

U4 Helpdesk Answer

U4 Helpdesk Answer 2020

Definitions of grand corruption

There is no universally agreed definition of grand corruption. Instead, many general definitions have been developed over the years and they cover different elements of what they consider as grand corruption. Nonetheless, there is some consensus on elements such as i) misuse or abuse of high-level power; ii) large scale and/or large sums of money, (iii) harmful consequences. The definitions have also been useful to differentiate grand corruption from other forms of corruption, such as petty corruption.

With high-level corruption scandals usually remaining unpunished, there have been increased efforts to establish a legal definition of grand corruption, as a first step towards the empowerment of national and international authorities with better legal tools to pursue corrupt high-level officials and to end impunity.

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Query

Please provide an overview of the most widely accepted definitions of “grand” corruption, and if there are any relevant advantages/disadvantages of the definitions. What other definitions (where possible, legal definitions) of corruption exist that might enable policymakers to distinguish between grand and petty corruption?

Contents

1. Introduction
2. General definitions of grand corruption
3. Legal definitions of grand corruption
4. Conclusion
5. References

Caveat

This Helpdesk answer provides an overview of general and legal definitions of grand corruption. It does not offer legal expertise or analysis on defining grand corruption, which goes beyond the scope of the Helpdesk.

General definitions of grand corruption

There is no universally agreed definition of grand corruption. No anti-corruption instrument has defined grand corruption or even corruption as such. Instead, many international treaties prescribe a list of corruption offences (OECD 2008: 22). For instance, the United Nations Convention against Corruption (UNCAC) does not define corruption but rather provides a list of corruption offences in articles 15-25.

Nonetheless, many general definitions of grand corruption have been developed by academics and policy makers over the years to give a better

MAIN POINTS

- Some general definitions of grand corruption agree on i) misuse or abuse of high-level power; ii) large scale and/or large sums of money, (iii) harmful consequences. These elements from general definitions have been useful when differentiating grand corruption from other forms of corruption, such as petty corruption.
- Recently, efforts have been made to establish a legal definition of grand corruption. For instance, Transparency International has worked on a draft legal definition, which was released in 2016 and revised in 2019.
- The main rationale behind efforts for a legal definition is to develop a criminal offence of grand corruption, as a first step towards the empowerment of national and international authorities with better legal tools to pursue corrupt high-level officials and to end impunity.

understanding of this aggravated form of corruption. Some of the definitions are the following:

“Cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of states, and that

threaten the political stability and sustainable development of those states”¹ (Preamble of the United Nations Convention against Corruption).

“Grand corruption is an expression used to describe corruption that pervades the highest levels of government, engendering major abuses of power. A broad erosion of the rule of law, economic stability and confidence in good governance quickly follow. Sometimes it is referred to as ‘state capture’, which is where external interests illegally distort the highest levels of a political system to private ends” (United Nations 2004: 23).

“The abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished” (Transparency International 2016).

“Grand corruption typically takes place at the public sphere’s top tiers and within the highest levels in private business. It includes actors that make rules, policies and executive decisions. It often involves large sums of money. Grand corruption is also often called political corruption, highlighting the negative influence of money in political processes, campaigns and political parties” (U4 Anti-Corruption Research Centre, no date).

Other common definitions of grand corruption, include the following:

- “The misuse of public power by heads of state, ministers and senior officials for private pecuniary gain” (Moody-Stuart 1994: 1). This definition has been used by a number of scholars (Doig and Theobald 1999: 3; Houngnikpo 2006: 86; González 2007: 50).
- “Corruption that pervades the highest levels of a national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability” (Rose-Ackerman 1996). This definition is used in the United Nations Anti-Corruption Toolkit (UNODC 2004: 13) as well as in academia and advocacy work (Langseth 2006: 9; UK Open Government 2016; Rotberg 2019: 34; UNAFRI 2020).
- “Corruption at the top of the state hierarchy that involves political leaders and their close associates and concerns the award of major contracts, concessions and the privatisation of state enterprises” (Rose-Ackerman 2010: 132).
- Others have tailored the definition of grand corruption according to a particular sector. For instance, Kenny and Søreide (2008:5) define grand corruption in utilities as including “cases when politicians or high-ranking civil servants manipulate a country’s management or regulation of

¹ The phrase “corruption involving vast quantities of assets”, derived from UNCAC, is used in official UNCAC-related meetings and documents to describe grand corruption. See for example, the [Conferences of the States Parties to UNCAC](#), as well as the [Lima Statement on Corruption involving Vast Quantities of](#)

[Assets and the Oslo Statement on Corruption involving Vast Quantities of Assets](#) issued after Global Expert Group Meetings.

infrastructure industries to gain exclusive benefits”.

