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Fifteen Minutes of Shame: The Growing Notoriety of Grand Corruption

By Mary Evans Webster*

I. Introduction

Corruption in all its manifest forms gnaws at, undermines, and contradicts all the democratic elements. It is underserved, unfair, unjust, and immoral benefit derived from positions of public trust and responsibility used for sleaze and unworthy actions.¹

Ten years ago, corruption was considered incident to doing business internationally and, for better or worse, an inescapable reality.² Today, corruption is considered to be one of the fundamental obstacles to development and an enemy that must be defeated.³ Accordingly, the international community is focused, like never before, on efforts to reduce corruption as an essential component of poverty eradication.⁴

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Unfortunately, many reforms implemented to fight corruption have yet to significantly reduce corruption. In May 2005, the World Bank released a study which declared that, between 1996 and 2004, the quality of governance deteriorated in as many African countries as in which the quality of governance improved. Despite billions of dollars expended on rule of law and good governance programs, corruption maintains a tight grasp on many developing countries.

This note will examine grand corruption, provide a survey of recent efforts to combat such flagrant abuses of power, and assess the relationship between grand corruption and international legal development. Part II draws a distinction between administrative and grand corruption and examines one of the most egregious cases of grand corruption and kleptocracy from the latter half of the twentieth century. Part III addresses recent efforts of the United Nations, the World Bank, and the United States to fight grand corruption. Part IV explores the relationship between grand corruption and legal development. It looks at the relationship between law and politics in fighting grand corruption and addresses the difficulty of using development aid to fight grand corruption. Lastly, Part V examines a number of legal approaches to fighting grand corruption.

II. What Grand Corruption Looks Like

In order to understand current worldwide efforts to combat corruption, an important distinction must be made. For a number of years, international development organizations operated on the theory that institutional and organizational reform combined with public education would successfully eliminate corruption. Accordingly, the vast majority of anticorruption resources and efforts have gone to fight administrative corruption. Administrative corruption is the payment of small-scale bribes to mid- and low-level government officials such as police officers, customs personnel,

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medical doctors, and teachers. 8

Today, a shift in focus has occurred, and the international community has begun to recognize the harm caused by grand corruption. Grand corruption, also known as political corruption, is classified as large bribes given in connection with major interactions, such as large infrastructure projects or arms sales, and the abuse of political power to extract and accumulate for private gain. 9 The key difference between the two types of corruption is that “administrative corruption reflects specific weaknesses within different systems, while grand corruption involves the distortion and exploitation of entire systems for the benefit of private interests.” 10 Grand corruption is often associated with the massive redirection of public funds for the private use of the political elite. 11 The most notorious culprits have embezzled billions of dollars from their countries for their own personal wealth accumulation.

Transparency International, one of the preeminent international organizations dedicated to fighting corruption, has compiled a list of the most flagrant benefactors of grand corruption. 12 Each of the leaders on the list used his position and power to amass huge amounts of wealth, in turn denying his citizens access to development funds and the benefits of private investments in their respective countries. Mohamed Suharto, the president of Indonesia from 1967 to 1998, is the most egregious offender, having embezzled an estimated $15 billion to $35 billion. 13

The World Bank ("Bank") estimates that up to 30 percent, or $10 billion, of its loans to Indonesia were lost to corruption during the Suharto regime. 14 It is not hard to understand why development is

11. Id.
13. Id.
impeled by corruption when a president has stolen billions of dollars from his citizens. Suharto resigned from his presidency in 1998 in response to mounting opposition to his rule. In 2000, he was charged by the Indonesian government with embezzling more than $600 million. All of the charges against Suharto were formally dropped in 2006 due to his failing health; Suharto never appeared in court regarding the corruption allegations.

While administrative corruption may be more visible on a day-to-day basis, grand corruption is utterly devastating to state development. Grand corruption robs citizens of access to necessary funds and exacerbates state poverty. It was believed that fighting small-scale bribery and increasing public awareness regarding corruption is enough to change a country. This idea has proven to be a false hope. International efforts to fight corruption must emphasize grand corruption in order to be successful.

III. Current Strategies for Fighting Grand Corruption

Recent changes to international aid strategies and developments in global cooperation offer insight into the potential to fight grand corruption. The last ten years have shown dramatic increases in worldwide recognition of the problems of corruption. Developments in the past five years are particularly telling in regards to the obstacles to and opportunities for battling grand corruption.

