

[FACTI Inbox] RE: Virtual global townhall with civil society, 28 April 2020 – Video and call for written comments

Inbox



Paul Hoffman via factipanel.org

3:37 PM (11 minutes ago)



to FACTI ▾

Greetings,

The short points are:

1. An international definition of grand corruption is overdue
2. The impunity of kleptocrats must be ended if the UN SDGs are to stand any chance of achievement post-covid pandemic
3. The FACTI Panel should recommend an International Anti-Corruption Court be established, its time has come.

The packaging of these points is here:

<https://accountabilitynow.org.za/an-international-anti-corruption-court-could-help-recover-funds-for-the-fight-against-covid-19/>

Yours in accountability

Paul Hoffman

From: FACTI Secretariat [mailto:info@factipanel.org]**Sent:** 13 May 2020 06:43 PM**To:** paulhoffman@webafrica.org.za**Subject:** RE: Virtual global townhall with civil society, 28 April 2020 – Video and call for written comments

Dear Paul Hoffman,

We are writing to inform you that the summary of the virtual townhall with civil society organised by the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda ([FACTI Panel](#)) has now been published. The video and summary of the townhall are both available online at: <https://www.factipanel.org/events/virtual-global-townhall-with-civil-society>.

As we previously wrote, the Panel recognized that it is not possible for all interested stakeholders to participate in meetings, so is inviting concise written comments and suggestions from all stakeholders. **The Panel requests submission of written comments by 24 May 2020 to info@factipanel.org**. The full request for is posted at: <https://www.factipanel.org/news/call-for-comments-from-all-stakeholders>. The Panel may decide to publish any comments received on the website, if appropriate.

We will not follow up to the list of registered attendees at the townhall again. We recommend you sign up for the FACTI Updates to stay informed. You can sign up by using the form on the bottom of the FACTI Panel website. You may also wish to follow the Panel on Twitter ([@FACTIPanel](#)).

Thank you and kind regards,
FACTI Panel Secretariat

On Fri, May 1, 2020 at 3:26 PM FACTI Panel Secretariat <info@factipanel.org> wrote:

Dear Participants,

We hope that this message finds you well. Thank you for participating in the FACTI Panel Virtual global townhall with civil society on 28 April 2020. A video recording is available on the website: <https://www.factipanel.org/events/virtual-global-townhall-with-civil-society>. We will follow-up with the meeting summary once it is cleared by the co-chairs.

The Panel recognized that it is not possible for all interested stakeholders to participate in meetings, so is inviting concise written comments and suggestions from all stakeholders on:

- any aspect of the background paper;
- the three clusters: 1) Improving cooperation in tax matters; 2) Accountability, public reporting and anti-corruption measures; and 3) Cooperation and settling disputes; and
- key priorities and concerns of stakeholders.

The Panel requests submission of written comments by Friday, 24 May 2020 to info@factipanel.org. The full request is posted at: <https://www.factipanel.org/news/call-for-comments-from-all-stakeholders>. The Panel may decide to publish any comments received on the website, if appropriate.

To stay informed in the future, we recommend interested colleagues follow the Panel on Twitter ([@FACTIPanel](#)) and sign up for the FACTI Updates using the form on the bottom of the FACTI Panel website.

Thank you and kind regards,

Secretariat of the High Level Panel on International Financial Accountability, Transparency & Integrity for Achieving the 2030 Agenda

High Level Panel on International Financial Accountability, Transparency & Integrity for Achieving the 2030 Agenda

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An International Anti-Corruption Court could help recover funds for the fight against Covid-19

by @Ifaisa on [13 May 2020](#) in

Opinionista • Paul Hoffman • 12 May 2020

The trail of destruction left by the pandemic presents an opportunity to reconsider the culture of grand corruption with impunity, which imperils the future of humankind in ways more insidious and continuous than the pandemic. For too long now the kleptocrats have enjoyed impunity for their actions.

Like the pharaohs of ancient Egypt, the kleptocrats of the 21st century live high on the hog. Abusing positions of power and influence to steal a great deal from the miserable and oppressed masses is as old as time. The pharaohs used their ill-gotten gains to erect huge pyramids in their memory. Modern kleptocrats, whether found in politics, government or business, prefer investing in numbered bank accounts in safe tax havens.