Some definitions agree on: i) abuse of high-level power²; ii) large scale and/or large sums of money,³ and also (iii) harmful consequences.⁴ However, regarding consequences, there are variations as some definitions focus on political stability and sustainable development (UNCAC), others on a wide range of harm to individuals and society (Transparency International), and some on political integrity (U4 Anti-Corruption Research Centre) and on the rule of law, economic stability and governance (United Nations, Rose-Ackerman 1996). Hence, the general definitions provided by different sources seem to be more subjective and influenced by individual objectives or the purposes of the drafters.

Distinguishing grand from petty corruption

Corruption is a complex phenomenon that eludes simple binaries such as that between “grand” and “petty”. Nonetheless, this Helpdesk answer considers several features that distinguish street level bribery from higher-level venality, not least because several definitions have drawn distinctions between the two. Petty corruption is defined as small-scale and everyday corruption by public officials in their interactions with ordinary citizens, mostly during public service delivery (U4 Anti-Corruption Resource Centre, no date).

² Definition provided in the UNCAC preamble does not specifically include this element.

³ Surprisingly, a number of definitions do not include this element. See Moody-Stuart (1994); United Nations (2004); (Rose-Ackerman 1996); Transparency International (2016).

The first distinction between petty and grand corruption, as provided by most general definitions, involves the status of the perpetrator. Grand corruption is committed with the involvement of a high-level official who enjoys discretionary authority over government policy. In contrast, petty corruption involves lower-level officials who usually enjoy discretion over basic service delivery, such as education and electricity (Heineman and Heimann 2006: 77) or during their encounter with citizens; for example, a police officer may extort bribes, or a businessperson may pay grease money to officials to expedite licencing procedures.

Since grand corruption occurs at a higher level, it may involve changing laws, policies or institutional structures for private gain (U4 Anti-Corruption Resource Centre no date; United Nations 2004: Kenny and Søreide 2008: 5), whereas petty corruption focuses on abusing existing laws and structures (Kenny and Søreide 2008: 4). As pointed out by the United Nations (2004: 23), “the essential difference between grand corruption and petty corruption is that the former involves the distortion of central functions of government by senior public officials; the latter develops within the context of functioning governance and social frameworks”.

The second distinction relates to the threshold or amounts involved. Grand corruption involves a

⁴ Definitions that do not include the harmful consequences of grand corruption include Moody-Stuart (1994); Rose-Ackerman (2010); and Kenny and Søreide (2008).

substantial amount of resources, for instance, as described in UNCAC as “vast quantities of assets, which may constitute a substantial proportion of the resources of states”. Whereas petty corruption, also known as “administrative” or “bureaucratic” corruption, is everyday corruption that involves small amounts or granting small favours.

The third distinction regards the organisational and transnational nature of grand corruption compared to petty corruption.⁵ Grand corruption usually crosses borders and involves highly connected officials who engage in organised schemes to siphon off state resources for their own private benefits (Ware and Noone 2005; Cooley and Sharman 2017). However, petty corruption may be organised but mostly takes place within national borders; for instance, where low-level officials engaged in everyday corruption are required to give a cut to the next person up the chain, who might be required to do the same until it gets to top management (Bohórquez and Devrim 2012:2).

Researchers have used these distinctions in their studies on corruption in certain sectors or regions. For instance, Kenny (2009) examined the impact of grand and petty corruption in infrastructure. After analysing various corruption perceptions indices, he concluded that a focus on bribe payments as the main indicator of costs of corruption in infrastructure was misplaced, and did not reflect on costs of large-scale corruption common in the sector. He cautioned against using perceptions indices, as perceptions tend to capture petty corruption rather than grand corruption, to guide

policy decisions in infrastructure (Kenny 2009: 329-330).

