimes like transnational money laundering no matter how poorly they comply with international regulatory standards.

There should be greater objective qualitative and quantitative scrutiny of major haven country financial centres to discern both general regulatory failures and the specific location of looted wealth. Policy priorities in countering international corruption and money laundering should be shifted towards major banks in haven countries. It is notable that in some cases non-state groups have provided more credible information for free than expensive but politically biased efforts by governments and inter-governmental organizations.

More specifically, it is important that the StAR initiative re-focus on its original mission of tackling havens for corruption proceeds, rather than replicating much of the work of other bodies in advising and providing technical assistance to source countries. Although source countries may well need assistance in recovering stolen assets, an exclusive focus on such countries once more tends to reproduce the idea that corruption is only a problem for the developing world.

These kinds of reforms are technically easy and financially cheap or free, but politically difficult given entrenched interests, biases, and power differentials between developed haven countries and developing source countries and the disproportionate control the former wield over key international organizations.

5.3 Regulating, licensing and auditing corporate service providers

Our findings from the 2011-12 Global Shell Games study, reinforced by the results from the recent experiment, suggest that even governments with limited capacity can take important steps toward reducing money-laundering risk and therefore lessen their propensity to shelter assets from corruption through effective beneficial-ownership-verification systems. The steps are relatively straightforward, and the policy itself is funded on a user-pays principle rather than from general government revenue.

Governments need to require that banks and intermediaries obtain photo identification (preferably notarized, apostilled or otherwise certified) of the beneficial owner of the company and associated bank account. They should require that the records be kept and be available to law enforcement at short notice. And the same governments need to periodically audit banks and intermediaries at random intervals. The governments need to license CSPs (currently not the case in important jurisdictions like the United States) and regulate and audit their activities (currently not the case in jurisdictions like the United Kingdom and Switzerland). Our studies

from over nine years suggest that even governments in small-population, lower-income countries can manage these steps in ways that reduce their non-compliance to levels that are negligible.[123] That many governments of OECD countries do not take these relatively low-cost, easy-to-implement steps should alarm the international community. Efforts by intergovernmental organizations and NGOs might encourage governments to move in the direction of transparency.

The most thorough study of strengthening beneficial ownership effectiveness for anti-corruption purposes found that licensing and regulating CSPs was found to be a far superior solution than beneficial ownership registries.[124] This point is rarely acknowledged by proponents of beneficial ownership registries. Generally, the latter have a passive, archival function, merely receiving and recording unverified information. Significantly, those working in company registries themselves do not regard registries as the best means by which to establish beneficial ownership. It is notable that for years the only enforcement action taken by the UK (a passionate proponent of beneficial ownership registries internationally) in response to incorrect ownership information was against an individual who deliberately incorporated a company under a false name to prove the ineffectiveness of the UK company registry, and then reported this fact to the authorities.[125]

Rather than requiring more international legal standards or mandating beneficial ownership registries, improving the effectiveness of beneficial ownership regimes is largely a matter of states implementing long-standing FATF Recommendations, including regulating and auditing their local CSPs to ensure compliance. This measure is technically straightforward, but in some cases is politically difficult given the political power of sectoral interests.

5.4 Beyond the state 1: better engaging non-profit actors

As noted, most of the major instances of international financial crime have first been detected not by reporting from the banking sector, nor by law enforcement agencies, but instead by journalists, NGOs and whistle-blowers. Even without formal investigative powers, and despite very limited funding, bodies like the International Consortium of Investigative Journalists and Organized Crime and Corruption Reporting Project have been highly successful in uncovering corruption scandals. Just as importantly, they have created political pressure for authorities to take action in response.

The return on the extra marginal dollar of anti-corruption spending is much higher in relation to these non-state groups relative to either law enforcement or the private sector financial surveillance apparatus. The World Bank-Siemens comprehensive settlement of 2009, through which $100 million was made available to non-profit organizations fighting corruption across the world after Siemens was revealed to be running a massive bribery program,[126] is a successful funding precedent for non-state actors that should be replicated.