A. The United Nations

In December 2003, United Nations General Assembly adopted the United Nations Convention against Corruption ("UNCAC"). To date, the Convention has 140 signatories. The UNCAC is the

17. Id.
18. USAID Anticorruption Strategy, supra note 3, at 8.
19. Id. at 1.
21. Id.
first binding international agreement on corruption. The Convention represents the result of serious efforts to get the global community to come together and address specific aspects of corruption that impede development and exacerbate poverty.

Significantly, the UNCAC distinguishes itself from other international conventions in that it recognizes that the problem of corruption is more extensive than bribery and that other aspects of corruption must be addressed in order to make global efforts effective. In the preamble to the Convention, there is specific reference to the need to fight grand corruption. The signatories declare themselves to be "[c]onvinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law, [and] [d]etermined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery."  

One of the most contentious and important aspects of the UNCAC is its provisions regarding asset recovery. Asset recovery is a major issue for countries where grand corruption has resulted in the loss of millions of dollars that could be used for poverty alleviation and development of civil services. Leaders involved in the negotiations for the UNCAC recognized that asset recovery was fundamental to the Convention and a significant indicator of the political will of states to truly work together to fight grand corruption. Ultimately, an entire chapter of the Convention was devoted to asset recovery.

In December 2006, the Conference of the States Parties to the UNCAC held its first session in Amman, Jordan. In a resolution, the States reconfirmed their commitment to asset recovery and declared asset recovery to be one of the primary objectives of the UNCAC. The resolution called for the establishment of an interim

23. Id. at 210.
27. Id.
open-ended intergovernmental working group to continue global cooperation in asset recovery; there was particular emphasis on the importance of the exchange of information, and “with a view to tracing financial flows linked to corruption, seizing assets derived from corruption and returning such assets.”

Not surprisingly, the asset recovery component of the Convention has been met with mixed reviews. Many considered the provisions to be groundbreaking. Importantly, there are mandatory provisions which empower states to recover property through civil action or international cooperation. On the other hand, some of the most important provisions were made optional. Specifically, states need only consider establishing financial disclosure systems. Furthermore, the enforcement of the Convention in international law remains largely incidental to international cooperation. While the Vienna Convention on the Law of Treaties requires states that ratify treaties to oblige by the treaty under the doctrine of *pacta sunt servanda*, no reliable body of enforcement exists in international law.

**B. The World Bank**

The World Bank is one of the global leaders in the fight against corruption and was the first development finance organization to implement a comprehensive anticorruption regime. Since 1996, the Bank has changed its function from self-described apolitical institute to a bank that actively supports the improvement of public institutes and the strengthening of governments. “Between 2000 and 2004, lending to promote economic reforms fell by 14 percent a year, but lending to improve governance rose by 11 percent. In the 2004 fiscal

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28. *Id.*
year the Bank committed 25 percent of its lending to law and public administration. The Bank now considers corruption to be one of the greatest obstacles to economic and social development and has identified five elements of an effective anticorruption strategy: increase political accountability, strengthen civil society participation, create a competitive private sector, implement institutional restraints on power, and improve public sector management.

In September 2006, the World Bank released a new proposed strategy on governance and anticorruption at its annual meeting. The strategy explicitly recognizes the problem of grand corruption and notes that it is harder to address than administrative corruption. Like the UNCAC, the Bank lists technical assistance for asset recovery as fundamental to its global approach. In fact, in September 2007, the World Bank announced the Stolen Asset Recovery (StAR) Initiative, a joint project between the Bank and the UN. The four primary tasks of the project are: to build institutional capacity in developing countries, to strengthen the integrity of financial markets (especially by assuring that financial centers are in compliance with anti-money laundering legislation), to assist the asset recovery process of developing countries, and to monitor the use of recovered assets. Hopefully, cooperation between the two entities will increase the success rate of asset recovery efforts.

C. Millennium Challenge Corporation and the United States Agency for International Development

During the presidency of George W. Bush, U.S. foreign aid has undergone significant changes. In 2004, Congress established the Millennium Challenge Corporation (MCC), a government-owned corporation responsible for managing the Millennium Challenge

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35. Id.
38. Id.
39. Id.
Account (MCA). The MCC requires states to meet a set of selection criteria in order to be eligible for funding through the program. States must "demonstrate a commitment to policies that promote political and economic freedom, investments in education and health, control of corruption, and respect for civil liberties and the rule of law by performing well on 16 different policy indicators."  