They use opaque trusts registered in often dodgy jurisdictions that are strangers to accountability and integrity. Kleptocrats invest in prime real estate and blue-chip stocks, shares and bonds via their trusts with a little loot also disappearing on fast cars, slow horses and loose living. They leave no pyramids; only pyramid schemes and broken dreams of a better life for all.

As followers of the Abrahamic traditions and students of ancient Egypt know, the pharaohs were jolted out of their lifestyles by a series of plagues visited upon ancient Egypt. Moses was able to lead his enslaved people to freedom in a faraway land after the plagues had acted as catalysts for the changes that allowed their escape from the indignities and misery of their enslavement in Egypt.

Similarly, the modern-day kleptocrats may well have received their comeuppance from the Covid-19 pandemic currently sweeping the planet. A sensible international response to the ravages of the virus is, however, required to stop their scheming.

Popular discontent with their shenanigans has been rising for years. All of humanity was promised a great deal after the depredation seen in WWII. The victors in that war pledged in the preamble to the United Nations Charter:

“...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, [and] in equal rights of men and women.”

The signing of the Universal Declaration of Human Rights in December 1948 gave content to the human rights provisions of the UN Charter. Since then, it has become increasingly apparent that the current main enemy of human rights is grand corruption. Courts and the UN itself recognise corruption in all its forms as a human rights issue. Navi Pillay, when she was UN Human Rights Commissioner, called corruption a killer; rightly so.

The entrenchment of kleptocrats, in the worlds of political power and commercial influence, has made it difficult for the UN to live up to its promise of its organisational faith in fundamental human rights that was affirmed in 1945.

The trail of destruction left by the Covid-19 pandemic presents an opportunity to reconsider the culture of grand corruption with impunity, which imperils the future of humankind in ways more insidious and continuous than the pandemic. For too long now the kleptocrats have enjoyed impunity for their actions.

In its quest to affirm human rights, the UN has agreed to 17 sustainable development goals (SDGs) intended to transform the world.

The SDGs are the goals of the members of the United Nations, envisioned in 2015 for delivery by 2030. The agenda is to use “a holistic approach to achieving sustainable development for all” as the UN website puts it. Others may choose to call it radical economic transformation. It certainly would be a radical change to have a world without hunger, poverty or inequality. The strong institutions required by SDG #16 to end corruption will have to be created.

Whether 2030 is going to be an achievable delivery date for the SDGs, as envisaged in pre-pandemic times, will depend on the rapidity with which the world economy bounces back from the ill-effects of the current pandemic by 2030, which is less than a decade away.

It is to the realisation of the aims of SDG #16 that good leaders will turn in order to accelerate the recovery needed. In particular, the establishment of strong institutions of government is vital to the ability to finance the recovery.

Sources of funding previously untapped include the loot of state capture, the proceeds of kleptocracy and the ill-gotten gains of those involved in grand corruption.

Experts have calculated that 5% of the world's GDP is lost to corruption. It is estimated that in the case of South Africa, the amounts involved in the attempts at state capture during the Jacob Zuma era are around R1.5-trillion. These ill-gotten gains actually exceed the current estimates of the requirements for recovery from the pandemic's assault on economic activity, state revenue streams and the general financial wellbeing of the nation.

It will be unnecessary to go cap in hand to international lending agencies such as the African Development Bank, the International Monetary Fund and the World Bank, to request funding for the recovery from the pandemic, if the loot can be accessed and returned to the state and its enterprises that were looted. That is a big “if”.

While the International Criminal Court was brought into existence in the face of genocide and war crimes, the crash of 2008 did not elicit so radical a new step despite the malfeasance involved in that disaster. It is to be hoped that the pandemic will have political decision-makers around the world pondering the best and quickest means to access the loot of grand corruption in all its manifestations.

The UN has not been caught napping on this occasion. Perhaps fortuitously, but nevertheless with impeccable timing, the General Assembly is planning to hold a special session on corruption within a year. Its

leadership has, in preparation for this important event, created a Financial Accountability Transparency and Integrity (FACTI) Panel. This high-powered panel is charged with recommending better ways to combat corruption in meaningful measure to assure that resources needed to fund the 2030 SDGs are not lost. The setbacks occasioned by the pandemic have added to the already onerous tasks the FACTI panel is facing.

