

ADDRESSING CORRUPTION AS A DRIVER OF DEMOCRATIC DECLINE

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Policy position

Addressing corruption as a driver of democratic decline

Positions towards Summit for Democracy 2021

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INTRODUCTION

Corruption undermines democracy, destroys public trust in institutions, skews policymaking in the interest of the few and leads to the capture of accountability mechanisms. This was recognised by the international community back in 2003, when states came together to agree on measures for tackling corruption. They expressed serious concerns about corruption “undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.”¹ And yet corrupt practices in countries around the world have continued to damage democracy, igniting a new rise in authoritarianism.

The current interlinked global crises of democracy and corruption – along with the associated human rights abuses – bring into question the very legitimacy of the state in the worst affected countries, where corruption is a means of state capture and authoritarian consolidation.²

In those countries, pervasive corruption networks work at all levels of state institutions, connecting public officials with unscrupulous private sector actors and crime syndicates to execute corruption schemes, often involving vast amounts of public assets and high-level officials.³ Electoral and justice systems are so weakened that they provide no accountability, while independent voices are stifled. People are deprived of economic opportunities, driven into poverty and denied basic public services.

Meanwhile, some leaders invoke a sham fight against corruption as a means for furthering their own interests, while sabotaging democracy.

Even in more resilient democracies, national integrity systems are often proving insufficiently robust to meet the challenge of corruption – especially in the context of spiralling inequalities and environmental and health crises. Polarising public discourse combines with inadequate controls on political finance, lobbying and conflicts of interest, contributing to political disenchantment

and weakening of democratic institutions. The undue influence of the wealthiest and of multinational companies on political elites secures them a free pass for tax avoidance, resulting in underfunded state institutions unable to fulfil their functions.

In sectors like defence, natural resources and infrastructure, the undue influence exerted by industry representatives results into policies and practices inimical to peace, sustainable development and stability at home and abroad. Rising socioeconomic inequalities feed public frustrations and a sense that the system is rigged to benefit the elites.

The corruption problems that established democracies face at home diminish their ability to confront the rising authoritarianism around the world. What’s worse, these countries contribute to global democratic decline by failing to curb the transnational corruption linked to their jurisdictions. Corrupt actors, networks, schemes and corruption proceeds cross borders with great ease, bypassing weak national oversight and enforcement systems.

The established democracies continue to welcome dirty money, turning a blind eye to the embezzled funds and bribe payments laundered through their financial systems and the real estate sector. Most fail to deter and sanction the enablers of transnational corruption and the companies that resort to bribery to access foreign markets.

And the same weaknesses that allow for dirty money to circulate in an ever-more globalised economy are often exploited by authoritarian regimes to exert illicit influence on social, economic and political affairs of democracies, contributing to polarisation and mistrust.

There is an urgent need to address corruption as a driver of democratic decline. This is especially critical for ensuring that the legacy of the COVID-19 pandemic does not include increased authoritarianism. Since the onset of the pandemic,

many governments around the world have assumed extraordinary executive powers to tackle the crisis, and this has offered political leaders a dangerous opportunity to lessen accountability.⁴ This pressing concern was highlighted in Transparency International's 2021 Annual Membership Meeting resolution, which notes with great concern that democracy has been "one of the victims of the pandemic," as governments from around the world have abused executive powers and curtailed civic freedoms under the guise of the public health emergency.⁵

Recognising the role that corruption plays in corroding democracy and how certain anti-corruption measures have worked in practice, the Summit for Democracy provides an opportunity to assess why key anti-corruption commitments have not yet been implemented and to overcome those obstacles. It is also an occasion to evaluate the impact of reforms to date and to commit to improvements.

Transparency International is urging governments that gather for the Summit for Democracy in December 2021 to follow through on previous pledges and make new, meaningful commitments, with a clear timeline for action, in three key areas:

1. purging dirty money from the global financial system to end complicity in the laundering of proceeds or reputations of the corrupt;
2. deterring and sanctioning cross-border corruption by companies and high-level public officials; and
3. supporting anti-corruption activists, civil society organisations, whistleblowers and investigators around the world.

Enabling follow-up

Transparency International calls on the Summit for Democracy hosts to ensure that commitments made by participating governments are specific and measurable. This can enable countries and stakeholders to track country follow-up. As the Open Government Partnership recently reported, building on Transparency International UK's analysis, one of the lessons from the 2016 London Anti-Corruption Summit was that the majority of country commitments could not be readily tracked, and of those that could be, only one in five have been fully implemented.

In designing a monitoring mechanism, Summit for Democracy hosts and their civil society partners could build on methodology developed by Transparency International to monitor commitments made at the 2018 International Anti-Corruption Conference.⁶

I. PURGING DIRTY MONEY

Currently dirty money is flowing through and into secrecy jurisdictions, which include not only so-called offshore centres but also advanced democratic economies. Most jurisdictions have so far resisted efforts to robustly regulate, supervise and enforce against the use of anonymous companies and the role of financial institutions, lawyers, accountants, company service providers and others that enable dirty money flows. At the same time, the rate of returning stolen assets and proceeds of corruption to the countries from which they were taken has been far too low.

