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## **The International Anti-Corruption Court (IACC) Frequently Asked Questions**

### **Why is an IACC necessary?**

Grand corruption – the abuse of public office for private gain by a nation's leaders (kleptocrats) – is a major barrier to meeting the UN Sustainable Development Goals, responding effectively to pandemics, fighting climate change and connected ecological crises, diminishing the refugee crises, promoting and maintaining democracy and human rights, establishing international peace and security, and securing a more just, rules-based global order. Therefore, it is not a victimless crime. Rather, it has devastating human and ecological consequences.

Grand corruption does not persist due to a lack of criminal laws intended to prevent and punish corruption. According to the UN Secretary-General, there are 191 parties to the United Nations Convention against Corruption (UNCAC). All states parties are required by the Convention to have laws criminalizing various forms of corruption. However, corrupt heads of state and government, and many other corrupt senior government officials, have impunity in their own countries because they control the police, prosecutors, and courts.

There is now no international institution to hold kleptocrats accountable for their crimes of corruption when the countries that they rule are unwilling or unable to do so. Among others, officials in countries where national administrations have been elected with a strong mandate and desire to address systemic corruption, but lack the capacity to do so, have expressed interest in the IACC. The Court would play a key role in filling the crucial enforcement gap in the international framework for combating grand corruption.

### **What is the IACC?**

Operating on the principle of “complementarity,” the IACC would be a court of last resort. It would hold kleptocrats accountable only when national governments are unable or unwilling to do so. Any country that joins the IACC will be deciding to share some of its authority to prosecute kleptocrats, in limited circumstances, to give integrity to the domestic laws it is obligated to enact as a party to the UNCAC. The Convention requires the criminalization of bribery of public officials, the embezzlement and misappropriation of public funds, money laundering, and obstruction of justice. The Court will be designed to be efficient and effective, based on lessons learned from the experiences of existing international courts, including the International Criminal Court, and other permanent and ad hoc international tribunals.

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### **What role would the IACC play?**

The IACC would:

- Provide a politically neutral forum to fairly and effectively prosecute and punish kleptocrats and their transnational networks of professional enablers – including lawyers, bankers, accountants, real estate agents, and other service providers.
- Deter future grand corruption by establishing a credible threat of prosecution where such a threat does not currently exist for almost all kleptocrats and their co-conspirators.
- Recover, repatriate and/or repurpose stolen assets for the benefit of the victims of grand corruption through orders of restitution or disgorgement, and possibly civil suits.
- Make its expert investigators, prosecutors, and judges available to offer valuable advice and assistance to their counterparts in countries striving to improve their anti-corruption capacity.

### **Who could be prosecuted at the IACC?**

The Court would have the authority to prosecute high-level officials, including heads of state and government, anyone they appoint, and other public officials, as well as anyone who knowingly and intentionally assists one or more of them in the commission of a crime within the jurisdiction of the Court. To fall within the jurisdiction of the Court, some or all elements of the crime would have to be committed either by nationals of a member state or within the territory of a member state.

As the IACC would be an international court, consistent with established international law recognized by the International Court of Justice and other courts, public officials would not have immunity from prosecution while in office or subsequently.

### **What law will the IACC apply?**

The IACC would have the authority to enforce the laws required by the UNCAC, particularly those criminalizing bribery, embezzlement of public funds, misappropriation of public property, money laundering, and obstruction of justice. This could be done by giving the IACC jurisdiction, with the consent of the state party concerned, to enforce existing domestic laws, a uniform version of them included in the treaty creating the court, or both.

In any event, the IACC would not require the creation of any new norms. Rather, it would provide a forum for the enforcement of existing obligations that are codified in the criminal laws of virtually every country but not enforced against kleptocrats and their collaborators in the countries that the kleptocrats rule.

### **Why can't the existing International Criminal Court (ICC) address grand corruption?**

The ICC Statute does not cover crimes of corruption. Amending it would require a two-thirds vote by its 123 member states and then ratification by seven-eighths of them to come into effect. Some of the ICC's 123 member states are ruled by kleptocrats who would oppose such an amendment. Expanding the jurisdiction of the ICC to include grand corruption is, therefore, unlikely to be politically feasible.

Moreover, in view of the global demands on the ICC's limited resources, including grand corruption in its mandate would, as a practical matter, prove to be inadequate. Required to prioritize potential cases, prosecutors would inevitably feel compelled to focus on genocide, war crimes, and crimes against humanity, rather than on grand corruption, despite its serious consequences.