The MCC approach is a break from traditional U.S. foreign aid projects, not only in its use of funding criteria but also in the way it imagines the projects to be carried out. Rather than short-term projects implemented by Washington consultants, the MCC permits countries to plan and carry out larger projects themselves. Currently, forty-two countries are eligible for MCC funding. The Bush Administration created the program as an alternative to the United States Agency for International Development (USAID) in order to assure lawmakers that a $2 billion increase in foreign aid would not be wasted on corrupt foreign officials. 

There are as many supporters of the program as there are critics. Some development experts praise the program as necessary in order to assure that aid money is not squandered away as it has been in the past. Lawmakers and policy experts have not failed to make the connection between generous foreign aid and the embezzlement of millions of dollars by the political elite in some developing countries, and have encouraged greater oversight of aid packages. On the other hand, for some experts, the program is controversial, if not misguided. Jeffrey Sachs, an economist from Columbia University, argues that the MCC fails to contribute enough money to international aid and is too narrow in the countries to which it will provide aid. As recently as December 2007, the MCC continues to be criticized for its failure to follow through on funding promises.

45. Elizabeth Becker, With Record Rise in Foreign Aid Comes Change in How It is Monitored, N.Y. TIMES, Dec. 7, 2003, at 110.
46. Id.
48. Dugger, supra note 43.
The MCC has suffered a number of setbacks since its creation. In June 2005, the first director of the MCC, Paul Applegarth, resigned from his post after a lackluster job in the role.\textsuperscript{49} A few weeks later, the leaders of five African states criticized the United States for excessive delays in delivery of grant funds.\textsuperscript{50} The presidents of Botswana, Ghana, Mozambique, Niger, and Namibia publicly complained that "the bureaucracy and fine print of the program made it nearly impossible for them to get aid."\textsuperscript{51} While Congress had at one point appropriated $4.8 billion for the MCA, as of December 2007, the agency had spent only $155 million.\textsuperscript{52}

In January 2005, USAID produced a new strategy plan for fighting corruption. In this report, USAID recognizes the need to expand its efforts to include more focus on fighting grand corruption.\textsuperscript{53} The agency claims that trying to fight corruption without attacking grand corruption is more likely to result in rearranging corruption than actually reducing it.\textsuperscript{54} In the strategy plan, USAID explicitly states that, in light of a new understanding of the detrimental effects of grand corruption, development efforts will now focus on countries which may suffer from administrative corruption but have relatively lower levels of grand corruption.\textsuperscript{55}

In no uncertain terms, the U.S. government seems to be suggesting it is less willing to send money to countries where the leadership exacerbates corruption. At the very least, USAID is putting significant effort into locating where the political will to fight grand corruption lies in order to direct its development money to projects that have the potential to effect change.\textsuperscript{56} Such a refocus of efforts requires creating projects that resist manipulation by government leaders and their cronies, by supporting decentralization and increased economic competition and introducing targeted

\textsuperscript{49} Celia Dugger, \textit{Bush Aid Initiative for Poor Nations Faces Sharp Budget Cuts and Criticism of Slow Pace}, N.Y. TIMES, June 17, 2005, at A12.
\textsuperscript{50} Id.
\textsuperscript{51} \textit{A Timely Departure}, N.Y. TIMES, June 19, 2005, at 411.
\textsuperscript{52} Dugger, supra note 43.
\textsuperscript{53} USAID Anticorruption Strategy, supra note 3, at 2.
\textsuperscript{54} Id. at 13.
\textsuperscript{55} Id. at 16.
\textsuperscript{56} Interview with Jason Schwarz, General Counsel, Senior Business Development Associate, DPK Consulting (March 2007) (on file with the author). DPK Consulting is a public sector management consulting firm that implements democracy and governance projects in developing countries for USAID, World Bank, and other clients.
transparency and accountability reforms.\textsuperscript{57}

IV. Legal Development and Grand Corruption

A. The Relationship Between Legal Development and Politics

i. The United States

Since the 1990s, the international development community has accepted corruption as a major impediment to international growth and a problem that exacerbates poverty and inequality.\textsuperscript{58} Rule of law and good governance are buzz words that receive a good deal of use in development circles. Seemingly, money invested in legal frameworks to fight corruption and bring kleptocrats to justice would be well spent. Unfortunately, grand corruption has a political character that continues to shield it from legal attack. In some instances, despite the United States' public opposition to grand corruption, it still offers significant funding to countries known to be systematically corrupt because other concerns, often political, are deemed more important.\textsuperscript{59}