The ease with which leaders and their accomplices based in countries plagued by grand corruption and state capture can stash stolen assets abroad enables consolidation of kleptocracies and an ongoing attack on the people's lives and livelihoods.

In established democracies, the most visible impact of allowing in dirty money flows is the widespread hardship caused by outlandish real estate prices and rents. For people around the world, illicit financial flows and tax avoidance means underfunded governments, reduced social services and crumbling infrastructure to the detriment of the whole population, especially the poorest and most vulnerable.

The opportunities for hidden cross-border payments also enable foreign interference in the political systems of established democracies, including through foreign-state-sponsored corruption.

Corrupt officials and their accomplices prefer to channel their assets into countries with a strong rule of law and political and economic stability. All the while, the tentative steps towards increased regulation and supervision in democratic economies is leading to some diversion of corrupt money flows to financial centres in authoritarian states with low oversight. This is a challenge that should also be anticipated.

Transparency International is calling on countries that have committed to stop dirty money flows to honour those commitments.

Further improvements to rules and practices are also needed in four key areas. Democracies should adopt decisive measures to counter financial secrecy in order to comply with commonly agreed rules for beneficial ownership disclosure; information-sharing to support strategic intelligence work; regulation and supervision of professional enablers of financial crime; as well as the recovery and repatriation of assets.

1. COLLECT, SHARE & USE BENEFICIAL OWNERSHIP INFORMATION

More than 200 jurisdictions have committed to the Financial Action Task Force (FATF) recommendations, which require them to ensure that competent authorities can access adequate, accurate and up-to-date beneficial ownership information in a timely manner.⁷ This recommendation is, however, poorly implemented, with low compliance and effectiveness rates across the FATF network. None of the jurisdictions reviewed so far are achieving high levels of effectiveness.⁸

The flexibility provided by the FATF standard – which does not specify the mechanisms which countries should use to ensure that beneficial ownership data is available – is one of the main problems. Transparency International's research shows that in countries with a beneficial ownership register authorities are more likely to access company ownership information in a timely manner.⁹ However, the FATF standard does not thus far require a register.¹⁰

Issues related to the adequacy of the legal frameworks and gaps in implementation also play a role. The experience across EU member states and

at least 25 other jurisdictions that have created some sort of beneficial ownership register points to certain gaps in the legal framework that limit the usefulness of the information available.

At least 110 countries have made commitments on beneficial ownership transparency through global fora such as the G20, OGP and the UK Anti-Corruption Summit, but not all have taken concrete steps to implement them. The Summit for Democracy is the time to hold countries accountable for their voluntarily made commitments. They should establish a timetable for following through as well as ensure their commitments are implemented in a way that leads to an effective regime.

Specific recommendations

- + Support a meaningful reform of the global standards on beneficial ownership transparency, ensuring that central registers are a requirement under the revised FATF standards.
- + Establish public, central beneficial ownership registers of legal entities and arrangements.
- + Mandate and resource public authorities to establish mechanisms to independently verify the accuracy of beneficial ownership information provided by legal entities and arrangements.
- + Require foreign companies investing in their countries (e.g., through real estate, private equity, bank accounts) to abide by the same beneficial ownership transparency requirements as domestic actors.
- + Build beneficial ownership registers based on the recommendations of Open Government Partnership's Beneficial Ownership Leadership Group.¹¹
- + Apply proportionate and dissuasive sanctions to companies and individuals in cases of non-compliance.
- + Record and publish the beneficial owners of companies making financial or in-kind contributions to political parties, candidates, and third parties – acting in support or coordination with them, and engaging policymakers through lobbying.
- + Record and publish beneficial ownership information of companies awarded public contracts or concessions.
- + Regulate the role of nominee directors and shareholders, requiring them to be licensed and to disclose in the company register the name of their nominator as well as the nominator's beneficial owner.
- + Provide assistance to less advanced economies for the establishment of beneficial ownership registers as well as the creation of mechanisms to independently verify the accuracy of beneficial ownership information provided by legal entities and arrangements.

2. REGULATE PROFESSIONAL SERVICE PROVIDERS THAT ENABLE CORRUPTION

There is ample evidence that the ‘gatekeepers’ of the financial sector, also known as professional enablers of financial crime – including banks, lawyers, accountants, investment advisers and real estate agents – play a key role in laundering the proceeds of corruption and other crimes. Yet they typically escape regulation, supervision and enforcement, providing illicit services with impunity.

Leading democratic economies and other countries have committed to regulate certain gatekeepers of the financial system under FATF, G7 and G20 standards, and more recently through the political declaration of the UN General Assembly Special Session (UNGASS) against Corruption in June 2021.¹² However, much work remains to close gaps in the regulatory framework in most of these countries. Gatekeeper due diligence commitments for service professionals have been partially met in a range of countries. In the US, for example, banks, investment brokers and several others are covered but not investment advisors, and there is only limited coverage of the real estate sector.

