

Remarks for Africa TI Regional Meeting August 9, 2023

It is a pleasure to be speaking to you today. The people in this room and watching online are among the most exceptional activists on the continent. The work Transparency International does globally and in each of your countries is vital to creating the conditions for freer, fairer, and more prosperous societies. I thank Karam Singh, in particular, for inviting me to participate in this important gathering.

As you know, this year is the 20th Anniversary of the adoption of the African Union Convention on Preventing and Combatting Corruption (the AU Convention). This year's theme for African Anti-Corruption Day was: AU Convention, 20 Years After: Achievements and Prospects. It invited critical reflection on achievements, challenges and lessons over the past twenty years, and a vision for the next twenty years and devising strategies for its realisation.

28 African Transparency International Chapters heeded that invitation when they released a letter last month emphasising the urgency of expediting strategies to combat illicit financial flows, ensure corruption-free delivery of essential services to African citizens, and advance the full ratification and implementation of the Convention.

The AU Convention is an excellent instrument on paper. However, African governments have a long way to go in order to honour their commitments to protect democracy, human rights, and the rule of law. There remains a need for you to advocate for the fundamental principles of transparency, integrity, engagement, and accountability.

We all know the terrible costs of corruption too well, so I need not delve into extensive examples. I do want to underline that cases of corruption in Africa are rarely contained within Africa. As Ke Rafitoson described in her recent [speech at the Oslo Freedom Forum](#), one of most prominent issues of corruption plaguing Madagascar is kleptocratic sponsors such as Russian mercenary leader Yevgeny Prigozhin, (now internationally infamous for other reasons). Some of them also meddle and influence national elections.

And we must not forget the criminal co-conspirators around the world in banks, law firms, real estate agencies, and other financial service providers who aid and abet kleptocrats in the transnational crime of money laundering. As Raymond Baker has aptly put it:

“For decades Americans and Europeans have been persuaded to see themselves as extremely generous to the developing world with foreign aid, private investment, and military assistance. Reality is the opposite. Data indicates that more money appears to be flowing out of the developing world into Western accounts than is flowing via Western generosity into the developing world. Africa is particularly hurt by this phenomenon, with annual outflows – permanent outflows – likely exceeding \$100 billion a year and perhaps much more, making Africa in all probability a net creditor to the rest of the world.”

There are many important interlocking ideas for which civil society must advocate in order to address the global problem of corruption. Many of them are familiar to this audience. Indeed, you and your Transparency International colleagues have taken the lead in the enhancement of transparency relating to beneficial ownership, protections for whistleblowers, and improved asset recovery mechanisms.

I would like to spend the remainder of my time presenting a complementary idea that can help with the accountability part of the anti-corruption equation and that may be less well known or understood.

As Vice Chair of Integrity Initiatives International (or Triple I), I am an ardent advocate for the creation of an International Anti-Corruption Court (the IACC) that will hold both kleptocrats and their co-conspirators, those so-called professional enablers, accountable when national authorities are unable or unwilling to do so.

In addition to the AU Convention, there is near universal agreement that several forms of corruption must be criminalised by the 189 parties to the United Nations Convention Against Corruption (UNCAC). There is a long way to go to fully implement UNCAC, but most members have complied with their obligations under the Convention to have domestic anti-corruption laws on the books.

Kleptocracy is not a consequence of the lack of laws. To facilitate their criminal activities, kleptocrats have gutted their domestic criminal justice systems – they have taken control of the prosecuting authorities, the police and frequently the courts. The laws are not enforced. A prime example is former South African President Jacob Zuma who, with his crony capitalist partners, the Gupta brothers, enabled the state to be looted on an industrial scale. The prosecution authority and the police authority were effectively disabled. Our country

was estimated to have lost fully a fifth of GDP during the Zuma 'state capture' decade. The detail can be found in the lengthy report by our Chief Justice, Raymond Zondo.

Few kleptocrats keep their ill-gotten gains at home. Billions of dollars of stolen assets are laundered in a number of countries – they include Canada, the Netherlands, Singapore, Switzerland, the United States, the United Kingdom and its Overseas Territories.

Of course, kleptocrats will not allow their countries to join an International Anti-Corruption Court and they will do everything in their power to hamper investigations into their criminality.

However, if some of the countries where laundered funds are held would join an International Anti-Corruption Court – and several are considering doing so - then illicit assets could be identified and frozen by the Court. Through orders of restitution, those funds could be repatriated to the countries from which they were stolen.

