

Monday, 18 November 2013

Dear Colleagues,

### **Prosecuting Grand Corruption as an International Crime**

At our most recent Global Conference, held in Manila this past February, our membership unanimously mandated GOPAC to seek to establish “Grand Corruption” as a crime at international law, to enable international institutions and alliances to apprehend, prosecute, judge, and sentence the guilty.

GOPAC’s parliamentarians clearly felt that there are some forms of corruption so grave, whose effects on human life, human rights, and human welfare are so catastrophic, that they should shock the conscience of the international community and mobilise the will of nations to act across borders.

Since February, GOPAC has been working with our chapters and with our international partners to develop options to fulfil the mandate given to us by our members. I am pleased to present you with the attached discussion paper laying out those options.

Each potential path forward has its advantages and disadvantages, and each strikes a different balance between the ideal and the possible. GOPAC will hold an in-depth discussion of these options at our Forum of Parliamentarians, to be held on Wednesday 28 November, at the Conference of States Parties (CoSP) to the UN Convention Against Corruption, in Panama City.

Our resources on the Forum of Parliamentarians are available online, at <http://gop.ac/18p8L97>

If you will be attending the CoSP, we would encourage you to attend our Forum of Parliamentarians and to participate in the debate.

If you are not able to be present in Panama City, you can still contribute your views, by sending a written submission to the GOPAC Global Secretariat by Monday 25 November, to [fp2013@gopacnetwork.org](mailto:fp2013@gopacnetwork.org) . We will compile our members’ and chapters’ submissions, and ensure that they inform the discussion.

Too often, the perpetrators of Grand Corruption are able to use their illicit wealth and power to distort and evade domestic justice. As a result, the worst perpetrators of corruption can be the least likely to be called to account. Through this initiative, we have a chance to stand together and stand against this injustice. I hope you will help us seize the opportunity.

Yours faithfully,



Akaash Maharaj  
*Executive Director*

/Encl.



GLOBAL ORGANIZATION OF PARLIAMENTARIANS AGAINST CORRUPTION  
ORGANISATION MONDIALE DES PARLEMENTAIRES CONTRE LA CORRUPTION  
ORGANIZACIÓN MUNDIAL DE PARLAMENTARIOS CONTRA LA CORRUPCIÓN  
المنظمة العالمية للبرلمانيين ضد الفساد

# Prosecuting Grand Corruption as an International Crime

Discussion Paper

*01 November 2013*

## What are the issues?

- The effects of *grand corruption* are so grave that combatting it must engage the will of the international community.
- National systems are often incapable of bringing the worst crimes of *grand corruption* to justice; when this occurs, the international community has an obligation to act.
- GOPAC's worldwide alliance of parliamentarians has mandated the organization to find ways to make *grand corruption* judiciable on an international basis.

Every year, corruption causes human suffering on a scale that should shock the conscience of the international community.

The World Bank estimates that more than \$1 trillion is paid in bribes every year.<sup>1</sup> The UN Office on Drugs and Crime (UNODC) estimates that multinational criminality moves \$2.1 trillion per year across borders.<sup>2</sup> According to Global Financial Integrity, over the past decade India, Malaysia, and Indonesia alone have lost a collective \$517 billion through illicit financial outflows.<sup>3</sup> Corruption not only decreases economic efficiency, but also undermines fundamental human rights.<sup>4</sup> The public wealth lost to corruption could eradicate extreme hunger and poverty across the world.

While most countries have established a legal framework to fight corruption, they often struggle to enforce their laws in practice. Far too frequently, perpetrators are able to vitiate their national judicial systems and shield themselves from the rule of law, in direct proportion to the scale of their illicit wealth and power. As a result, the worst perpetrators of corruption can be the least likely to face national justice.<sup>5</sup>

In response, at the Fifth Global Conference of Parliamentarians Against Corruption, held in Manila, Philippines, February 2013, GOPAC's worldwide network of parliamentarians unanimously resolved to seek the widespread adoption of international legal instruments and strategies, to apprehend, prosecute, judge, and sentence perpetrators of *grand corruption*—the gravest forms of corruption, across borders. Towards this end, GOPAC's members have also mandated the organisation to explore how *grand corruption* could be deemed a crime under international law, and whether *grand corruption* should be considered a crime against humanity.