Moreover, in countries where gatekeepers are regulated, available evidence suggests their supervision is often fragmented, with limited on-site inspections and very limited enforcement action.

Specific recommendations

- + Extend anti-money laundering requirements to all professionals and entities providing services entailing risks of money laundering, including real estate agents; private equity and hedge fund managers; sellers of yachts, airplanes and other luxury goods and art dealers; lawyers; accountants; company formation agents.
- + Require gatekeepers to identify the beneficial owners of their clients, including both domestic and foreign politically exposed persons (PEPs), conduct enhanced due diligence on high-risk customers and report suspicious transactions to competent authorities.
- + Ensure adequate powers as well as technical, human and financial resources for supervisory authorities, law enforcement and financial intelligence units to carry out their responsibilities.
- + Countries that rely on self-regulatory bodies (e.g., professional associations) to supervise gatekeepers’ adherence to anti-money laundering rules should consider government-led supervision or establish a government agency to oversee self-regulatory bodies’ supervision and examination efforts.
- + Subject gatekeepers to dissuasive and proportionate sanctions, ranging from license withdrawal to monetary fines for non-compliance with anti-money laundering obligations. Sanctions should cover both legal persons and senior management.
- + Criminalise the aiding and abetting of money laundering to ensure that anyone who helps money launderers will themselves be committing a crime.

3. INCREASE INFORMATION-SHARING, ENABLING STRATEGIC INTELLIGENCE WORK

More than 100 jurisdictions already participate in the Common Reporting Standard (CRS). The US currently undertakes exchange of bank information through the Foreign Account Tax Compliance Act (FATCA). These mechanisms can form the foundation for a truly global system for sharing bank account information with other relevant competent authorities.

Moreover, high-level commitments to collect, cooperate and share information have not yet fully led to improved intelligence work. Some democracies already require electronic funds transfer reports, such as Canada, for example, and the SWIFT payment system also records all payments made via SWIFT. However, this type of information is not systematically used for intelligence purposes, nor regularly shared with relevant domestic and competent authorities.

Specific recommendations

- + Harmonise FATCA and CRS – including the categories of information shared from the CRS and the enforcement framework from FATCA. In particular, the US should achieve equivalent levels of reciprocal automatic information exchange with partner jurisdictions.
- + Explore expanding the use of the information collected under CRS to tackle corruption and money laundering.
- + Explore expanding the CRS to other categories of assets such as real estate.
- + Create a multilateral task force to develop a new database (or leverage existing systems) of cross-border payments that is accessible to relevant competent authorities. Such a database could help authorities to detect patterns and identify anomalies related to money laundering in payment flows without compromising data privacy, particularly if combined with data analytics.
- + Establish bank account registers with beneficial ownership data that can be directly accessed by competent authorities. This would allow better analysis of cross-border data by competent authorities as well as improve international cooperation.

4. RECOVER & RESPONSIBLY RETURN STOLEN ASSETS

By conservative estimates, about US\$400 billion in corruption proceeds have been diverted from developing countries in the last decade. Despite recent efforts, only a fraction has been recovered and returned, while a good part of it lands in leading democratic economies. This is money needed to achieve the 2030 Agenda for Sustainable Development and consolidate democracies.

The barriers to asset recovery are well understood thanks largely to the work of the Stolen Asset Recovery Initiative (StAR) and other organisations working in the field of asset recovery.¹³ Many of those barriers could be addressed if countries – both origin and destination jurisdictions – fulfilled existing commitments, including those in the UN Convention against Corruption (UNCAC) and the UNGASS 2021 political declaration.

Countries have already committed, for example, to using all tools – including non-conviction-based asset confiscation – to confiscate and return the proceeds of corruption in the context of non-trial resolutions. However, few destination jurisdictions have adequate frameworks and practices with respect to those commitments. They also lack frameworks for proactive freezing of assets and the use of rebuttable presumptions as to the illicit origin of assets; for value-based confiscation of assets; for handling confiscated assets in cases where return is non-mandatory under the UNCAC; and for involving possible victims.

Both origin and destination jurisdictions also have yet to establish adequate frameworks for ensuring transparent, inclusive and accountable return of assets. There are also many obstacles when it comes to international cooperation – which networks and bodies like the International Anti-Corruption Coordination Centre (IACCC) were established to address – and in many countries the needed investment of resources for successful asset recovery is missing. In too many cases, existing commitments have not led to the return of assets.

In the UNGASS 2021 political declaration, countries committed to publishing data on the asset recovery process (e.g., volumes of assets seized, confiscated or returned, number and types of cases). By doing so, they would help create a better collective understanding of the status of asset recovery and the obstacles.