If there is a high risk of those funds being misused if returned to a corrupted state, they could be repurposed for refugee and humanitarian purposes or repatriated only at a time when they would reach the real victims – the millions in need in those countries and their forced diasporas.

The envisioned Court would have jurisdiction over crimes committed by nationals of an IACC member state, and crimes committed in the territory of an IACC member state. It would enforce the criminal laws already required by UNCAC – the bribery of public officials, embezzlement and other misappropriation of public funds, money laundering, and obstruction of justice in relation to those offences. The IACC would be a court of last resort, meaning it would acquire jurisdiction only in cases in which the appropriate domestic authorities are unable or unwilling to investigate or prosecute the corruption. Member states would also be able to refer cases to the IACC.

It would also be an institution that would be able to offer what could be crucial assistance. The IACC's expert investigators and prosecutors could be called upon for assistance by leaders in countries such as Moldova – which has endorsed the idea – who are willing but do not have the resources to counter corruption on their own. IACC personnel could work with nascent islands of integrity in such transitional countries to help them build their cases. That could include facilitating mutual legal assistance requests that are required to obtain evidence located in foreign jurisdictions.

If the judiciary of such a country is independent and able to preside over cases brought by anti-corruption prosecutors, then the role of the IACC would stop at providing such assistance.

If a state such as Moldova were to determine that its courts are still too corrupt to properly adjudicate cases of grand corruption, then they could defer the cases to be heard by IACC judges. In this scenario, it would be preferable for the IACC judges to travel to the country or a nearby regional country for the trials so that justice can be conducted as close to home as possible. That would make the proceedings more accessible to victims, civil society, and journalists. Such a model would help address one of the shortcomings of the International Criminal Court.

Recently, I had the honour of leading the Independent Expert Review of the International Criminal Court, the ICC. The newly launched IACC model treaty drafting project, which I chair, will be guided by lessons learned from the experiences of the ICC, as well as other previous and existing international and hybrid courts. We are confident that we can design a new IACC that is more efficient and more effective.

There are a variety of ways in which an IACC can be more cost effective than the ICC, including only employing a small number of permanent judges, with other vetted and approved judges called upon only when the caseload requires their services. Furthermore, there should be no need for pre-trial chambers, which have greatly prolonged the life cycle, and therefore costs, of situations before the ICC.

Regardless, the operational cost of the IACC would constitute a small fraction of the amount of illicit assets that it could seize and return to their originally intended purpose - the public good. In addition to orders of restitution, it could levy fines on those found guilty and these could be used to defray some of its costs.

The first in person meeting of the IACC Drafting Committee will be held at the end of this month. We will chart the work-plan for the next year.

We would welcome the creative input of the Transparency International community as we refine and strengthen the IACC proposal.

None of the IACC's supporters see the Court as a panacea that will end kleptocracy, any more than the International Criminal Court has ended atrocity crimes by political leaders. But it would be one of the many tools, domestic and international, that are absolutely

essential to combat and hopefully ultimately to defeat kleptocracy. It would be the only international mechanism to have jurisdiction over kleptocrats and/or their illicit funds.

By establishing a credible threat of criminal prosecution for both kleptocrats and their enablers – the bribe givers and the money launderers – the IACC would deter others who may be tempted to emulate their example.

There are now over 300 leading figures from across the world including more than 50 former Presidents and Prime Ministers and 32 Nobel Laureates, who have signed a Declaration calling for the creation of the IACC.

Colombia was the first country to call for an IACC back in 2016. More recently, the Netherlands, Canada, Nigeria, Moldova, and Ecuador have committed to working towards the creation of the Court. In January this year, the European Parliament passed a resolution calling for the IACC. Additional countries from each region of the world have also expressed their interest in the idea.

The UK Labour party, which has a good chance to win elections next year, announced last month that it will champion the IACC idea and there is further cross-party support for the Court in the UK.

The effort to create the IACC will take time, but the momentum generated in the past two years suggests it may be possible sooner than even its strongest proponents think. The time is now to therefore strengthen the proposal so that the eventual Court can provide as meaningful as possible a check on corruption. My colleagues and I invite you all to participate in the process in whatever capacity you can.

In the meantime, the current priorities of the Transparency International movement are imperative. The harder it is for kleptocrats to hide their money in shell companies, and the easier it is for courageous whistleblowers, activists, and investigative journalists to uncover potential criminality, the more effective a future IACC will be.

Progress on both short and longer term anti-corruption solutions will knit together a powerful anti-corruption tapestry that strips kleptocrats of their impunity and thereby helps Africa and the world reach for a better tomorrow.

Thank you for your attention.