Nystrand (2014) explored how petty and grand corruption affected the dynamics of conflict in northern Uganda, based on the perspectives of local businesspersons. His study highlighted that grand corruption was more of a driver of the conflict, as many people were aggrieved by high-level corruption scandals, which increased political tensions in northern Uganda. In contrast, petty corruption was viewed as a way of doing business and had a remote link to the conflict (Nystrand 2014: 829-830).

However, there are also challenges faced distinguishing grand from petty corruption using a general definition. The terms “petty corruption” and “grand corruption” are not legal distinctions, but merely used to describe variations of the same phenomenon (Peters 2015: 10). As with petty and other forms of corruption, grand corruption includes bribery, embezzlement, illicit enrichment and other misuses of power for private gain.

According to the U4 Anti-Corruption Resource Centre (no date), it may sometimes be unclear where petty corruption ends and grand corruption begins (see also Abjorensen 2014: 21). An example is given where grand or political corruption encompasses vote buying and other forms of petty corruption, or where there is a corrupt pyramid scheme which stretches from junior officials all the way up to senior state officials (U4 Anti-Corruption Resource Centre, no date; Kenny and Søreide 2008: 4; Bohórquez and Devrim 2012: 2; Abjorensen 2014: 21.).

⁵ This element is not really included in general definitions listed above, but it is worth mentioning.

Legal definitions of grand corruption

Rationale for a legal definition

As will be discussed below, there have been current efforts to establish a legal definition of grand corruption. However, one of the first questions to be answered is why there is a need for a legal definition. At the moment, most/all criminal codes have already criminalised various offences of corruption such as embezzlement or abuse of functions, whether committed at grand or petty level and many include aggravated forms of the offence (UNODC 2017).

In addition, many legal instruments do not contain a legal definition of corruption per se, but only regulate specific offenses such as bribery, abuse of functions and embezzlement (UNODC 2017). Even during the negotiation of UNCAC, the Ad Hoc Committee could not reach an agreement on a definition of “corruption” (UNODC 2002: 8; UNODC 2003: 3), and eventually agreed to include a list of criminal offences instead of a formal definition.⁶ Hence, in the absence of a universally accepted legal definition of corruption, what use is there for a legal definition of grand corruption?

The answer to the question is centred on the serious impact of grand corruption and the need to end the impunity of its perpetrators. For instance, Benestad (2020) argues that grand corruption has become an international issue and should be an indispensable priority at the 2021 United Nations

General Assembly Special Session against Corruption. He points out that a “political declaration should give an honest description of ‘grand corruption’, to spread awareness about what it actually constitutes, how it affects the masses and global prosperity, and that it is a serious threat to the achievement of the 2030 Sustainable Development Goals.” (Benestad 2020: 4). According to the Global Organisation of Parliamentarians against Corruption (GOPAC) (2013: 3), a rigorous definition of grand corruption would draw attention to the crime, including who is capable of committing the offence and any threshold(s) for the crime of grand corruption.

Hence, defining grand corruption as precisely as possible may be a crucial step to attract special attention to the offence instead of depending on general corruption offences (Hava 2015: 483; Transparency International 2017). The value of a legal definition may lie in helping to provide a basis for developing special measures at both national and international levels aimed at reducing impunity for grand corruption. The following section turns to focus on these efforts.

Ending impunity for grand corruption

National level

Establishing a legal definition of grand corruption may increase attention and opprobrium to the offence and enhance its investigation and prosecution at national level. In its submission to the 7th UNCAC Conference of the States Parties, Transparency International (2017) recommended

⁶ Other international instruments such as the Council of Europe Criminal Law Convention on Corruption (articles 2-15) and African Union Convention of

Preventing and Combating Corruption (articles 4 and 6) adopted a similar approach.

that countries “consider the adoption of an offence of grand corruption in their national legislation with special measures to ensure crimes of grand corruption are detected, investigated and prosecuted”. It went on to point that the advantage of establishing a grand corruption offence emanates from the associated special measures designed to end impunity and prevent grand corruption.