As the size and frequency of fines, settlements, deferred prosecution agreements and the like increase, diverting even a small proportion of these penalties (rather than scarce general government revenue) to fund non-state actors efforts' to expose and fight corruption could be expected to substantially increase overall effectiveness. It would also send a message concerning corrupt actors' accountability to civil society as well as the State. Given the Siemens

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[123] Findley, et. al. Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism. Cambridge University Press, 2014.

[124] StAR, The Puppet Masters, 2011.

[125] "Campaigner Prosecuted over Stunt to Expose UK Company Records Fraud," *Financial Times*, 17 April 2018.

[126] https://www.worldbank.org/en/news/press-release/2009/12/09/siemens-launches-million-initiative-anti-corruption

precedent and the increasing availability of money from fines and settlements, such a reform should be politically and technically easy. Acting on an earlier suggestion to set up a trust account with the StAR Initiative to fund non-state anti-corruption and asset recovery initiatives, especially strategic litigation, would further enhance effectiveness, but it would be more difficult as it would directly call on Member States' general budget.

As well as struggling to detect cross-border corruption and related financial crime, governments have also struggled at the enforcement stage. Although, as discussed above, there are many reasons why enforcement fails, such failures are often the result of a lack of political will to pursue corruption cases in the source or haven country (or both). Despite repeated public commitments to fight corruption, governments are often reluctant to jeopardize sensitive diplomatic, commercial, or military relations with foreign partners by investigating corruption among incumbent senior officials or their families. Almost by definition, kleptocratic regimes will not hold themselves accountable. Furthermore, in corrupt authoritarian systems, journalists and civil society actors investigating official corruption are vulnerable to repression, as indeed are individuals within the government acting to uphold integrity. Indeed, such actors increasingly face false accusations of corruption from the corrupt authorities.

In contrast, civil-society organizations in haven countries at least are less politically constrained and less likely to face countervailing pressures to turn a blind eye to corruption, and hence they are more likely to be committed to staying the course during protracted investigations. Though such organizations cannot replace state action against cross-border corruption, there is much more they could do in enforcement if allowed by reforms.

The major legal obstacle to these non-state actors taking a more active role is the question of standing. In common-law jurisdictions, it is very difficult (if not quite impossible) to bring private criminal cases.[127] This is in contrast to jurisdictions like France and especially Spain, where non-state actors have more scope to bring criminal prosecutions, including cases involving the local laundering of the proceeds of foreign corruption offences.[128] More governments should widen the scope for such private prosecutions in the same manner as many countries have widened the scope for private prosecutions of international human rights crimes.

Given the likely constraints on state capacity in the aftermath of the coronavirus pandemic, states should also widen the scope for non-state actors to have standing to bring civil cases to recover proceeds of corruption and other financial crimes. Such cases might take place along the lines of the pre-2013 use of the US Alien Torts Act, while also employing the powers of Anton Piller orders and Mareva injunctions to allow private parties to forcibly obtain financial records and apply asset freezes on a world-wide basis.[129]

5.5 Beyond the state 2: better engaging for-profit actors

One of the reasons that governments struggle with effective remedies for complex cross-border financial crime is because most of the necessary legal and accounting expertise is located in the private sector. In both developed and developing countries it is hard for law enforcement

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[127] Matthew C. Stephenson, "Standing Doctrine and Anti-Corruption Litigation: A Survey," Open Society Foundations, 2016; Tamlyn Edmonds and David Jugnarain, "Private Prosecutions: A Potential Anti-Corruption Tool in English Law," Open Society Foundations, 2016.

[128] Maud Perdriel-Vaissière, "France's *Biens Mal Acquis* Affair: Lessons from a Decade of Legal Struggle," Open Society Foundations, 2017.