In a speech on August 10, 2006, President Bush announced his "National Strategy to Internationalize Efforts Against Kleptocracy."\textsuperscript{60} In the words of the President: "High-level corruption by senior government officials, or kleptocracy, is a grave and corrosive abuse of power and represents the most invidious type of public corruption."\textsuperscript{61} The strategy calls for the creation of a coalition of international financial centers committed to denying access and financial safe haven to kleptocrats. It also calls for the prosecution of foreign corruption offenses and seizure of illicitly acquired assets, among other initiatives.\textsuperscript{62}

The public recognition that world leaders themselves impede development and squander international aid is an important step.

\textsuperscript{57} Id.

\textsuperscript{58} See HEATHER MARQUETTE, CORRUPTION, POLITICS, AND DEVELOPMENT (2003).

\textsuperscript{59} Schwarz Interview, \textit{supra} note 56.


\textsuperscript{61} Id.

\textsuperscript{62} Id.
While this new policy effort sounds promising, there is reason to be skeptical. Failure to recognize the problem and a shortage of strategies to fight it are not the primary obstacles to eliminating grand corruption. Rather, the challenges are incentive and lack of political will.

This reality played out when the president of Kazakhstan, Nursultan A. Nazarbayev, visited the United States in September 2006. Mr. Nazarbayev has been criticized for amassing a personal fortune from lucrative oil deals at the expense of his citizenry. In fact, he is an unindicted co-conspirator in one of the largest foreign bribery cases ever brought in a U.S. court. The defendant in the case, James H. Giffen, an American merchant banker and a consultant to the Kazakh government, has been accused of paying more than $78 million in bribes to Mr. Nazarbayev and the head of the Kazakhstan oil ministry. Federal prosecutors allege the Kazakh leadership accepted the money for personal use, including the purchase of expensive jewelry, speedboats, snowmobiles, and fur coats.

Despite the Kazakh president’s strong connection to these accusations and Mr. Bush’s declared devotion to prosecuting kleptocrats, Mr. Nazarbayev was warmly received by the Bush Administration and several prominent business people during his visit. Kazakhstan is an important ally in the fight against terrorism and a lucrative source of oil. Concerns of national security, strategic political relationships, and access to oil all impact the United States’ will and ability to fight grand corruption. While the United States has indicated a dedication to fighting grand corruption through a number of policy and spending initiatives, political and economic realities can supersede the priority of ending grand corruption and limit the role the law is permitted to play.

64. Id.
65. Id.
66. Id.
67. Id.
68. Id.
69. Id.
ii. The World Bank

The nature of the political dilemma at the World Bank is distinct from that which the United States faces. According to its bylaws, the Bank is not permitted to take into account the “political character” of the regimes it deals with.\textsuperscript{70} Until 1996, the Bank generally followed this rule and did not factor the political variable into its lending decisions.\textsuperscript{71} Furthermore, it did not engage in projects of a political nature.\textsuperscript{72}

When James Wolfensohn became president of the World Bank in 1996, he made good governance and anticorruption top priorities for the Bank. Nonetheless, even as World Bank projects have been expanded over the last ten years to address rule of law and governance concerns, the Bank has been reluctant to cut off funding to states, even in light of widespread evidence of corruption.\textsuperscript{73} The Bank “decries politics while conducting work that is overtly political.”\textsuperscript{74}

A not-so-quiet debate has been stirring within the World Bank about whether or not to take grand corruption into account when making future lending decisions.\textsuperscript{75} Paul Wolfowitz, the beleaguered president of the World Bank who resigned in May 2007, made battling graft his number one priority.\textsuperscript{76} In his first year as president of the Bank, he canceled or suspended several loans, some of them to powerful clients.\textsuperscript{77} His actions were controversial within the Bank and angered many, who questioned both his motives and his approach.\textsuperscript{78} Robert Zoellick, Wolfowitz’s successor, entered a World Bank greatly shaken by the anticorruption strategy pursued by Wolfowitz. Some Bank insiders hoped that Zoellick would be less preoccupied with corruption — particularly Wolfowitz’s plans to cut funding to some countries accused of corruption.\textsuperscript{79} While Zoellick remains