The special measures include “increased sanctions, extended statutes of limitation, lifting of immunities, possibility of private prosecution, special remedies for victims in criminal and civil proceedings, and denial of entry” (Transparency International 2017; Dell 2020). According to Hava (2015: 483), defining grand corruption would enable criminal law specialists to propose new laws for grand corruption, or interpret those that already exist. Hence, a legal definition will provide the basis for empowering national authorities with better legal tools to pursue corrupt high-level officials and to end impunity.

International level

In many countries, corrupt leaders enjoy impunity from prosecution because justice systems in these countries have been captured, corrupted or paralysed by the elites, and are unwilling or unable to prosecute the senior figures and their associates (Stephenson and Schütte 2019: 1; Roht-Arriaza and Martinez 2019: 1062). Thus, leaving cases of grand corruption to be addressed by captured local authorities will mean the chances of corrupt elites being left unpunished are high.

There is a view that the main rationale for a legal definition is to create an international crime so that extraterritorial jurisdiction can be exercised by foreign national courts or potentially an international court. For instance, GOPAC argues

that “the development of a defensible and widely accepted definition of the term ‘grand corruption’ is a prerequisite to deeming grand corruption an international crime” (GOPAC 2013: 3). This could trigger the jurisdiction of foreign and international courts to prosecute grand corruption where countries with primary jurisdiction are unwilling or unable to prosecute parties for the offence of grand corruption.

There has been an increased focus over the years on prosecuting corruption as an international crime. According to Sarr (2007: 1281), grand corruption is an “extraordinary crime” which cannot and will not be prosecuted effectively at the national level, making a clear case for its consideration for prosecution at the international level. Others have argued that grand corruption is a crime against humanity which starves citizens and strips future generations of their national wealth (Bantekas 2006: 474; GOPAC 2013: 6). The presidents of Colombia and Peru have also called on states to consider international instruments to fight corruption, with a diplomat pointing out that it is only reasonable for the United Nations to thoroughly analyse such requests from countries struggling to counter corruption at the national level (Benestad 2020).

The conclusion is that grand corruption with impunity at the national level warrants address by the international community in the same way as human rights violations in countries with impunity led to the creation of international criminal courts or tribunals.

Dell (2020) argues that a legal definition is “an essential starting point” for discussions on international mechanisms to end impunity for grand corruption. The Oslo statement also recommended the exploration of innovative ideas

to end impunity for grand corruption, including establishment of regional and international mechanisms (UNODC 2019: 8). Several accountability mechanisms that have been proposed include the following (Stephenson and Schütte 2019: 8-11; Dell 2020):

- The proposed International Anti-Corruption Court by Wolf (2014), which will exercise jurisdiction over grand corruption in a similar manner to the International Criminal Court (ICC). In particular, its jurisdiction would be complementary as it would prosecute grand corruption where national courts are unwilling or unable to do so (see Stephenson and Schütte 2019, UNODC 2019: 8).
- Extending the jurisdiction of the ICC. This would mean that grand corruption would be classified as a crime against humanity (Bantekas 2006: 474; Bloom 2014: 649) or as an international crime. According to Recommendation 47 of the Oslo Statement on Corruption involving Vast Quantities of Assets (VQA), the Global Expert Group Meeting explored the idea of “extending the jurisdiction of the International Criminal Court to include corruption involving VQA” (UNODC 2019: 8).
- Establishing regional anti-corruption courts, similar to regional human rights courts that already exist, such as the African Court of Human and Peoples’ Rights. For instance, in 2014, the African Union adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol). Annexed to the

Malabo Protocol is the Statute of the African Court of Justice and Human and Peoples’ Rights, which provides jurisdiction to the yet to be formed African Court of Justice and Human and Peoples’ Rights (African Criminal Court). The African Criminal Court will exercise jurisdiction over 14 international and transnational crimes, including corruption and money laundering. Article 28l of the annex to the Malabo Protocol criminalises acts of corruption that are “of a serious nature affecting the stability of a state, region or the Union” (see Fernandez 2017).