## What does the UN Convention against Corruption say about prosecuting corruption internationally?

- The UN Convention against Corruption (UNCAC) clearly recognises the need for corruption to be addressed on an international level, and provides a broad endorsement of the creation of innovative mechanisms between states, on an as-needed basis.

The Preamble of the UNCAC<sup>6</sup> recognises that corruption is “no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and

<sup>1</sup> The World Bank. [The Cost of Corruption](#). (2004).

<sup>2</sup> The UN Office on Drugs and Crime. [Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes](#). (2011).

<sup>3</sup> Global Integrity. [Global Integrity Report: 2011 – Executive Summary](#). (2011).

<sup>4</sup> International Council on Human Rights Policy and Transparency International. [Corruption and Human Rights: Making the Connection](#). Versoix: ATAR Roto Press SA, (2009).

<sup>5</sup> Friedrichs, David O. *Trusted Criminals: White Collar Crime in Contemporary Society*. 3<sup>rd</sup> ed., (2007), pages 203-205.

<sup>6</sup> UN General Assembly, [United Nations Convention against Corruption : resolution / adopted by the General Assembly](#), 31 October 2003, A/RES/54/4.

control it essential.” Several articles in the UNCAC emphasise the importance of promoting, facilitating, and supporting international cooperation to effectively combat corruption.

Article 62(1) requires States Parties to co-operate internationally to implement the UNCAC, taking into account the negative effects of corruption on sustainable development and on society. The UNCAC goes further in Article 63(7), authorising the Conference of States Parties to establish new mechanisms and bodies to assist in such implementation of the Convention. The UNCAC itself is a basis for international cooperation in extradition (Article 44), mutual legal assistance between states (Article 46), transfer of criminal proceedings between states (Article 47), and law enforcement (Article 48). Finally, Article 49 recommends joint investigations between States Parties for corruption offences involving multiple jurisdictions, further encouraging an international approach against corruption.

Overall, the UNCAC strongly endorses States Parties to cooperate in the prosecution of corruption across borders.<sup>7</sup>

### What is *grand corruption*?

- The development of a defensible and widely accepted definition of the term “grand corruption” is a prerequisite to deeming *grand corruption* an international crime.

Broadly speaking, *grand corruption* is more than just ordinary corruption on a larger scale. It differs from ordinary corruption in both the scale of its effects and the nature of its operation.

*Grand corruption* takes place at high levels of the political system, when “politicians and state agents entitled to make and enforce the laws in the name of the people, are misusing this authority to sustain their power, status and wealth.”<sup>8</sup> Essentially, *grand corruption* not only breaks national laws, but more seriously still, it distorts and undermines the rule of law itself. *Grand corruption* is systemic, becoming an integrated and essential aspect of the very economic, social, and political systems that should combat it.<sup>9</sup>

To take a biological analogy, if ordinary corruption is a disease that afflicts the body of the state, then *grand corruption* is a cancer that turns the very tissues of the state against itself.

A rigorous definition of *grand corruption* would address the following questions:

1. What categories of people would be capable of *grand corruption*? High-level public officials, powerful businesspeople, heads of organised crime syndicates, others?
2. At what point are public officials, businesspeople, and other individuals considered “high-level”?
3. How much illicit money, improper influence, or unjust advantage would have to be in question before a crime reached the threshold of *grand corruption*?
4. How much physical or mental damage, how serious the effect on human dignity, how many people would have to be harmed, before a crime reached the threshold of *grand corruption*?
5. How grave, widespread, or systematic would violations of human rights need to be before a crime reached the threshold of *grand corruption*?

<sup>7</sup> See ANNEX for the aforementioned UNCAC Articles in full.

<sup>8</sup> U4: The Anti-Corruption Resource Centre. [The Basics of Anti-Corruption](#). (2013).

<sup>9</sup> *Ibid.*

## How could the international community best pursue *grand corruption*?

- The international community could pursue *grand corruption* through a combination of streams, such as national, regional or international courts, or the creation of entirely new mechanisms altogether. Each has approach has its strengths and weaknesses.

### Option (1): National Courts with Universal Jurisdiction

The doctrine of universality asserts that certain crimes are so egregious that they are an affront to all humanity and are therefore prosecutable by any state.

Under this doctrine, states or international organisations can assert that certain crimes fall under universal jurisdiction, and therefore claim a *locus standi* over a person accused of such crimes, irrespective of where the alleged crime was committed, and irrespective of the accused’s nationality, country of residence, or other relation with the prosecuting entity.

