Session Title: Willing and Able to Prosecute Grand Corruption

Date & Time: Friday 2 December 2016 16:30

Report prepared by: Anne Koch, Transparency International

Experts:
Helen Brady
Senior Appeals Counsel and Head of the Appeals Section, Office of the Prosecutor, ICC

Nazar Kholodnytskyi
Head of Special Anti-Corruption Prosecutor’s Office, Prosecutor General’s Office of Ukraine

Giovanni Tartaglia Polcini
Magistrate, legal advisor, Italian Ministry of Foreign Affairs and university professor of anti-mafia law

Yegor Sobolev
Head of Anti-Corruption Committee, Parliament of Ukraine

Ivan Velasquez
Commissioner, International Commission Against Impunity in Guatemala

Honorable Mark L. Wolf
United States District Judge, District of Massachusetts

Moderated by: Jose Ugaz, Chair, Transparency International

Session coordinated by: Casey Kelso

Session Description:

This panel will address the context of prosecution in a country where justice is compromised through undue influence or lack of resources and therefore high-level figures of grand corruption are not held to account. Already available alternatives in these situations will be examined, including the international – national hybrid investigative and prosecutorial mechanism, such as Comisión Internacional contra la Impunidad en Guatemala (CICIG). Another is the non-hierarchical independent prosecutors and magistrates system, such as in Italy or Brazil. The new prosecutorial policy of the Office of the Prosecutor of the International Criminal Court, which now includes the assessment of destruction of the environment, illegal exploitation of natural
resources or illegal dispossession of land, among others as part of the Office’s assessment of the gravity of the crimes within its mandate, may offer new opportunities to consider grand corruption at the international level.

Countries such as Ukraine are at the cross-roads of accountability, seeking to reform their criminal justice system for anti-corruption prosecution, and would be a major reference point for discussion in the conversation. Five speakers would address these avenues in the workshop, moderated by TI Chair José Ugaz, former Ad-Hoc State Attorney of the Republic of Peru in several major corruption cases.

**Main issues raised in kick off remarks. What’s the focus of the session?**

| Issue of definition of Grand Corruption (GC) (lay person’s definition and legal standard) and how TI pursued over three years – evolved from realisation that not viable to take to ICC. Started a different approach taking three factors into account: that it involves individuals and bodies with very substantial economic or political power; implies mobilisation of immense resources; and directly related to the violation of human rights, with deleterious effect on the poorest. Impunity is the other face of this kind of corruption and a typical consequence of GC. Arriving at a legal definition was challenging and a serious effort has been made. TI has received many legal opinions and has opened it up for wider debate and discussion. One of questions that has emerged is how GC is different from Corruption. The idea of this panel is to bring further light and insight to this debate, and to discuss how high-level figures of grand corruption are not held to account. Another objective is address how impunity can be stopped, exploring various models and alternatives. |

---

| What initiatives have been showcased? |
| Two successful models were noted in the introduction: The first, the model of the International Commission Against Impunity in Guatemala (CICIG) - so effective that it was replicated in Honduras with less powers, however (called Maxi) – a commission against impunity. The other model is very effective as well: Brazilian prosecutors and judges taking the lead to investigate GC with substantial results. |

Ivan Valasquez spoke about the International Commission Against Impunity in Guatemala – overcoming constitutional issues, the fact that the country’s judiciary and public administration were captured, and the steps they took to make progress, given the Commission had to work with state bodies and that many new laws had to be introduced for commission to take its work forward. A huge political struggle and has to be renewed every two years.  

Giovanni Tartaglia Polcini stated that GC cannot be separated from organised crime and its networks. To ensure success it was essential to remove immunity of politicians and to introduce strong new anti-corruption laws. Independence and |
autonomy of prosecutors and judges in Italian criminal process is essential.

Helen Brady noted that ICC does not have jurisdiction of GC as a crime. However, a link between crimes in Rome Statute which created ICC and GC – a cycle of criminality. Spoke specifically of how links are being made now via work of the ICC. E.g. case selection policy can touch on GC in two ways. This link is made at times even though corruption (and other non-core crimes) not the focus.

Judge Wolf has advocated necessity of an international anti-corruption court. The corrupt are criminals that ruin the lives of others and the amounts lost to GC are far greater than all of the funding given in foreign aid. Corruption global so needs a global response which is why in his view it needs a separate global court. It has substantial support but needs to go from a concept to a campaign.

Yegor Sobolev spoke about how Ukraine is a laboratory in the fight against corruption and for good governance. To fight corruption effectively – have to work at a domestic level but success not complete until there is the international space to fight GC and greater international cooperation. Attempting to establish anti-corruption court in Ukraine.

Briefly describe the highlights including the thematically interesting questions and ideas that were generated from the discussion or from the floor, and session quotes.

- The establishment of a legal definition of grand corruption and discussion re its specifics and potential effectiveness
- Many models/ways to prosecute cases of grand corruption at both national and international levels
- Discussion about whether CICIG model should be applied to other countries and how to make this possible
- The viability of international anti-corruption court
- The difficulty/impossibility of adding GC to ICC as core crime
- Other specific options to combat GC in courts, including private prosecutions, watchdog bodies
- Question of regulation of prosecutors
What are the key recommendations, follow-up Actions (200 words narrative form)

Key Insights that could be included in the IACC Declaration
Definition of Grand Corruption and its link to human rights.

Rapporteur’s name and date submitted
Anne Koch, 2 December 2016

Remember! This Short Report needs to be emailed to reports@17iacc.org within 2 hours after the session and will be uploaded instantly to the IACC website. Thanks.