### **How will the IACC be different from the ICC?**

The design of the IACC will benefit from the experience of other international criminal courts. As a result of its more limited remit, the IACC will be a sleeker and more cost-effective court.

Unlike the crimes tried in the ICC, crimes of bribery of public officials, embezzlement of public funds, misappropriation of public property, money laundering, and other corruption offenses that would be tried in the IACC occur in countries throughout the world. The individuals who would be prosecuted in the IACC, namely kleptocrats and their professional enablers, are part of transnational criminal networks that span the Global North and South. The global nature of the problem also means that there are many investigators and prosecutors around the world who already have considerable expertise and experience targeting these offenses. The IACC would be a central hub for these experts to work together across jurisdictions to ensure effective prosecutions.

### **Why are current national laws insufficient to hold kleptocrats accountable?**

Some states that are party to the UNCAC are governed by kleptocrats who enjoy impunity in the countries that they rule because they control the police, prosecutors, and courts, which are often also corrupt themselves or are subject to grave threats, retaliation, and intimidation if they attempt to apply the law impartially. Those kleptocrats will not permit honest, effective investigation of themselves or their criminal collaborators. There are other countries in which there are leaders or other officials who are willing to hold kleptocrats accountable, but do not have the capacity to conduct complex criminal investigations or try complex cases, particularly against wealthy, powerful people.

Grand corruption is frequently a transnational crime. Funds and assets cross borders, often through complex networks of anonymous shell companies and other offshore vehicles that span multiple jurisdictions. Domestic mechanisms may be able to prosecute the corrupt act committed within their national jurisdictions, but they are often unable to prosecute the entire corrupt scheme. An IACC would have the ability to effectively prosecute cases spanning multiple jurisdictions.

Domestic institutions will remain an essential part of the international anti-corruption framework. The IACC would provide countries an incentive to strengthen domestic anti-corruption efforts. In addition, the IACC's expert investigators, prosecutors, and judges would be valuable resources that their national counterparts striving to improve their capacity could call on for assistance and advice.

### **States run by kleptocrats are highly unlikely to allow their countries to join the IACC. Won't that hobble the Court and frustrate its intended purpose?**

Kleptocrats are unlikely to permit the countries that they rule to join a court that would be a threat to prosecute them. However, in democratizing countries, public pressure and/or changes in

leadership should lead certain governments to join the IACC. In such transitional countries, the IACC would reinforce democratic norms at the expense of kleptocrats who attempt to retain and regain power over the state.

Furthermore, kleptocrats regularly launder the proceeds of their criminal activity through major financial centers, invest them in other foreign countries that are attractive destinations for dirty money, and conspire with enablers in foreign countries to do both. The Panama Papers, Pandora Papers, and other major works of investigative journalism have revealed that such countries are polluted by massive illicit financial flows. The 44 member states of the OECD Anti-Bribery Convention have laws that allow them to hold their nationals and companies registered in their territory accountable for providing bribes to foreign officials, but they have no jurisdiction to hold the corrupt foreign officials accountable for demanding bribes. Therefore, they should be predisposed to join an IACC that increases global enforcement of criminal laws against corruption that they have already codified within their own jurisdiction.

The IACC would have jurisdiction over crimes committed by nationals of an IACC member state, and crimes committed in the territory of an IACC member state. Accordingly, the IACC could be created and quickly become effective if it consisted initially of even a relatively small number of representative states, as long as they include some financial centers used by kleptocrats to launder their illicit funds and some other attractive destinations in which kleptocrats hide and spend the proceeds of grand corruption. Therefore, the IACC has significant potential to prosecute, punish, and recover illicit assets from kleptocrats who rule countries that have not joined the Court.

### **Is the establishment of the IACC politically feasible?**

The goal is to attract as many member states as possible, but the IACC would not need countries ruled by kleptocrats to join to be effective. Grand corruption is transnational by nature and the IACC would have jurisdiction to prosecute nationals of member states and foreign nationals who commit all or part of a crime within the territory of a member state. The IACC could, therefore, be effective if initially established by a relatively small number of founding member states so long as they include key financial centers and other countries that kleptocrats use to launder and hide the proceeds of their criminal activity.

Canada, Ecuador, Moldova, the Netherlands and Nigeria have made commitments to work with international partners to create the IACC and the European Parliament has passed a resolution calling for creation of the Court. In May 2024, David Lammy, who is now the United Kingdom's Foreign Secretary, said in a major speech on corruption that the Labour party will "use Britain's diplomatic leverage to push for the creation of an International Anti-Corruption Court."