According to *The Princeton Principles on Universal Jurisdiction*, “enhancing the proper exercise of universal jurisdiction by national courts will help close the gap in law enforcement that has favoured perpetrators of serious crimes under international law.”<sup>10</sup> As a growing body of evidence shows that anti-corruption agencies in under-resourced or ill-governed states are “generally ineffective, if not actively harmful”,<sup>11</sup> universal jurisdiction presents an appealing path, where states with greater capacity could prosecute corrupt individuals who have exploited states where anti-corruption enforcement is weak.

The universal jurisdiction approach also has the significant advantage that its effectiveness does not require a majority of states to co-operate. Even a small group of motivated states that are highly committed to applying universal jurisdiction could have a significant impact.

Currently, most states that have enacted legislation permitting their courts to exercise universal jurisdiction have only done so with respect to a very narrow group of crimes (e.g., war crimes, torture, and other crimes against humanity). As of 2011, approximately 90 UN member states have criminalised at least one specimen of a crime against humanity under national law, while at least 78 UN member states have asserted universal jurisdiction over such crimes.<sup>12</sup>

However, since the end of the Second World War, only 15 countries have applied universal jurisdiction in investigations or prosecutions of persons suspected of crimes in violation of international law.

Moreover, the existing framework of legislation, regulation, and precedent governing the application of universal jurisdiction legislation is significantly incomplete. In states where such legislation is in place, implementation is often hampered by inadequate knowledge of universal jurisdiction by critical actors, lack of political will, or political interference.<sup>13</sup> There are also legitimate concerns that universal jurisdiction dilutes national sovereignty, and could become a tool to advance international political agendas rather than the agenda of justice.

<sup>10</sup> Macendo, Stephen et al. [The Princeton Principles on Universal Jurisdiction](#). (2001), page 24.

<sup>11</sup> Meagher, Patrick. *Anti-corruption Agencies: Reality Versus Rhetoric*. The Journal of Policy Reform, Vol. 8, N° 1. (2005).

<sup>12</sup> Amnesty International. [Universal Jurisdiction: A Preliminary Survey of Legislation around the World](#), (2011).

<sup>13</sup> Amnesty International. [Universal Jurisdiction: UN General Assembly Should Support This Essential International Justice Tool](#), (2010).

## Option (2): Regional Courts

A second approach would be to prosecute *grand corruption* through regional courts. Regional courts mandated to enforce regional human rights conventions have played significant roles in the affairs of their subscribing states. In recent years, some regional courts have tried cases analogous to crimes of *grand corruption*.

Whereas the International Criminal Court (ICC) has frequently been criticised for being “too Western” and specifically “anti-African”,<sup>14</sup> regional courts tend to enjoy greater regional credibility while enforcing international laws and conventions.

Currently, there are well-established regional human rights courts and regional courts of justice in Africa, the Americas, and Europe, in addition to a range of regional human rights commissions around the world. There are also several regional anti-corruption conventions that were established well before the UNCAC, such as the *1996 Inter-American Convention against Corruption* and the *1997 Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention*. However, there are currently no regional human rights-focused courts in Asia, the Middle East, or Oceania.

An advantage of regional courts is that they can hold member states accountable to the anti-corruption conventions those states have ratified, and eventually prosecute (or at the very least denounce) those who violate these conventions. For example, in 2010, the Nigerian NGO Socio-Economic Rights and Accountability Project (SERAP) successfully brought a *grand corruption* case to the Economic Community of West African States (ECOWAS) Community Court of Justice. SERAP argued that Nigerians’ right to education had been breached by massive corruption in the public education budget, and cited an international convention, the *African Charter on Human and Peoples’ Rights*, as the applicable law.<sup>15</sup> SERAP brought the case to the court over the objections of actors in the government of Nigeria, marking the first time that a regional human rights court has explicitly considered corruption as a violation of human rights. The case also resulted in the recovery of N3.4 billion that had been stolen from the education budget.

However, critics frequently accuse regional courts of being ineffective. Regional media often dismiss regional courts in Africa and South East Asia as “toothless” or “whistling in the wind”, with inadequate resources and an inability or unwillingness to enforce judicial judgements.<sup>16</sup> European courts have just as frequently faced public criticism for displaying a timorous unwillingness to impose the sanctions at their disposal.<sup>17</sup>

Moreover, the collective web of regional courts is far from global in reach, and even in regions where such courts do exist, many do not have jurisdiction over economic crimes such as corruption.<sup>18</sup>

<sup>14</sup> The Economist. [Justice for dictators: history rules](#), (April 2012).