Specific recommendations

- + Ensure follow-up on asset recovery commitments in the UNGASS 2021 political declaration.
- + Expand the legal toolkit with rebuttable legal presumptions of the illicit origin of assets, value-based confiscation and mechanisms for rapid proactive freezing.
- + Ensure an adequate framework for handling confiscated proceeds of foreign corruption where return is non-mandatory under UNCAC. This should include prompt return, where possible, and otherwise placing confiscated amounts in special accounts or funds for uses benefiting the victim population. In no case should the funds count as development assistance.
- + Implement standards of transparent, inclusive and accountable return of assets building on the Global Forum on Asset Recovery Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases.
- + Expand the membership and capacity of the International Anti-Corruption Coordination Centre (IACCC) and increase the use of joint investigation bodies to improve international cooperation.
- + Increase resources for the time-intensive work of tracing, seizing and returning the proceeds of corruption to victims.
- + Designate an entity to collect and publish information about mutual legal assistance and asset recovery efforts.
- + Promptly and regularly publish data on mutual legal assistance (MLA) and asset recovery.

II. DETERRING & SANCTIONING CROSS-BORDER CORRUPTION

Democracies around the world are weakened when international businesses make payoffs to foreign public officials – often at the highest levels – in order to win state contracts, licenses and concessions or to influence legal and policy frameworks. To counter this all-too-common form of cross-border corruption, countries have committed under the OECD Anti-Bribery Convention and the UNCAC to criminalise and enforce against it. But many leading democratic economies are failing to follow through on these commitments, thereby giving a free pass to their companies which undermine foreign institutions.

Democracies are also undermined when multinational companies acquire influence over foreign governments through donations to political parties and candidates. The same is true when authoritarian governments use such donations to secure influence or when they interfere in foreign democratic institutions through hiring national agents to carry out lobbying. It is crucial for democracies to counter these practices.

Foreign corrupt practices are made easier by the failure to apply basic transparency standards for states and businesses. The lack of corporate tax transparency can help conceal corruption and undue influence in tax arrangements, with huge losses to public treasuries. Insufficient transparency standards in business sectors with high corruption risks, such as defence, natural resources and pharmaceuticals, can also enable the diversion of public funds and a lack of accountability that undermines democratic institutions.

Meanwhile, the public officials involved in international corruption – whether as the “demand” side of foreign bribery or diverting state assets across borders – too often get away scot-free at home thanks to a lack of effective prevention and

enforcement measures. Accountability can often only be achieved in foreign jurisdictions.

Countries should honour their commitment to enforce against companies engaging in corrupt practices abroad. They should also ban both multinationals and states from making donations to foreign political parties; regulate lobbying by agents of foreign states; introduce general and sectoral transparency and accountability measures. To counter impunity of corrupt foreign public officials, countries should require and exchange information on asset declarations of public officials; enforce against the demand side of foreign bribery; and impose sanctions where appropriate.

1. REIN IN FOREIGN BRIBERY & INCREASE COMPANY ACCOUNTABILITY

Transparency International's *Exporting corruption – Progress report 2020* found that only four of 47 countries assessed (including 43 of the 44 parties to the OECD Anti-Bribery Convention) were actively enforcing against foreign bribery, marking a decline from 2018.¹⁴ But in the UNGASS 2021 political declaration countries re-committed to “actively enforce” bans on foreign bribery; so did recently the G20. Much more action is needed to make good on these existing commitments.

The poor results in foreign bribery enforcement are due to weaknesses in countries' legal frameworks, enforcement systems and international cooperation. In some countries, for example, improvements are needed in laws governing the liability of companies – including of parent companies for the illicit activities of their subsidiaries and affiliated companies. Another problem area is frameworks for non-trial

resolutions, which often fail to ensure safeguards, transparency, deterrent sanctions and recognition of victims' rights.¹⁵

In many countries, enforcement authorities lack sufficient resources and training to handle complex cross-border cases. Enforcement is also hampered by obstacles to international cooperation that could be overcome through greater coordination.

These weaknesses and barriers must be addressed in order to stop the negative influence on foreign institutions of cross-border bribery by companies from leading democratic economies.

Democracies are also vulnerable to interference from authoritarian regimes via political or economic activities. Authoritarian governments, their state-owned or affiliated companies, and their political organisations may circumvent outdated political finance frameworks to make political donations using third parties and engage in lobbying through national agents. Counteracting these political risks demands careful consideration of potential negative effects on civic space.¹⁶

Tax transparency and public country-by-country (and project-by-project) reporting by multinationals can support efforts to counter democratic decline by helping to expose corrupt tax deals in countries around the world. It enables public scrutiny and increased accountability for the fiscal contributions of large business, by citizens, journalists, investors, analysts and parliamentarians. It also facilitates better tax outcomes in developing countries by assisting tax administrations that are often not equipped to engage in cumbersome data exchange systems.

The OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) adopted in 2013 and supplemented with guidance in 2015, includes the Action 13 minimum standard on country-by-country reporting.¹⁷ The EU has adopted a directive on public country-by-country reporting, albeit with weaknesses. In February 2021, the FACTI Panel report called for multinational entities to publish accounting and financial information on a country-by-country basis – a recommendation that Transparency International endorses.¹⁸

The defence and security sector is one of the least transparent and accountable sectors, making it prone to corruption. The consequences of defence sector corruption are dire: it is both a driver and a root cause of conflict,¹⁹ it stifles economic development and it wastes vast amounts of public funds. On the other hand, good defence governance

is closely connected to the stability and longevity of national democratic institutions. Transparency International's Government Defence Index reveals that in nearly two thirds of countries across all regions the corruption risk in the defence sector is at high, very high or critical levels.²⁰ Part of this risk is due to lack of transparency.

While some defence information may need to remain classified for legitimate national security reasons, the defence sector is often cloaked in unnecessary secrecy and evades oversight and accountability through use of 'national security' exemptions.²¹ Recent research has also highlighted excessive secrecy in connection with offsets or equivalent industrial cooperation agreements from both governments and defence companies, also leading to corruption risks.

The extractive industries are also particularly prone to corruption. The OECD estimated in 2014 that one in five cases of foreign bribery occurs in this sector.²² Greater transparency and civil society participation can help reduce the risk of corruption and bring much-needed accountability to the sector.

Some jurisdictions such as the EU²³ and Canada²⁴ have introduced laws requiring oil, gas and mining companies to disclose all payments made to governments on a project-by-project basis, in line with the Extractive Industries Transparency Initiative (EITI). Over 50 countries have committed to the EITI Standard, which sets several transparency requirements and establishes a multi-stakeholder framework for improving sector governance.²⁵ The transparency requirements include public disclosure of payments made by and revenues received from extractive companies on a project-by-project basis; public disclosure of the beneficial owners of extractive companies; and transparency of all extractive licences and contracts awarded. All countries playing a role in the extractive industries value chain – from production to refining and trading – should join EITI and implement the EITI Standard.

Within the health sector, the pharmaceuticals industry is particularly susceptible to corruption, including transnational corruption, with abundant examples globally of resulting negative health outcomes.²⁶ Historically, there is a near-complete lack of public information about contracts for the supply of pharmaceuticals to state institutions.²⁷ This makes public oversight impossible, leading to unsustainably high costs for life-saving medicines and, in the worst cases, the infiltration of

substandard or falsified medicines into the system.²⁸

The solution is systematic publication of supply contracts, with minimal redactions.²⁹ Another area where transparency is needed is in the relationships between the pharmaceutical industry and healthcare providers, to help reduce improper influence by the industry on research outcomes, clinical decisions and prescription of medicines, which in turn frequently results in adverse health effects.³⁰ Also, payments by pharma companies to medical experts sitting on public advisory bodies put in question their objectivity.³¹ There is thus an urgent need in many countries for robust legislation that ensures the public declaration of any financial relationship between pharmaceutical companies and medical professionals.

Specific recommendations

Foreign bribery enforcement

- + Actively enforce against foreign bribery.
- + Require multinational companies to put in place adequate processes and procedures for preventing and detecting foreign bribery, including in their subsidiaries and controlled entities, as well as implementing risk-based integrity due diligence procedures with respect to companies along their supply chain. This should be accompanied by parent-company liability for failure to prevent foreign bribery in subsidiaries and controlled entities.
- + Establish and implement an adequate framework for non-trial resolutions that includes safeguards, transparency requirements, recognition of victims' rights and guidelines for deterrent sanctions.
- + Increase funding for staffing and for tailored trainings of specific enforcement officials for investigation and prosecution of foreign bribery.
- + Expand the IACCC's membership and capacity, and increase the use of joint investigation bodies and coordination mechanisms in foreign bribery enforcement.

Foreign political donations and lobbying

- + Ban multinational companies and subsidiaries of foreign parent companies from making financial or in-kind contributions to political parties, candidates and third parties acting in support or in coordination with them.
- + Require registration for individuals employed by or acting on behalf of governments, state-owned or affiliated companies and political organisations of a foreign country to conduct lobbying, sponsorship and other communication with decisionmakers.
- + Establish post-employment incompatibilities for political officeholders to act on behalf of or receive remuneration from foreign governments, foreign state-owned companies and political parties beyond their term in office.
- + Ensure that the definition of agents and activities does not negatively impact civil society and media freedoms.

Country-by-country reporting

- + Require multinational entities to publish accounting and financial information on a country-by-country basis.

Sectoral transparency

- + Adopt and publicise clear rules for classifying and withholding national security information, including time limitations for such classification and guidance on the application of tests balancing the public interest against the harm of releasing information. Prohibit economic offsets in the context of defence procurement.
- + Join the Extractive Industry Transparency Initiative (EITI) and disclose information about (i) beneficial owners of extractive companies holding or applying for natural resource licences, (ii) full texts of contracts and licences awarded, and (iii) all payments received from companies on a project-by-project basis.³²
- + Disclose government contracts for the supply of pharmaceuticals with information of critical public interest unredacted and legislate for the disclosure of payments to health service providers by pharmaceutical companies.

