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

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
As Covid-19 spreads throughout the world...

...so too do scare-mongering, false reports and misinformation. As essential as increased hygiene efforts are in the fight against Covid-19, so is ensuring that our society has free access to correct and substantiated information.

Think of Maverick Insider as the disinfectant in our hand sanitiser, powering our efforts to stop the spread of fake news. By becoming an Insider, you help ensure that there is a trusted source of news and information that all can access. We’ve launched a series of Coronavirus (Covid-19) special reports because we see this as our responsibility to make sure that you have accurate and up-to-date information.

It’s a public service and we are privileged to provide it. But the only way we will be able to continue to do so is for more of our readers to sign up to Maverick Insider.

We have a ton of great benefits that come with being part of this cause-driven community, but more than that, we need your help to keep going and to fight against the fake outbreak.

For whatever amount you choose, you can support DM and it only takes a minute.

Support Daily Maverick→

![VISA](https://www.dailymaverick.co.za/opinion-piece-tag/visa/)  ![MasterCard](https://www.dailymaverick.co.za/opinion-piece-tag/mastercard/)  ![EFT](https://www.dailymaverick.co.za/opinion-piece-tag/eft/)

Corruption (https://www.dailymaverick.co.za/opinion-piece-tag/corruption/)
Jacob Zuma (https://www.dailymaverick.co.za/opinion-piece-tag/jacob-zuma/)
kleptocracy (https://www.dailymaverick.co.za/opinion-piece-tag/kleptocracy/)
State Capture (https://www.dailymaverick.co.za/opinion-piece-tag/state-capture/)
Sustainable Development Goals (https://www.dailymaverick.co.za/opinion-piece-tag/sustainable-development-goals/)
UN (https://www.dailymaverick.co.za/opinion-piece-tag/un/)
Paul Hoffman SC is a director of Accountability Now and serves on the board of Integrity Initiatives International.

Comments - share your knowledge and experience

Please note you must be a Maverick Insider (/insider/?utm_source=DM_Website&utm_medium=Comments) to comment. Sign up here (/insider/?utm_source=DM_Website&utm_medium=Comments) or sign in if you are already an Insider.

Everybody has an opinion but not everyone has the knowledge and the experience to contribute meaningfully to a discussion. That’s what we want from our members. Help us learn with your expertise and insights on articles that we publish. We encourage different, respectful viewpoints to further our understanding of the world. View our comments policy here.

Only Maverick Insiders can comment. Become an Insider

All Comments 1

Tom Lessing 5 hours ago

"The prevention and combatting of corrupt activities act" ought to be able to deal with it. But the NPA otherwise known as the "No Prosecutions Agency" falls short here. A corruption court seems like a good idea but who is going to investigate and prosecute?