[129] Tim Daniel and James Maton, "Civil Proceedings to Recover Corruptly Acquired Assets of Public Officials," in Mark Pieth (Ed.) *Recovering Stolen Assets* (Bern: Peter Lang, 2008).

agencies and regulators to retain staff with the necessary skills when these individuals are routinely "poached" to work for much higher salaries in the private sector.

The idea of motivating the fight against criminal finances through the profit motive seems counter-intuitive, yet it should be explored further, especially as the line between for-profit and non-profit groups blurs with the rise of ethical and impact investing.[130] Commercial cases involving asset recovery in bankruptcy and insolvency have increasingly become an asset class in themselves, thanks in part to the rise of third-party litigation funders and litigation insurance.[131] Especially if initial funding is available from bodies equivalent to the Siemens Foundation or the Open Society Foundations, it should be possible to involve for-profit impact or ethical investment schemes in the hunt for stolen money.

The idea would be to cover the costs of tracing and seizing the proceeds of foreign corruption in developed haven countries, provide a certain return above costs to the private for-profit actors in haven countries, and repatriate the surplus to source countries.[132] In cases that failed, the source country government would not pay, with the costs being borne exclusively by private actors. This would compare favourably with the current situation, in which governments often spend a large amount of public money on unsuccessful asset recovery cases. It is only an evolutionary change from the current situation, as governments from developing countries have already engaged law firms in developed haven countries to seek out stolen assets on a contingency "no win, no fee" basis.[133]

The technical skills and most of the legal and financial infrastructure for such blended non-state asset recovery cases are already in place, necessitating only modest reforms to make it easier for private actors to achieve standing in bringing civil and criminal asset recovery cases. This approach requires no new spending from governments, and as such, reform along these lines should be politically and technically achievable.

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[130] Andrew Marshall, "What's Yours is Mine: New Actors and New Approaches to Asset Recovery in Global Corruption Cases," Center for Global Development Working Paper 18 2013.

[131] Edward Davis, "Transnational Civil Asset Recovery of the Proceeds of Crime and Corruption: A Practical Approach," pp.63-93 in Daniel Thelesklaf and Pedro Gomes Pereira (Eds) *Non-State Actors and Asset Recovery* (Bern: Peter Lang, 2011).

[132] For an example of how this might work, see James Mather, "Stolen Asset Recovery Fund (SARF): Outline Proposal," 2018.

[133] Mark Pieth, "Recovering Stolen Assets–A New Issue," in Mark Pieth (Ed.) *Recovering Stolen Assets* (Bern: Peter Lang, 2008).

6. Appendix: Selected partnerships, initiatives and instruments

The section below presents thumbnail sketches of the selection of some of the main existing partnerships, initiatives and instruments in international anti-corruption and relevant related areas, while the following section assesses some of the gaps and vulnerabilities in the current system that contribute to a lack of incentives for corruption prevention.

United Nations Convention Against Corruption Implementation Review Mechanism

The UNCAC is the only legally-binding global anti-corruption instrument. The IRM relies on voluntary member self-assessments as well as country-to-country peer reviews to assess compliance with Convention standards and to review implementation. Created in 2010, the IRM has completed one five-year round of country assessments, which include country visits and recommendation development, on UNCAC Chapters 3 and 4 (criminalization and law enforcement & international cooperation). The second, five-year round of assessments focused on Chapters 2 and 5 (corruption prevention & asset recovery) is ongoing.

United Nations Office on Drugs and Crime/World Bank Stolen Assets Recovery Initiative

StAR offers two types of services. A majority of StAR's time and resources are devoted to providing technical assistance directly to countries via legal/jurisdictional advice as well as tracing, freezing, and recovering stolen assets. StAR's remaining work centers on publishing guidance on asset recovery efforts and legal procedures. StAR also maintains a public database, the Asset Recovery Watch, that is a repository of past asset recovery cases.