2. INCREASE DETERRENCE & SANCTIONING OF HIGH-LEVEL PUBLIC OFFICIALS

Corruption involving high-level officials is one of the most serious threats to democracy, especially when it is large-scale. Too often, officials benefit from impunity in the absence of effective prevention and enforcement measures.

While most countries have adopted laws requiring high-level public officials to declare their assets and interests, the implementation of those laws remains largely insufficient and ineffective. Most countries have yet to introduce well-designed and well-managed systems of asset declarations that foster integrity in public office and help detect illicit wealth of public officials. Many still need to invest in digitised disclosure systems with globally interoperable information. These systems can be a powerful tool for countries to exchange information and counter transnational corruption – especially when combined with full beneficial ownership transparency and country adherence to the International Treaty on Exchange of Data for the Verification of Asset Declarations.³³

Accountability of high-level officials also depends on a well-functioning justice system. However, in many cases, justice institutions in officials' home jurisdictions are unwilling or unable to undertake enforcement, often disabled by the very officials who should be held to account. Where this is the case, some accountability can be achieved in foreign jurisdictions. This may take the form of criminal enforcement against foreign officials for money laundering or through non-conviction-based confiscation proceedings.³⁴ Another potential avenue is enforcement in other jurisdictions against foreign public officials for "passive" foreign bribery. The Council of Europe Criminal Law Convention on Corruption requires criminalisation of passive foreign bribery in its 48 state parties, and the UNCAC foresees this in an optional provision. Most countries have either not introduced the necessary legislation or have not followed up with enforcement.³⁵

Yet another avenue for overcoming impunity of high-level officials is global anti-corruption and human rights sanction regimes, most effective with enhanced harmonisation and synchronisation of targeted sanctions against those officials. The US Global Magnitsky Act and similar legislation under development in the EU and the UK provide examples of such regimes.

Specific recommendations

Asset declarations

- + Introduce digital reporting, public disclosure and automated exchange systems for assets and interests of PEPs and ensure that relevant institutions have the mandate, capacity and will to conduct verifications and sanction non-compliance. The technology and data standard should be interoperable across countries and across other datasets concerning resource allocation decisions (e.g., public procurement), political engagement (e.g., campaign finance).
- + Commit to becoming a party to the International Treaty on Exchange of Data for the Verification of Asset Declarations.
- + Arrange for technical support for asset declaration systems to be provided by experts, including from civil society and multilateral bodies.

Demand side of foreign bribery

- + Introduce and implement legislation to criminalise the demand side of foreign bribery.
- + Ensure adequate resources for training appropriate personnel, and for investigation and prosecution of foreign public officials.

Sanctions regimes

- + Issue well-founded, harmonised and synchronised designations and targeted sanctions – which can include travel and visa bans, asset freezes – on high-level public officials who engage in subverting democratic processes, human rights abuses and corruption. Designations and sanctions must extend to relatives and networks of individuals and companies, foreign or domestic, which act as their accessories or enablers.
- + To reduce the risk that bilateral interests will obscure the application of sanctions that are likely to have an impact, mechanisms for civil society and parliamentary oversight should be established or, where they already exist, strengthened.
- + Establish mechanisms to ensure coordination in the application of targeted sanctions.

III. SUPPORTING ANTI-CORRUPTION FIGHTERS

Independent journalists, activists, whistleblowers and civil society organisations investigating, exposing and challenging corruption are key to driving change and accountability, especially in countries facing democratic decline or suffering from authoritarian kleptocracy. Support to them is crucial.

Investigative journalists and civil society groups carrying out investigations into allegations of corruption and those using the right to access public information are particularly exposed to intimidation, threats, digital attacks and state-sanctioned violence.

In some countries, regulatory restrictions are used to exercise government control over dissenting voices. Such restrictions may relate to the establishment and functioning of non-governmental organisations, public order, libel, national security or cybersecurity. Additionally, several countries have imposed restrictions on civil society's ability to access international funding, in violation of international standards on the right to freedom of association. At the same time, anti-corruption civil society organisations are increasingly subjected to retaliatory audits or tax investigations after appearing to criticise the government, or face judicial harassment, including through strategic lawsuits against public participation. Digital safety threats and illegal surveillance remain a major concern.

Anti-corruption activists and investigators play key roles in uncovering cross-border corruption. In the 2019 Oslo Statement on Corruption involving Vast Quantities of Assets, a global anti-corruption expert group recommended to the UNCAC States parties to consider funding for "anti-corruption practitioners in difficult circumstances and similar initiatives to protect anti-corruption fighters, such as investigative journalists and other activists." Leading

democracies should increase support to civic activists and reform-minded officials, both at the Summit and beyond.