One of the suggestions it has under consideration is the establishment of an International Anti-Corruption Court (IACC) to investigate and prosecute grand corruption wherever it occurs, but on the basis of complementarity. This means that the IACC only acts when nations are unwilling or unable to act against grand corruption. Part of the mandate of the IACC will be to recover the illicitly held assets and funds in the hands of the corrupt, be they politicians, officials or in business.

The concept “grand corruption” has yet to be legally defined in international law. It is probable that a suitable definition will rely on the value of the prejudice occasioned by grand corruption or the amount of money involved in any given transaction. The FACTI Panel, which is actively taking advice and receiving input from all quarters, is well placed to recommend a definition of grand corruption to the UN General Assembly.

Those who have in the past complained that the IACC is not politically feasible will have to reconsider their arguments. The need to achieve the SDGs is universally accepted. The cost of doing so will be considerable. And now, it will cost considerably more, due to the ravages of the pandemic.

One need look no further than the goals around eradicating poverty and hunger while reducing inequalities, and promoting universal healthcare. The price tag on these goals will be considerable and certainly much higher now than the amounts envisaged in the pre-pandemic era. And these are but four of the 17 goals set and agreed upon by the UN back in 2015.

Responsible governments around the world will currently be considering the cost of the pandemic to the people on whose behalf they govern. They will be seeking means of redress for the pandemic and its economic fallout. The ability to recover loot from kleptocrats has in the past eluded too many nations simply because state anti-corruption machinery is insufficiently independent to be able to act effectively and efficiently against kleptocrats.

All too often a prosecutor who goes after a kleptocrat is making a career-limiting move. All too frequently, especially in developing countries, the resources available are inadequate and the skills required for confronting the corrupt in high places are not in plentiful supply.

The choice of referring serious cases of grand corruption to an IACC will be attractive to those seeking to use the rule of law as a means of clawing back the proceeds of grand corruption. Even well-to-do countries, those which are regarded by the corrupt as havens for money laundering, will be relieved to refer matters of that kind to the IACC.

The economies of scale and the level of expertise that an IACC will be able to command will make its establishment attractive to nations that find themselves cash-strapped by the pandemic’s economic impact. The best anti-corruption brains in the world will most likely find the IACC an attractive career option and it will, for this reason, mature into a deterrent force against grand corruption.

More immediately, it will get to work on recovery of the loot of grand corruption. Assets and cash clawed back could be a game-changer for many nations in the testing economic times ahead.

Just as the creation of the ICC was a sensible response to the commission of genocide and war crimes, the establishment of the IACC will be an astute way of overcoming economic damage done by the pandemic currently sweeping the world.

It is vital to the success of the FACTI Panel that it is bold and innovative in its approach. It ought to recommend a definition of grand corruption to the UN; it must consider the economic ramifications of continued kleptocracy with impunity and it should suggest to the UN General Assembly that serious consideration needs to be given to building a political consensus around establishing an IACC.

It is possible, within a relatively short time span, to see a well-functioning IACC freezing assets in the hands of kleptocrats, ordering forfeiture of loot, punishing those convicted and deterring those considering kleptocracy as a career. The scale of recoveries will certainly be sufficient to enable the IACC to self-fund in short order.

If the pandemic becomes the catalyst for the urgent consideration and establishment of the IACC, some good will have come from its devastating impact on the physical and mental health of humanity. **DM**

[FACTI Inbox] FW: FACTI Panel call4comments,Comms,ConceptNotes,

Paul Hoffman paulhoffman@webafrica.org.za via factipanel.org
to FACTI

Sat, May 2, 6:27 AM (4 days ago)

Dear Secretariat,

Thank you for the invitation to comment which I received after I wrote to Professor Rose-Ackerman in the brief terms set out in my email to her forwarded below. Please regard my said email as my response to your invitation.

Best

Paul Hoffman.

From: Paul Hoffman [mailto:paulhoffman@webafrica.org.za]
Sent: 01 May 2020 12:28 PM
To: 'susan.rose-ackerman@yale.edu'
Subject: FACTI Panel

Dear Prof,

I have met and heard you twice in cyberspace during FACTI Panel engagements. Congratulations on your appointment to the Panel.

I fear that the aims of this worthy UN initiative will not be attained unless ways are found to end the culture of impunity which kleptocrats around the world currently enjoy. The solution, I suggest, lies in improving and reforming integrity systems so that they actually work to reduce and deter grand corruption. The UNCAC Article 5 obligations are too often honoured in the breach.