\textsuperscript{70} Double Edged-Sword: The Fight Against Corruption, \textit{The Economist}, September 14, 2006, at 99.
\textsuperscript{72} Marquette, \textit{supra} note 58.
\textsuperscript{73} Chanda, \textit{supra} note 33, at 347.
\textsuperscript{74} Marquette, \textit{supra} note 58.
\textsuperscript{75} \textit{Id}.
\textsuperscript{76} The World Bank: Just Saying No, \textit{The Economist}, March 2, 2006.
\textsuperscript{77} \textit{Id}.
\textsuperscript{78} \textit{Id}.
\textsuperscript{79} Steven R. Weisman, \textit{New World Bank Head Will Continue Fight} on
committed to fighting corruption in World Bank projects, he also is aware of the resistance among many at the Bank to put corruption concerns ahead of poverty alleviation.  

In many ways, the World Bank is caught in a predicament of priorities: Fight grand corruption by holding governments accountable, or continue to support economic development by making generous loans even in light of evidence of grand corruption.

B. Obstacles to Legal Development in Light of Grand Corruption

In 2003, the Asian Development Bank (ADB) estimated that one-third of public investment within many Asia-Pacific countries was being siphoned for corrupt use. The ADB also noted that corruption can cost a country up to 17 percent of its gross domestic product, which essentially robs the population of resources to fight poverty and implement development plans. The implication is that international development aid to fund anticorruption efforts where grand corruption is a serious problem is an inefficient use of resources. Anticorruption efforts, which aim to foster positive change, have the potential to do nothing more than create new opportunities for corruption. The international community is left in a seemingly lose-lose situation where money spent to fight corruption is invested in and, in turn, lost to corruption, because heads of state pocket the money instead of apply it accordingly.

Grand corruption is so much more difficult to fight than administrative corruption, because there is no leadership to support reform. The leadership itself is the problem. This is to say, the regimes the development community seeks to cooperate with in implementing corruption reforms have no serious commitment to seeing the reforms work, because they risk exposing their crimes.

On the other hand, abandoning corrupt states altogether is not

_Corruption, INTERNATIONAL HERALD TRIBUNE, June 26, 2007, at 9._

80. Id.


83. Johnston, _supra_ note 5, at 196.

84. Schwarz interview, _supra_ note 56.
an option.85 "[P]olicies which try to isolate corrupt countries and individuals from the international community encourage their rulers to descend into paranoia and isolation...." and fail to help the citizens, who are the real victims of grand corruption.86 Cutting off development aid and permitting leaders to continue to exploit the public sector for their own gain, thus deserting the citizens of profoundly corrupt regimes, cannot be the solution.

Given this scenario, proactive international legal efforts, which extend beyond administrative corruption to directly attack the infrastructure that supports grand corruption, become imperative. Development aid alone will never be successful in putting an end to grand corruption. No effective way exists to make sure the aid is used properly, oversight is difficult, and politics will always influence how the world leaders will react to grand corruption within a specific country. There must be significant legal ramifications for taking part in or making any profit from grand corruption, completely independent of political considerations.

V. Legal Approaches to Grand Corruption

A. National Regulations

Legal reform must come both from within corrupt countries and in the form of international law. National laws that make it harder to engage in grand corruption create an important foundation. But not all national laws are created equally. Laws aimed at increasing transparency, such as public procurement reforms, or strengthening domestic prosecution and investigative bodies can easily be manipulated in states with grand corruption.87 Rather, emphasis should be on reducing the state's concentration of political and economic power through the implementation of laws that increase economic competition and open the door to private sector stakeholders.88 The private sector is in a unique position to use its

86. Id.
87. Schwarz interview, supra note 56.
88. Id.
influence to insist on reforms which level the playing field. 89

Another approach to limiting highly centralized state power is to bolster regional and local governments. 90 This has the potential to create new political forces, spread power away from the center, and foster opposition and checks and balances. 91 Of course, as with any legal reforms, the strength of the laws themselves is crucial to making improvements. “[P]oorly written laws that have ambiguities or inconsistencies . . . and make processes more complex and lengthy are magnets for corrupt behavior.” 92 Laws must be straightforward, well written, and drafted with an eye to limiting corruption. 93

B. International Responses

i. Asset Recovery Through Civil Suits

As discussed above, asset recovery is now focused on as one of the most viable and effective responses to grand corruption. Asset recovery requires action on behalf of the home country attempting to recover the looted funds but quickly becomes an international effort and typically requires cooperation and mutual assistance on behalf of a number of states. The main theory behind the importance of asset recovery is that by reclaiming the stolen money, the profit is taken out of corruption. 94 If corrupt officials know they will not be able to hide and keep the money, the primary incentive behind looting state funds is removed. Furthermore, through asset recovery, states have the opportunity to get back some of the money they have lost and put it to use in civil society.