Whistleblowing is one of the most effective ways to detect and prevent corruption and other malpractice. Whistleblowers' disclosures have exposed wrongdoing and fraud, helped save millions in public funds, avoid disasters for health, the environment. Whistleblowers' important role in safeguarding the common good is repeatedly proved by the scandals they uncover, such as industry-scale tax avoidance (e.g., LuxLeaks and Panama Papers disclosures) and money laundering (e.g., Danske Bank scandal). Recognising this, the EU has now adopted a comprehensive directive on whistleblower protection.³⁶

Specific recommendations

- + Invest in programmes combining investigative journalism with civil society advocacy for systemic change.
- + Establish specific funds to support anti-corruption practitioners such as whistleblowers, investigative journalists and other activists.
- + Provide support to anti-corruption fighters through learning exchanges, improvements to security protocols and use of diplomatic leverage to deter threats against them.
- + Develop a framework for public interest organisations to bring collective compensation claims on behalf of victims of corruption.
- + Provide credible and well-functioning corruption reporting mechanisms that allow citizens and civil society organisations to report corruption safely and confidentially.

- + Ensure that legislation regulating non-profit organisations does not restrict the capacity of civil society human rights defenders (HRDs) to operate. In accordance with the rights enshrined in the International Covenant on Civil and Political Rights (ICCPR), the UN Declaration on Human Rights Defenders and many national constitutions, and as implied in UNCAC Article 13 on public participation, governments should ensure that – *de jure* and *de facto* – civil society organisations have the operational and physical freedom to carry out their work, including public advocacy and awareness-raising, initiating litigation and exposing allegations of corruption.
- + Ensure that relevant national policies, such as national anti-corruption action plans, include provisions to support and protect civil society actors working on corruption and to prevent retaliation. States should ensure that institutions mandated to fight corruption, such as independent anti-corruption agencies, are also mandated and resourced to provide support and protection to anti-corruption activists in case of retaliation.
- + Adopt measures providing protection against strategic lawsuits against public participation (SLAPPs). These should include provision for sanctions against claimants bringing abusive lawsuits and procedural safeguards for SLAPP victims³⁷ as well as other types of preventive measures.
- + Prioritise the passage and implementation of comprehensive whistleblower protection laws, in line with international standards and best practice, and ensure that whistleblower protection legislation is effectively implemented and enforced.

ENDNOTES

¹ Preamble of the United Nations Convention against Corruption (UNCAC), adopted by the General Assembly resolution 58/4 of 31 October 2003

² The opening words of the UN Charter, “We the Peoples”, reflect the fundamental principle of democracy: that the will of the people is the source of legitimacy of sovereign states and, therefore, of the United Nations as a whole.
<https://www.un.org/en/global-issues/democracy>

³ See, for example, *UN Common Position to Address Global Corruption: Towards UNGASS* (August 2020)
https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UN_Common_Position_to_Address_Global_Corruption_Towards_UNGASS2021.pdf; Lima Statement on Corruption involving Vast Quantities of Assets (2018)
https://www.unodc.org/documents/corruption/LimaEGM2018/Outcome_Statement_Lima_EGM_2018.pdf

⁴ Transparency International, 29 May 2020. *Will the legacy of COVID-19 include increased authoritarianism?* Available at:
<https://www.transparency.org/en/news/will-the-legacy-of-covid-19-include-increased-authoritarianism>

⁵ Transparency International, 7 November 2021. *Membership resolves to counter democratic backsliding, declares anti-corruption incompatible with human rights abuses.* Available at: <https://www.transparency.org/en/press/annual-membership-meeting-2021-democracy-rule-of-law-human-rights>

⁶ The IACC Monitor’s methodology builds on Transparency International’s experience gained in developing earlier methodologies for monitoring commitments made at the London Summit in 2016 and at the 8th Summit of the Americas in 2018. See: <https://iaccmonitor.org/about/methodology/>

⁷ The list of FATF members as well as countries committed to the FATF recommendations through FATF-style regional bodies is available at: www.fatf-gafi.org/about/membersandobservers/

⁸ Financial Action Task Force, *Consolidated Assessment Ratings*. Available at: <https://www.fatf-gafi.org/publications/mutualevaluations/documents/assessment-ratings.html>

⁹ Maíra Martini, *Who is Behind the Wheel? Fixing the global standards on company ownership*. Transparency International (2019). Available at: www.transparency.org/en/publications/who-is-behind-the-wheel-fixing-the-global-standards-on-company-ownership

¹⁰ Transparency International, 6 August 2021. *What the global standard on company ownership should look like: Five key fixes.*
www.transparency.org/en/news/fatf-consultation-global-standard-company-beneficial-ownership-transparency-key-fixes

¹¹ More information on Beneficial Ownership Leadership Group of the Open Government Partnership is available at:
<https://www.opengovpartnership.org/beneficial-ownership-leadership-group/>

¹² UNGASS against Corruption 2021 political declaration, *Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation*. Available at:
<https://undocs.org/A/RES/S-32/1>

¹³ See, for example, *Barriers to asset recovery: An analysis of the key barriers and recommendations for action* by the The World Bank (2011): <https://star.worldbank.org/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>

¹⁴ Gillian Dell, *Exporting corruption – Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention*. Transparency International (2020). Available at: <https://www.transparency.org/en/projects/exporting-corruption>;
<https://www.transparency.org/en/publications/exporting-corruption-2020>¹⁵ See, for example, the report of the Report of the UN High Level Panel on International Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) (February 2021): <https://www.factipanel.org/explore-the-report>

¹⁶ Australia’s Foreign Influence Transparency Scheme, Taiwan’s Anti-Infiltration Act and the US Foreign Agents Registration Act are some examples of legislation designed to prevent foreign agents from influencing internal political affairs.