<sup>15</sup> SERAP vs. Federal Republic of Nigeria and Universal Basic Education Commission [ECW/CCI/APP/08/08](#) (n.d.)

<sup>16</sup> Schulman, Marc. [The African Court of Justice and Human Rights: A Beacon of Hope or a Dead-end Odyssey?](#) (2013).

<sup>17</sup> Carrington, Paul D. [Enforcing International Corrupt Practices Law](#). Duke University (2010), page 147.

<sup>18</sup> Sceats, Sonya. [Africa’s New Human Rights Court: Whistling in the Wind?](#) (2009), page 10.

### Option (3): The International Criminal Court

Founded in 2002 under the Rome Statute, the ICC is perhaps the best-known international court, and the symbolism of a global court of last resort and ultimate appeal has captured public imagination. The ICC has considerable powers to trace, freeze, and seize stolen funds, and can exercise jurisdiction where other domestic or international remedies are unavailable.<sup>19</sup>

While its primary focus has been on crises and armed conflicts, the ICC may actually be better equipped to respond to serious long-term crimes such as *grand corruption*.<sup>20</sup> The very nature of corruption offences, particularly those involving money laundering, is that their prosecution is less dependent on the testimony of victims, and more focused on documentary evidence accessible to objective subject-matter experts.<sup>21</sup>

The ICC also has jurisdiction over crimes against humanity. Article 7 of the ICC's enabling treaty, the Rome Statute, defines "crime against humanity" as follows:<sup>22</sup>

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...]
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

There may be sufficient justification to prosecute *grand corruption* as a crime against humanity under Article 7(1)(k) of the Rome Statute, if *grand corruption* is defined in a manner that makes it explicit that it is restricted to inhumane acts that cause "great suffering, or serious injury to body or to mental or physical health."

However, there are concerns that equating corruption with crimes against humanity may be unreasonable, since the devastation caused by corruption is not as obvious as in, for example, genocide or slavery. Expanding the scope of "other inhumane acts" to include corruption may encourage political actors to try to further stretch the definition and pursue political vendettas through the ICC.

Moreover, *grand corruption* crimes are not necessarily "committed as part of a widespread or systematic attack directed against a civilian population." While *grand corruption* may meet the *actus reus* test of crimes against humanity, the *mens rea*, the clear intent to eventually destroy part of a population, is typically missing.<sup>23</sup>

A broader argument questions the causal link between corruption and human rights violations in the first place. Much empirical work suggests that a lack of respect for human rights is as much a cause of corruption as a consequence of corruption.<sup>24</sup> In the words of law professor Bryane Michael, "Corruption does not necessarily lead to human rights offences (as often assumed in the literature). Instead, lack of

<sup>19</sup> Marshall, Andrew. "What's Yours Is Mine: New Actors and Approaches to Asset Recovery in Global Corruption Cases." *Policy Paper 18*. Centre for Global Development (2013), pages 13-14.

<sup>20</sup> Starr, Sonja. *Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations*, (2007).

<sup>21</sup> Anderson, Michael. *International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction*. Virginia Journal of International Law (forthcoming) (2013).

<sup>22</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6

<sup>23</sup> Bantekas, Ilias. *Corruption as an International Crime and Crime against Humanity*, (2006).

<sup>24</sup> Michael, Bryane. *What Does Kosovo Teach Us About Using Human Rights Law to Prosecute Corruption Offences?* (2010), page 18.

observance of human rights in many spheres of public sector activity, provide the incentives leading to corruption.”<sup>25</sup>

There are also structural limits to using the ICC to prosecute *grand corruption* cases. Most notably, the ICC can only prosecute crimes that fall under one of four categories: (1) if the accused is a citizen of a State Party to the Rome Statute; (2) if the offence has taken place in a State Party to the Rome Statute; (3) if the UN Security Council has referred the offence to the prosecutor of the ICC; (4) if a non-party state voluntarily accepts the Court’s jurisdiction.<sup>26</sup>

It bears noting that over 50 UN states are not States Parties to the ICC, including UN Security Council members China, Russia, and the United States.