Asset recovery through civil action avoids many of the problems encountered in efforts to criminally prosecute corrupt leaders in their home countries. Importantly, because it is a civil suit and there is no need to obtain a criminal conviction, the burden of proof is lower. 95

89. See Ethan S. Burger & Mary S. Holland, Why the Private Sector is Likely to Lead the Next Stage in the Global Fight Against Corruption, 30 FORDHAM INT’L L. J. 45 (2006).
90. Schwarz interview, supra note 56.
91. Id.
92. Id.
93. Id.
95. Id.
Establishing jurisdiction in a range of venues is easier (typically extending to countries where the stolen money has traveled), and so the case need not be brought in the home state of the official. Another important attribute of civil suits is that, even if presidential immunity extends to civil suits under the laws of the kleptocrat’s country, an action still may be brought against friends and family, who are often closely involved in corruption schemes. Lastly, civil suits may be brought even if a former president is deceased or has fled to another country.

Of course, asset recovery is not without its flaws. Efforts to recover lost funds require huge resources of time and money in order to trace the assets and carry out proper investigations and civil suits. Cooperation and mutual assistance among states also are essential to guarantee that efforts to locate the money will not be blocked or resisted by financial institutions. Furthermore, politics, both internal and international, always threaten to limit the willingness of parties to pursue a civil action. Whether or not these obstacles can be overcome will determine whether asset recovery will be successful in an individual case of grand corruption.

Prior to 1998, efforts to recover stolen assets from corrupt officials were notably unsuccessful. Since then, two well-publicized cases have helped to garnish public awareness and international support for asset recovery. In 1999, after the death of General Sani Abacha, the newly elected president of Nigeria, Olusegun Obasanjo, launched an effort to recover millions of dollars stolen by Abacha. Obasanjo requested assistance from those states where the money was being held in bank accounts. Ultimately Switzerland, Luxembourg, and Liechtenstein proved to possess the greatest concentration of Nigeria’s stolen money, and they cooperated extensively to help return the money. After several years of investigation, the Federal Supreme Court of Switzerland oversaw the return of nearly half a billion dollars to Nigeria. The case proved to

96. Id.
97. Id.
98. Id.
100. Id.
102. Id.
103. Id.
the international community that asset recovery, through international cooperation, is at least feasible.\textsuperscript{104}

Another major landmark case, requiring cooperation and mutual assistance from a number of states and banks, was finally settled in 2007. Last year, the High Court of England and Wales found that the former president of Zambia, Frederick Chiluba, and a number of his close associates had participated in a conspiracy to defraud the Republic of Zambia and had breached a duty of fiduciary responsibility to the country.\textsuperscript{105} The High Court found Chiluba guilty of stealing more than $46 million.\textsuperscript{106} Immediately following the ruling, the attorney general of Zambia initiated proceedings in Zambia to enforce the ruling against Chiluba's property in the country.\textsuperscript{107}

This case sets an important precedent in overcoming some of the fundamental challenges in asset recovery described above. Despite the enormity of the task, the legal endeavor undertaken by the Zambian government to track down the looted money was successful. Furthermore, the level of cooperation demonstrated to trace and freeze the assets proves a willingness and preparedness of states to actively support asset recovery. Asset recovery has its supporters and its detractors, but it is undoubtedly one of the most promising methods of both discouraging grand corruption and returning stolen money to its rightful owners.

\textit{ii. Bank Regulations}

Closely connected to efforts to promote asset recovery is the issue of money laundering and the role of international financial institutions in facilitating grand corruption. The international community must begin to take greater responsibility for preventing the embezzlement of state funds that have been granted to a country from an international development organization or earned through the private sector. Banks too often have turned a blind eye to, or in some cases, facilitated embezzlement of millions of dollars by corrupt leaders.\textsuperscript{108} The UNCAC calls attention to the failures of international

\begin{itemize}
\item \textsuperscript{104} \textit{Id}.
\item \textsuperscript{105} Hatchard, \textit{supra} note 94.
\item \textsuperscript{107} Hatchard, \textit{supra} note 94.
\end{itemize}
banks to implement their own policies regarding obligations to verify background information on bank clients in order to prevent money laundering. As countries grow weary of investing development aid in countries with corrupt leadership, the obvious question is, how does the developed world facilitate the accumulation of such massive wealth?