¹⁷ There are now 140 participating countries, and the OECD has conducted annual peer reviews since 2017. See, for example, OECD (2020), *Country-by-Country Reporting, Compilation of Peer Review Reports on BEPS Action 13* (Phase 3)
<https://www.oecd.org/tax/beps/country-by-country-reporting-Compilation-of-peer-review-reports-phase-3-fa6d31d7-en.htm>

¹⁸ UN FACTI Panel Report (February 2021). Available at: <https://www.factipanel.org/explore-the-report>

- ¹⁹ Transparency International Defence & Security (2017). *The Fifth Column: Understanding the Relationship Between Corruption and Conflict*. Available at: <https://ti-defence.org/publications/the-fifth-column/>
- ²⁰ These are the upper three of six categories. The other three categories are “very low”, “low” and “moderate”. See: <https://ti-defence.org/gdi/>²¹ Transparency International UK, 28 September 2021. *Access to information in a world in crisis: How opacity in the defence sector makes countries more vulnerable to corruption*. Available at: <https://www.transparency.org.uk/access-freedom-information-defence-security-sector-corruption-right-to-know-day-2021>
- ²² OECD (2014). *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*. Available at: <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>
- ²³ European Commission. *Public country-by-country reporting*. Available at: https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en
- ²⁴ Government of Canada. *Extractive Sector Transparency Measures Act (ESTMA)*. Available at: <https://www.nrcan.gc.ca/our-natural-resources/minerals-mining/extractive-sector-transparency-measures-act/18180>
- ²⁵ EITI Standard 2019. Available at: <https://eiti.org/document/eiti-standard-2019>
- ²⁶ OECD (2020) *Statement by the OECD Working Group on Bribery*. Available at: <https://www.oecd.org/corruption/anti-bribery/the-global-response-to-the-coronavirus-pandemic-must-not-be-undermined-by-bribery.htm>
- ²⁷ Transparency International Global Health (2017). *Making the case for open contracting in healthcare procurement*. Available at: <https://ti-health.org/content/making-case-open-contracting/>
- ²⁸ Transparency International Global Health (2016). *Corruption in the pharmaceutical sector*. Available at: <http://www.transparency.org.uk/publications/corruption-in-the-pharmaceutical-sector/>
- ²⁹ Center for Global Development (2019). *The Principles on Commercial Transparency in Public Contracts*. Available at: <https://www.cgdev.org/publication/principles-commercial-transparency-public-contracts>
- ³⁰ See *Association between gifts from pharmaceutical companies to French general practitioners and their drug prescribing patterns in 2016: retrospective study using the French Transparency in Healthcare and National Health Data System databases*. Available at: <https://www.bmj.com/content/367/bmj.l6015>
- ³¹ See Rishad Khan, Michael A. Scaffidi, Amir Rumman, et al, *Prevalence of Financial Conflicts of Interest Among Authors of Clinical Guidelines Related to High-Revenue Medications*. JAMA Intern Med. (2018). Available at: <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2708193>
- ³² For more detailed recommendations, see: <https://transparency.org.au/democratizing-the-benefits-of-natural-resources/>
- ³³ The treaty aims to prevent and combat corruption by providing for direct administrative exchange of information concerning asset declarations between the signatories. See: <https://archive.rai-see.org/regional-data-exchange-on-asset-disclosure-and-conflict-of-interest>
- ³⁴ See, for example, the Obiang Biens Mal Acquis case: <https://www.transparency.org/en/press/teodorin-obiang-conviction-asset-recovery-equatorial-guinea-france>
- ³⁵ There have been a number of examples of enforcement against foreign public officials in the US, such as in the Mozambique Tuna Bonds case. See: <https://www.justice.gov/opa/pr/mozambique-s-former-finance-minister-indicted-alongside-other-former-mozambican-officials>
- ³⁶ Transparency International, 12 March 2019. *Historic day for whistleblowers as eu agrees pathbreaking legislation*. Available at: <https://www.transparency.org/en/press/historic-day-for-whistleblowers-as-eu-agrees-pathbreaking-legislation>
- ³⁷ For example, special motions to contest the admissibility of certain claims and/or rules shifting the burden to the plaintiff to demonstrate a reasonable probability of succeeding in such claims.