Moreover, the ICC is not authorised to prosecute crimes committed before 2002 and has only secured a single conviction to date.<sup>27</sup> Adding a new offence to the ICC’s jurisdiction would stretch its already limited capacity and could overwhelm it.<sup>28</sup>

#### Option (4): Creating New Mechanisms

Other options to prosecute *grand corruption* can be broadly grouped under the creation of new mechanisms to be incorporated into existing international institutions. Some examples include:

1. Amending the UNCAC to include provisions requiring States Parties to incorporate *grand corruption* crimes into their universal jurisdiction legislation, or requiring States Parties to collaborate with regional and international authorities in the prosecution of *grand corruption*.<sup>29</sup>
2. Adopting a new Grand Corruption Statute altogether at the ICC, explicitly making such crimes illegal within the international criminal law system and clearly allowing the ICC to prosecute such offences.<sup>30</sup>
3. Creating a legal forum at the International Centre for Settlement of Investment Disputes that would reward effective private enforcement of international anti-money laundering laws.<sup>31</sup>
4. Amending the OECD or Civil Law Conventions to include an endorsement of laws that reward citizen-plaintiffs for representing their countries in matters of transnational corruption.<sup>32</sup>
5. Developing technology-based tools for detecting and deterring corruption, such as Information Communication Technologies (ICTs) that could help capture evidence of corruption in the act and facilitate the prosecution of the perpetrators.<sup>33</sup>

<sup>25</sup> *Ibid.*, page 2.

<sup>26</sup> Anderson, Michael. [International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction](#). Virginia Journal of International Law (forthcoming) (2013).

<sup>27</sup> The Guardian. [Thomas Lubanga sentenced to 14 years for Congo war crimes](#), (2012).

<sup>28</sup> Tejan-Cole, Abdul. [Don't Bank on Prosecuting Corruption as International Crime](#) (2012).

<sup>29</sup> UN General Assembly, [United Nations Convention against Corruption: resolution / adopted by the General Assembly](#), 31 October 2003, A/RES/54/4.

<sup>30</sup> Anderson, Michael. [International Money Laundering: The Need for ICC Investigative and Adjudicative Jurisdiction](#). Virginia Journal of International Law (forthcoming) (2013).

<sup>31</sup> Carrington, Paul D. [Enforcing International Corrupt Practices Law](#). Duke University (2010), page 159.

<sup>32</sup> *Ibid.*

<sup>33</sup> Chêne, Marie. [The Use of Mobile Phones to Detect and Deter Corruption](#), (2012).



## Beyond Criminal Action

- Civil remedies for victims and benefits for whistle-blowers can provide alternative streams to deprive the perpetrators of *grand corruption* of the proceeds of their crimes, and to undo the damages they have caused.

### Civil Law Versus Criminal Law

Another important consideration is whether *grand corruption* should be pursued under civil law rather than prosecuted under criminal law. While the dominant discourse focuses on the *criminality* of corruption, many legal experts are shifting their focus to the *damages caused* by corruption. The pursuit of corruption through civil litigation would seek to restore misappropriated funds to their rightful owners: the defrauded local populations.

Civil law has several advantages over criminal law. Civil law allows for confiscation and asset recovery based on a “balance of probabilities” rather than a “beyond a reasonable doubt” burden of proof. Civil litigation can also redress wrongs instead of just punishing them, granting the victims a material benefit and an opportunity to participate in the action.<sup>34</sup> While the punishment for perpetrators under this scheme would be confiscation and compensation – as opposed to incarceration and fines – the approach would still allow the victims to recover losses from systematic corruption at the perpetrators’ expense.

For example, in 2012, the United Kingdom High Court of Justice employed private civil law to seize over \$14 million in assets belonging to members of Libya’s former Gaddafi regime – the first international asset recovery by Libya and an important precedent.<sup>35</sup>

This approach also has the unique benefit of being self-financing: corruption fighters could recover the money they need to continue fighting corruption.<sup>36</sup>

However, civil litigation also has disadvantages. The cost of hiring civil lawyers and private expertise can be prohibitive. Negotiated settlements are always controversial. Civil actions against *grand corruption* could be tremendously complex, as it would involve vast numbers of affected and interested parties.<sup>37</sup> In addition, the perpetrators of *grand corruption* would only be required to return what they had stolen, rather than face punishment for their crimes – a state of affairs that would be a weak disincentive to crime.<sup>38</sup>

### Rewarding the Positive Versus Criminalising the Negative

Private companies can also play an important role in the fight against corruption. Originally a development issue, the proceeds of corruption and asset recovery are increasingly being addressed as part of broader reforms to the international financial system.<sup>39</sup>

Corporations frequently have little incentive to expose government corruption they encounter in the course of doing business. Exposing corrupt officials may bring a corporation no benefits, while causing it

<sup>34</sup> Marshall, Andrew. [What’s Yours Is Mine: New Actors and Approaches to Asset Recovery in Global Corruption Cases](#). Policy Paper 18. Centre for Global Development (2013), pages 12-14.