Furthermore, the head of the interim government in Bangladesh and the President of Timor-Leste have signed the Declaration calling for the creation of the Court. Many more governments, particularly in Africa, are actively interested in the progressing development of the proposal.

### **Would a new international court be too expensive?**

Corruption is estimated to cost trillions of dollars annually, and grand corruption contributes greatly to that cost. For example, [Global Financial Integrity found](#) that from 2000-2009, developing countries lost \$8.44 trillion to illicit financial flows – that is 10 times more than the amount of foreign aid they received over the same period. Their [2021 report](#), covering the most

recent available data, indicates that the massive scale of the problem is persistent. The IACC would deter and reduce grand corruption, saving many countries enormous sums of money. In addition, the IACC would recover and either repatriate or repurpose stolen assets for the benefit of the victims of grand corruption.

Of course, there is a cost to operate any multilateral institution. The ICC cost approximately \$168 million in 2021. However, the IACC would be designed to be less costly than the ICC. Its jurisdiction would be more limited, and its procedures less complex and protracted. The IACC would not, for example, require pre-trial chambers. The number of judges on active and remunerated service could be made contingent on the caseload of the court. Fines imposed by the IACC could also be used to defray the costs of its operation. Therefore, an IACC would be cost-effective. In any event, the cost of court operations would be minor compared with the estimated trillions of dollars that are lost annually to grand corruption.

### **Would the IACC distract from other anti-corruption solutions?**

Addressing the complex, global problem of grand corruption requires a wide range of measures. For example, the systematic creation of publicly accessible beneficial ownership registries in every country, which would make it harder for kleptocrats and their money launderers to hide behind shell companies, is badly needed to ensure transparency. Making public procurement standards and practices transparent and inclusive of civil society can also help to prevent some forms of grand corruption.

However, transparency is not an end in itself. If it is not accompanied by greater accountability, transparency can result in public perception that nothing can be done to address impunity for grand corruption. In some countries, enhanced accountability can be achieved through investments in strengthening the capacity of national anti-corruption institutions and/or establishing hybrid national-international institutions such as the now-shuttered UN-backed Commission Against Impunity in Guatemala (CICIG). However, national and hybrid institutions can be dismantled when kleptocrats regain power, as happened in Guatemala where CICIG was abolished when it began investigations of the President's inner circle. As a court of last resort, the IACC would be a key addition to the existing global anti-corruption framework and could represent a tipping point leading the international system to effectively combat grand corruption in a range of ways. Campaigning for the creation of the IACC brings greater attention to the problem of grand corruption and increases awareness of additional complementary anti-corruption innovations. The Court's existence would encourage the further development of national-level institutions and bring hope to the victims of grand corruption that justice can be done.

### **Ineffective international cooperation often hampers existing transnational anti-corruption investigations and asset recovery efforts. Would the IACC be similarly impeded?**

Due to the transnational nature of crimes of grand corruption, which involve money-laundering structures that frequently cross numerous borders, international cooperation is essential to existing investigations by prosecutors at the national level and will be equally important for a well-functioning IACC. Currently, prosecutors in some countries are able to communicate with law enforcement in other countries to identify evidence that can help them prosecute cases in their national courts. However, for evidence to be admissible, the requesting countries must submit

Mutual Legal Assistance requests through their embassies. This process is usually slow and can be impaired by the low quality of submitted requests.

The creation of an IACC is an opportunity to improve the existing Mutual Legal Assistance system. The expert investigators and prosecutors of the IACC would assist their national counterparts in ensuring that Mutual Legal Assistance requests are well drafted and likely to result in more timely evidence sharing. This may be particularly helpful for transitional countries where new leadership wishes to fight corruption, but where state anti-corruption bodies may lack the expertise to submit effective requests for international cooperation.

Because the IACC will rely on international cooperation, it will prioritize creating and facilitating effective channels of international cooperation between member states, as well as with countries that may not initially join the Court. These channels will be important for both gathering evidence, and for the asset recovery and return that will result from successful prosecutions. Ultimately, the sharing of evidence across jurisdictions depends on implicit trust, which the IACC will need to nurture with national partners. While international cooperation is a challenge, the Odebrecht and Petrobras investigations that toppled presidents and other politicians across Latin America demonstrate that when cooperation is prioritized, accountability is possible.