- Use of international or regional anti-corruption prosecutors or enforcement agencies; for instance the new European Public Prosecutor’s Office, which offers an example of similar work. This idea of creating international commissions against corruption and impunity was also considered in Recommendation 47 of the Oslo Statement (UNODC 2019: 8).
- International or regional investigative agencies; similar to the International Anti-Corruption Coordination Centre which was established by the United Kingdom in July 2017.
- Ad hoc international anti-corruption courts focused on one country or situation, following the models of the international criminal tribunals in Rwanda, Yugoslavia, Sierra Leone and Cambodia.
- A framework for ad hoc international prosecution or investigative functions focused on one country, following the example of the International Commission

against Impunity in Guatemala (CICIG) set up by the United Nations in 2006 and the European Union Rule of Law Mission in Kosovo (Kuris 2019).

A legal definition of grand corruption as an international crime may also be used to invoke the doctrine of universal jurisdiction by foreign courts to prosecute grand corruption (GOPAC 2013: 4). Using this doctrine, foreign states could assert universal jurisdiction over grand corruption offences irrespective of where the offence took place, the accused's nationality or country of residence.

However, there are legitimate concerns that universal jurisdiction may dilute national sovereignty and could be deployed as a tool to advance political agendas instead of an anti-corruption agenda (GOPAC 2013: 4; Sharman 2017:11). This means it would be important to make clear certain issues: for example, jurisdiction should only be possible if it can be shown that the jurisdiction where grand corruption occurs is unable or unwilling to pursue grand corruption cases, as well as having other safeguards against abuse of the universality principle for political gains.

Examples of legal definitions of grand corruption

Definitions by Transparency International

Transparency International has developed working legal definitions of grand corruption over the past few years. In 2016, its draft definition read as follows:

“Grand corruption occurs when:

- a public official or other person deprives a particular social group or substantial part of the population of a state of a fundamental right;
- or causes the state or any of its people a loss greater than 100 times the annual minimum subsistence income of its people;
- as a result of bribery, embezzlement or other corruption offence” (Transparency International 2016b).

By referring to “a public official or other person”, the draft definition did not specifically limit the perpetrators of grand corruption only to high-level public officials, nor to natural persons. As pointed out in the explanatory notes of the definition, a person includes both natural and legal persons (Transparency International 2016b), meaning that any natural person or legal entity could be charged and prosecuted for grand corruption using the definition.

A “fundamental right” was defined as any right included in the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; or other international and regional human rights conventions applicable under the domestic laws of the relevant state. “Depriving” such rights was defined as consistent with official interpretations from such conventions. A “particular social group” was referred in terms of Article 1(A)(2) of the United Nations Convention related to the Status of Refugees. The explanatory notes pointed out that by enhancing accountability for corruption as a human rights crime that harms citizens egregiously and too often with impunity, the legal definition

was giving legal relevance to the victims of corruption. (Transparency International 2016b).

The legal definition was revised in 2019. The current draft definition reads as follows⁷:

“Grand corruption means the commission of any of the offences in UNCAC Articles 15 - 25 as part of a scheme that

- (1) involves a high-level public official; and
- (2) results in or is intended to result in a gross misappropriation of public funds or resources, or gross violations of the human rights of a substantial part of the population or of a vulnerable group” (Transparency International 2019).

The draft definition includes specific elements which were absent in the first version. First, it introduced the element of a corruption scheme, which means that the crime of grand corruption should be committed as part of a systematic or well-organised plan of action, although a single offence “may amount to a scheme when the amount misappropriated or the number of victims is sufficiently high” (Transparency International 2019). To determine whether an act of corruption is part of a scheme, factors which are taken into account include: i) the number of transactions; ii) the duration of the offence(s); iii) the number of participants; or iv) the amount misappropriated (Transparency International 2019).

⁷ The draft definition is currently under review, hence the wording may change.

⁸ The term “gross” violation is commonly used in human rights discourse. See for example the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of

Second, the draft definition requires the involvement of a high-level public official, which was not a definitional element in the first version. This means that, where only private persons or only low-level officials engage in a corruption scheme without the involvement of a high-level public official, it would not count as grand corruption.