<sup>35</sup> Stolen Asset Recovery Initiative. [Muammar el-Qaddafi / Saadi Quaddafi / London Mansion Case](#), (2012)

<sup>36</sup> Michael, Bryane. [Suing against Corruption: The Role of Civil Law](#), (2007).

<sup>37</sup> Marshall, Andrew. [What’s Yours Is Mine: New Actors and Approaches to Asset Recovery in Global Corruption Cases](#). Policy Paper 18. Centre for Global Development (2013), pages 12-14.

<sup>38</sup> William Geldhart. *Introduction to English Law 146*. D.C.M. Yardley ed., 9<sup>th</sup> ed., (1984).

<sup>39</sup> Gilman, Stuart. [The Stolen Assets Recovery Initiative](#), (n.d.).

to lose lucrative contracts and relationships. But if a corporation could profit by exposing, for example, solicitations of bribery, it would have a clear business case to do so.<sup>40</sup>

Thus, in addition to criminalising corruption, governments could reward multinational corporations and other actors who expose transnational corrupt practices by their local firms, or authorise corruption victims to invoke the jurisdiction of any signatory state to bring forward a corruption claim against an actor within that state's jurisdictional reach.<sup>41</sup>

## Next Steps

1. GOPAC asks its members to reflect upon the questions raised in this paper on the prosecution of *grand corruption*, and to discuss the options with their national and regional chapters. The GOPAC Global Secretariat is at the disposal of our members to support their consultations.
2. GOPAC members will convene at the Fifth Forum of Parliamentarians, to be held during the Fifth Conference of States Parties to the UNCAC in Panama City, on 27 November 2013, to discuss and debate these issues. Panellists from Transparency International, the International Criminal Court, INTERPOL, and the GOPAC leadership will support the discussion.
3. At the end of the discussion, GOPAC will ask its members for direction about which options they would like the global organization to pursue, to implement our mandate to seek the widespread adoption of international legal instruments and strategies, to apprehend, prosecute, judge, and sentence perpetrators of *grand corruption*.
4. The direction given to GOPAC by our members will be captured in a formal Declaration, which we will announce during the closing remarks of the Conference of States Parties to the UNCAC.
5. After the Forum of Parliamentarians, GOPAC will work with our national chapters, our regional chapters, our partner organizations, and international institutions, to implement the Declaration in the international legal and government systems.
6. At the Sixth Conference of States Parties to the UNCAC, GOPAC will present a plan and case for implementation of the elements of our Declaration that involve action under the UNCAC or the UN Office on Drugs and Crime (UNODC).
7. We will report to our members on the effect of our efforts at the next GOPAC Global Conference, to be held in 2015.

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<sup>40</sup> Michael, Bryane. [Suing against Corruption: The Role of Civil Law](#). (2007).

<sup>41</sup> Carrington, Paul D. [Enforcing International Corrupt Practices Law](#). Duke University (2010), page 154.

## **ANNEX: UNCAC Articles<sup>42</sup> related to Prosecuting Corruption & New Mechanisms**

### Article 1: Statement of Purpose

The purposes of this Convention are:

- a) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.

### Article 44: Extradition

- 1) A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the end of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

### Article 46: Mutual Legal Assistance

- 1) State Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.
- 2) Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

### Article 47: Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

### Article 48: Law enforcement cooperation

With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

### Article 49: Joint Investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States the competent authorities may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

### Article 62: Other measures: implementation of the Convention through economic development and technical assistance

- 1) States Parties take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development

### Article 63: Conference of the States Parties to the Convention

- 7) Pursuant to paragraphs 4 to 6 of this article, the Conference of States Parties shall establish, if it deems it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

<sup>42</sup> UN General Assembly, [United Nations Convention against Corruption: resolution / adopted by the General Assembly](#), 31 October 2003, A/RES/54/4.