Financial Action Task Force Mutual Evaluation Reviews and National Risk Assessments

The Mutual Evaluation Reports are a combination of self-assessments in line with standardized questionnaires and on-site visits which assess countries against the 40 Recommendations on Anti-Money Laundering and Countering the Financing of Terrorism. There have been four rounds of these assessments with the standards themselves last updated in 2012. Since 2013, National Risk Assessments have aimed to allow countries to prioritize and allocate resources in fighting money laundering in accord with the Risk-Based Approach.

World Bank Surveys

The World Bank's extensive databases have a wide range of relevant material on assessing and improving corruption control, public financial management and fiscal transparency, including data that may be used to measure progress towards achieving UN SDG 16. This information includes the results of the Ease of Doing Business survey, as well as data on the Bribery Incidence (the percentage of firms subject to demands for bribes), firms expected to give gifts in meetings with tax officials, and the Control of Corruption Estimate.

International Monetary Fund 2014 Fiscal Transparency Code and Evaluations

With the 1997 Fund's Guidance Note on the Role of the Fund in Governance Issues, adopted by the Executive Board, the IMF committed to promoting good governance and tackling corruption as an essential part of its mission. The 2014 Fiscal Transparency Code (FTC), is the international standard for disclosure of information about public finances. It is a mandatory part of IMF Article IV country surveillance reports, covering a set of principles built around four pillars: (i) fiscal reporting; (ii) fiscal forecasting and budgeting; (iii) fiscal risk analysis and management; and (iv) resource revenue management. The Fiscal Transparency Evaluations (FTEs) are the

IMF's fiscal transparency diagnostic, which at the request of countries, help assess country practices against the FTC, support the identification of strengths and weaknesses in transparency practices, and make specific recommendations for improvement. FTEs have been conducted in over 30 countries to date.

G20 Anti-Corruption Working Group

The G20's Anti-Corruption Working Group (ACWG) was established in 2010, and represents an intergovernmental process supported by a number of international organizations including the OECD. The working group's efforts have focused on encouraging all members to accede to the UNCAC and draft self-assessment reports and implementation plans for UNCAC commitments. It has also provided strong leadership in support of the other leading instrument: the OECD Convention on Combating Bribery, calling for engagement and promoting its implementation. The ACWG has been increasingly collaborating with the business community, notably through the B20 Task Force on Improving Transparency and Anti-Corruption.

Organisation for Economic Co-operation and Development Anti-Bribery Convention Peer Reviews

The Convention is the only legally binding international instrument focused on the 'supply side' of the bribery transaction, and covers all 37 OECD and seven non-OECD countries. The OECD Working Group on Bribery monitors countries' implementation and enforcement of the OECD Anti-Bribery Convention through a continuous peer-review monitoring system. . The Working Group monitors the adoption and implementation of national laws and policies to improve compliance with the Convention, and assess anti-bribery enforcement. In-depth country reports include recommendations to rectify problems uncovered through the review process. Countries are subject to follow-up by the Working Group to ensure that the recommendations have been implemented and can also be subject to additional measures in the event of inadequate implementation or continued failure to implement the OECD Anti-Bribery Convention.

Since 2017, the Working Group on Bribery has also been monitoring, jointly with the Development Assistance Committee (OECD/DAC) through their respective peer reviews, implementation of the OECD Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption, thereby enhancing the evidence base around donor policies and practices in fighting corruption in development co-operation. The Recommendation details measures to prevent, detect, manage and sanction incidents of corruption in development co-operation, and invites Adherents to develop or strengthen their corruption risk management systems to address the dual challenge of modelling integrity as donors and of reducing the risks of corruption in development co-operation.

Group of States Against Corruption Council of Europe Peer Reviews

A team of experts conduct a two-step review process for GRECO's (*Groupe d'États Contre la Corruption)* 50 state signatories. Experts evaluate member countries' compliance with Council of Europe anti-corruption standards in evaluation rounds that focus on specific themes, for example the identification, seizure, and confiscation of criminal proceeds. The team of experts develop recommendations for each country. The second step of the review process is an examination of members' efforts to implement their country-specific recommendations.