The Constitutional Court in South Africa has done the world a service by considering, drawing on the research of the OECD, the essential attributes of adequately independent anti-corruption machinery of state. Its majority judgment penned jointly by Moseneke DCJ and Cameron J in the leading case known as *Glenister II* could serve as a template for the setting up of efficient and effective anti-corruption entities at state level or to the reform of existing integrity systems.

The main criteria for such entities are that they operate as a single entity staffed by specialists who are properly trained to prevent, combat, investigate and prosecute all corrupt activities. Their independence is vital to their success – they ought to be beyond executive control and free of political interference and influence from the powerful of all stripes, whether in politics, public service or the private sector. Their structure and operations should enable them to act without fear, favor or prejudice in their professional work. So that they are able to execute their mandates fully, their resourcing should be guaranteed and equal to the demands of the task at hand. All key staff should enjoy security of tenure of office. Investigators should be able to rest assured that doing their jobs properly does not become career limiting.

It may be too much to expect compromised nations to accept the reforms necessary to comply with the Glenister criteria (the STIRS – Specialized, Trained, Independent, Resourced, Secure criteria as we call them in SA). SA itself has not done so. Also it may prove too difficult to ensure their implementation on a nation by nation basis via review machinery and procedures worldwide that are similar to the African Peer Review Mechanism (APRM).

If the research and deliberations of the FACTI Panel reveal the insurmountable nature of the abovementioned obstacles to progress against the kleptocrats, the best alternative solution, I suggest, is the introduction of an International Anti-Corruption Court as advocated by Integrity Initiatives International. With civil jurisdiction to freeze and ensure repatriation of loot and criminal jurisdiction over matters involving grand corruption, kleptocracy and state capture, the IACC could be the game-changer that ends kleptocracy. Operating on the basis of complementarity, it is a viable means of countering and deterring the culture of impunity which bedevils sustainable progress and the attainment of the SDGs in full and on time. The Panel's unenviable task is to help generate the political will necessary to see the establishment of the IACC. Carrots and sticks will be needed in full measure.

Had the opportunities to talk in cyberspace not been so limited I would have briefly drawn attention to what is set out above.

I have sent this link to the secretariat, but, ex abundante cautela, I send it to you:

<https://accountabilitynow.org.za/the-facti-panel-taking-a-new-look-at-an-old-problem/>.

There is further material and draft legislation of relevance on the Accountability Now website "Glenister case" and "Integrity Commission" project pages. The website of Integrity Initiatives International is www.integrityinitiatives.org.

Yours in accountability,

Paul Hoffman SC

Director

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The FACTI Panel – taking a new look at an old problem

by @Ifaisa on [30 April 2020](#) in

Opinionista • Paul Hoffman • 30 April 2020

Among all the distractions of the Covid-19 pandemic, an important development at the United Nations – initiated by the President of the General Assembly and the President of the Economic and Social Council – has not received the attention it deserves.

On 2 March the Financial Accountability Transparency and Integrity panel (FACTI panel) was launched with terms of reference that would have had Moses in a sweat as he answered God’s call to summit Mount Sinai. As corruption was infecting his nation, and had been since Eve tempted Adam in the Garden of Eden, those of the Abrahamic traditions will know that the panel faces a daunting task.

The two initiators provide an overview of their vision in the announcement of the establishment of the FACTI panel:

“This initiative, taken upon our own responsibility, was developed in consideration of the request contained in General Assembly resolution 74/206 entitled; ‘Promotion of international co-operation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development’. We expect the panel to offer new and creative solutions to make the systems for financial accountability, transparency and integrity more robust, effective, and universal in approach.”

This note focuses on the unavoidable role of countering corruption in the execution of the mission of the panel as it relates to reforming integrity systems with new and creative solutions.

Accountability and integrity are currently in short supply in the world, hence the establishment of the panel. Corruption in high places, sometimes called “grand corruption” (a concept yet to be defined in international law) is often identified as the reason for the absence of proper accountability and effective integrity in the modern context.