The definition of “high level” is based on the language in Article 52 of UNCAC which refers to “individuals who are, or have been, entrusted with prominent public functions and their family members and close associates”. It also adopts the language of the Financial Action Task Force (FATF) on politically-exposed persons, defined as individuals such as “heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials” (FATF 2013:10). According to Hava (2015: 487), “the most serious cases of corruption are characterised as being perpetrated, facilitated, managed or tolerated by persons in high levels of power, *de facto* or *de iure*, in or affecting the government”. Using this explanation, it means that any person who exercises high-level power in government, with or without a formal title, could be regarded as a high-level official.

Third, the draft definition adds the adjective “gross” to the violation of fundamental human rights.⁸ The explanatory notes of the definition point out that the meaning of “gross violation” is

International Human Rights Law and Serious Violations of International Humanitarian Law, available at <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>. It also appears in many

derived from the International Commission of Jurists in The Right to a Remedy and Reparation for Gross Human Rights Violations, Practitioners' Guide No 2 of October 2018. According to the guide, major crimes under international law constitute serious or gross violations of human rights. In addition, "deliberate and systematic deprivation of essential foodstuffs, essential primary health care or basic shelter and housing may also amount to gross violations of human rights" (Transparency International 2019).

This means that where schemes of grand corruption lead to deprivation of fundamental services such as food, health and shelter, this may amount to a gross violation of human rights, thereby meeting the requirement in the proposed definition.

Suggested definitional elements by Esther Hava

While analysing whether corruption should be included within the mandate of the International Criminal Court, Hava (2015: 489) examined what a legal offence of grand corruption should consist of. She argues that there are five main factors to be considered to define grand corruption in terms of criminal law:

- The active perpetrators of the crime would be high-ranking officials or persons who exercise significant levels of power, *de facto* or *de iure*, in the areas of political decision making in the country or region affected (political factor).

- The attempt, directly or indirectly, by the perpetrators to gain large sums of money or greater levels of power, which in turn enable them to have access to quantifiable advantages (economic factor).
- The abuse of power and the systemic nature of such an abuse of power (political and systemic factors).
- The abuse of power should produce a highly negative social impact manifested in serious harm to very personal rights that are legally protected (social factor).
- The inability or refusal of the authorities to investigate or prosecute the act of corruption (impunity factor). However, this element would need to be excluded from criminal law definitions as it is more related to procedural matters than to substantive criminal law.

The similarities between definitional elements suggested by Hava and Transparency International's draft definition include (i) abuse of power (ii) by any person who exercises high-level power in government or political decision making in the country or region (iii) as part of a scheme or systemic abuse of power (iv) causing serious harm or gross violations of human rights. The major difference relates to the impunity factor, which Hava admits should not be included in a criminal law definition since it relates more to procedural criminal law.

places on the OHCHR website, for example <https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/callAccountability.aspx>

Hava points out that there are challenges in establishing a legal definition. For instance, certain legal terms may be used with different meanings between the common law and civil law systems in existence. Hence, any proposed definition based on one legal system cannot easily be compatible with legal principles of a different system (Hava 2015: 496). In addition, an international crime of grand corruption may face the same issues (political or otherwise) similar to the crime of aggression. These include gaining international consensus on the definition of grand corruption, such as identifying elements constituting a specific act; establishing the position that the perpetrator of a crime must occupy in the power structure of the state; and whether or not it is necessary for the perpetrator to have acted with a specific intention (Hava 2015: 497).

Conclusion

There is no universally agreed definition of grand corruption. Nonetheless, various definitions have been developed over the years and have been useful in differentiating grand corruption from other forms of corruption such as petty corruption. There are on-going efforts to establish legal definitions grand corruption for the purpose of reducing impunity for grand corruption at both national and international level. According to the available literature, the definition would likely include elements such as abuse of power, a person who exercises high-level power in government or political decision making in the country or region, a scheme or systemic abuse of power, and the act of corruption should cause or potential cause serious harm or gross violations of human rights.

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The U4 anti-corruption helpdesk is a free research service exclusively for staff from U4 partner agencies. This service is a collaboration between U4 and Transparency International (TI) in Berlin, Germany. Researchers at TI run the helpdesk.

The U4 Anti-Corruption Resource Centre shares research and evidence to help international development actors get sustainable results. The centre is part of Chr. Michelsen Institute (CMI) in Bergen, Norway – a research institute on global development and human rights.

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