Asian Development Bank/Organisation for Economic Co-operation and Development Anti-Corruption Initiative for Asia and the Pacific

The joint initiative was started in 1999 to fight corruption in the region. In addition to triennial reports outlining the initiative's long-term goals and principles, the ABD/OECD Anti-Corruption

Initiative publishes thematic reviews to highlight regional trends in implementation. Partner countries also participate in joint technical conversations, seminars, and regional conferences. There are currently three main work-streams of the Initiative: the Public Integrity Network, Law Enforcement Network and Business Integrity Network.

United Nations Convention Against Corruption Civil Society Coalition

The Civil Society Coalition serves as a co-ordinating mechanism for civil society organizations, within the UNCAC commitments it has prioritized access to information, asset recovery, beneficial ownership transparency, protection of whistle-blowers and anti-corruption activists. The Coalition works closely with UNCAC in distributing information to member organizations.

Transparency International Global Corruption Barometer

The Global Corruption Barometer is a survey conducted by TI seeking to capture citizens' daily experiences with public sector corruption. The survey includes questions on overall perception of national corruption, as well as specific prompts on key public institutions, and whether participants have paid bribes for public services in the past year. The most recent release of the Global Corruption Barometer was published in 2017, although regional data was released for the Middle East and North Africa, Latin America and the Caribbean, and Africa in 2019.

Tax Justice Network Secrecy Index and Corporate Haven Index

The Tax Justice Network is an advocacy organization launched in 2003 to combat international tax avoidance, evasion and tax havens. The Financial Secrecy Index of ranks jurisdictions is based on the scale of opaque financial activities and secrecy weighted by their share of the international finance sector. The Corporate Tax Haven Index of 2019 assesses jurisdictions' potential for aiding tax avoidance and evasion by multi-national corporations, again weighted by the size of the financial centre.

Extractive Industries Transparency Initiative

Launched in 2002, EITI is the leading international standard for transparency in the oil, gas and mining sectors. The standard is currently implemented by 52 countries. As part of the EITI process, governments publish, on a voluntary basis, information about the revenues from their extractive industries. These disclosures by government are subsequently matched to the payments (taxes, duties, royalties, bonuses and other payments) that extractive companies. What distinguishes the EITI from other initiatives is that the implementation process is overseen by local multi-stakeholder groups (MSG), consisting of representatives of governments, companies and civil society representatives. Countries who fail to make meaningful progress towards meeting EITI standards can have their membership to EITI suspended. In addition to overall validation reports, EITI publishes "road-map" reports that cover the implementation plans and progress on particular pieces of the EITI standards. These include Beneficial Ownership Road-maps and guidance notes on the newly adopted requirements for gender-responsive EITI implementation.

Global Initiative for Fiscal Transparency

GIFT operates as a network of interested government ministries, civil society organizations, and international institutions to share policy proposals, research, and solutions aimed at increasing transparent fiscal policies. GIFT's work includes peer-to-peer collaborations in which partner institutions can learn and critique each other's experiences in implementing fiscal transparency measures. GIFT publishes the materials used in its workshops, guides on best practices for transparent fiscal policy, and country-level briefs. The Country Briefs are short summaries of a

country's outlook together with a series of policy proposals for the country to enhance fiscal transparency.

Open Government Partnership

The Open Government Partnership was created in 2011 with the goal of improving government transparency and accountability. OGP strives to support civil society–government collaboration and reform by offering technical assistance. Its 78 members have adopted a declaration committing to independent public evaluation. With regards to anti-corruption, ODP helps members evaluate and create action plans to improve transparency in beneficial ownership, government procurement, and public accountability.

Open Contracting Partnership

The Open Contracting Partnership is dedicated to the institution of global standards for transparent public sector contracting and procurement. The partnership publishes guidance on how to implement its proposed standards and provides templates for the adoption of those standards. It also maintains a resource centre through which it offers tools for using open contracting data to follow flows of money from a government into the private sector.