When it comes to grand corruption, the problem is arguably somewhat more subtle: it is the culture of corruption *with impunity* that emboldens ever-increasing numbers of powerfully placed individuals to “go over to the dark side” to enjoy the fruits of their illegal activities. Looting without any prospect of being punished or even having the loot confiscated, wherever in the world it is stashed, are attractive propositions to too many politicians, public servants and people in business. Impunity lures them in with its siren call.

That was not the case with Adam and Eve: he was told off in no uncertain terms: “... on your account the earth will be cursed”; Eve’s punishment was “great labour in childbearing” and the middleman, the serpent, was told, “on your belly you will crawl and dust you will eat”.

Modern kleptocrats have devised the perverse aspects of a world order in which they have been able to avoid appropriately dire consequences for corrupt activities. These abominations include captured or meek law enforcement officials, corrupt judges and multiple opportunities for repurposing the state to their own greedy ends. Dense tax laws which elide the avoidance (legal) and evasion (illegal) of taxes, tax havens,

illicit financial flows to tax havens, secrecy a la the ‘Panama Papers, and the exploitation of resources of the developing nations that serve to enrich developed nations unfairly are further examples of the world order currently in place.

It is upon this culture of impunity that the panel is going to have to focus some attention if its terms of reference are to produce autonomously devised lasting solutions to the perennial problems that grand corruption afflicts on nations – and especially the poor, from whose needs resources are diverted to the corrupt to fritter away.

The terms of reference of the panel are wide-ranging. A sample, relevant to corruption (the absence of integrity) will suffice to illustrate this point:

“The current international institutional architecture falls short on many accounts in combating all types of illicit finance – from criminal, corrupt or commercial activities – and returning stolen assets to their country of origin. These areas include: financial transparency, tax matters, combating bribery and corruption, preventing money laundering and returning stolen assets. Rethinking and redesigning the international frameworks related to financial accountability, transparency and integrity is critical to financing the Sustainable Development Goals. This is a global problem that requires global co-operation.”

The stakes are high as the panel is expected to contribute to the implementation of:

“The ambitious and transformational vision of the 2030 Agenda to change global economic and financial systems to make them fair and equitable: systems that contribute to ending poverty and hunger and achieving sustainable development in all its dimensions. Our common goal is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions.”

A leading cause of the “global problem” alluded to in the terms of reference quoted above is the impunity that the powerful are able to enjoy. There is no shortage of laws relating to corruption. As was recently pointed out by Judges Goldstone and Wolf of Integrity Initiatives International:

“Grand corruption does not flourish because of a lack of laws. There are 187 nations party to the United Nations Convention Against Corruption [UNCAC]. Almost all of them have laws prohibiting extortion, bribery, money laundering, and misappropriation of national resources. They also have an international obligation to enforce those laws against their corrupt leaders. However, kleptocrats enjoy impunity in their own countries because they control the administration of justice. They will not permit the prosecution and punishment of their collaborators and themselves.”

Irrespective of what the FACTI panel recommends in relation to financial accountability and transparency, all of its work will come to nought if it is unable to devise a means of ensuring integrity by dealing decisively with the kleptocrats who regard themselves as above the law and who continue to loot and plunder the public purse to the detriment of the UN SDGs. It is the achievement of these goals which has inspired the FACTI initiative.

According to Article 5 of UNCAC, those 187 member nations are obliged to:

“... maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

These obligations are all too often honoured in the breach in that no effective anti-corruption structures operate to ensure integrity: hence the culture of corruption with impunity.

The FACTI panel will have to give close attention to this aspect of its terms of reference. Any failure to do so will surely render other reforms it recommends difficult to enforce or even unachievable. Either the anti-corruption machinery of the nations party to UNCAC might have to undergo radical reform to beef up the effectiveness of the war on grand corruption, or some other way of dealing with the kleptocrats is going to have to be devised.

A cost/benefit analysis may reveal that transferring responsibility for ending the culture of grand corruption with impunity to an International Anti-Corruption Court, which operates on the basis of complementarity, may prove to be the most elegant solution to the problem. Complementary means that this new court would exercise its authority to prosecute only if a country was found to be unable or unwilling to prosecute its leaders itself. Countries not desirous of having their leaders internationally prosecuted would accordingly be incentivised to improve the anti-corruption and integrity measures on the home front.

It is going to be interesting to see what the FACTI panel brings down from the mountain when it reports back to the two presidents who have established it, especially on how to effectively defend the integrity systems currently under siege in world affairs. **DM**