Prior to 9/11, efforts to increase the responsibility of banks to monitor their clients were strongly and successfully rejected by financial institutions. Since 9/11, however, regulations that were passed to prevent terrorists from using international financial institutions to launder money and fund attacks have had important repercussions for grand corruption. In particular, “know your customer” regulations require banks to “ascertain the identity of the nominal or beneficial owners of, and the source of funds deposited into, the account, and report any suspicious transactions.” These heightened requirements have the potential to make it harder for kleptocrats to hide stolen funds. Furthermore, they place more onus on banks to accept responsibility for facilitating corruption, and they limit banks’ ability to shield themselves with ignorance.

To be sure, kleptocrats are sophisticated money launderers and have likely become experts at avoiding detection in most cases. Money launderers go to great lengths particularly to hide the source of their funds. Nonetheless, a global effort is essential to force banks that elude regulations to discontinue managing accounts for corrupt leaders. If the banks are held accountable for their clients’ illegal activities, there finally will be an incentive to prevent money laundering. While money laundering is only one aspect of the problem of grand corruption, eliminating safe hiding places for kleptocrats to stash their wares is a fundamental step in preventing grand corruption.

109. Id. at 724.
111. Id. at 114.
113. Rose-Ackerman, supra note 82, at 190-191.
114. Id. at 191.
iii. International Criminal Prosecution

Current world leaders, who have seen their predecessors go largely unpunished and undeterred in their efforts to amass great wealth, have little incentive to change the system. National initiatives or promises to prosecute corrupt officials are greatly limited by local politics. International law has the potential to hold leaders responsible before an audience with power to demand change.

One potential step forward in fighting grand corruption is to hold heads of state liable for their crimes.\(^1\) Head-of-state liability is interconnected with rules of customary international law.\(^6\) While heads of state are normally immune from prosecution as a function of their official positions, there is emerging international consensus that they should be liable for serious international law crimes, such as crimes against humanity.\(^7\) Crimes against humanity are defined as "an attack against any civilian population, where the attack is widespread or part of a systematic policy."\(^8\) There is no requirement that the attack involve an armed conflict.\(^9\) Accordingly, "such crimes may be committed in the legal sense during relative peacetime."\(^10\) Efforts should be made to further the notion amongst the international community that it is in fact jurisprudentially possible to prosecute heads of state for kleptocracy before an international tribunal.\(^11\)

The idea that heads of state could be held liable for grand corruption is relatively new, but denying them immunity for atrocious crimes is not new.\(^12\) A head of state who steals millions of dollars from his citizens and exacerbates extreme poverty has certainly committed a "particularly heinous international crime."\(^13\) Prosecuting heads of state for grand corruption will serve as a strong deterrent for leaders who would otherwise go unpunished. A corrupt regime will not police or investigate itself, so it is up to the

\(^{116}\) \textit{Id.} at 734-735.
\(^{117}\) \textit{Id.}
\(^{119}\) \textit{Id.}
\(^{120}\) \textit{Id.}
\(^{121}\) \textit{See Id.}
\(^{122}\) Kofele-Kale, \textit{supra} note 108, at 735.
\(^{123}\) \textit{Id.}
international community to do so.

VI. Conclusion

Grand corruption is a heinous and severe crime. The world community is slowly waking up to the damage it causes and the extent to which it serves as a profound impediment to poverty eradication. In the last four years, significant progress has been made in global efforts to put an end to corruption. The United Nations has passed a binding convention on corruption, with specific focus on grand corruption. Both the World Bank and the United States Agency for International Development have created new strategies which recognize the problem of grand corruption.

Nonetheless, evidence of significant change has yet to surface. International legal development still struggles with the reality of trying to make progress in a country where the entire system is corrupt. Legal strategies in the context of international law have not yet been fully tested. Furthermore, politics stands in the way of a truly honest fight against grand corruption. The international community must continue to pool resources and promote cooperation to hold corrupt leaders and their banks responsible in order to truly address grand corruption. Certainly, if the law is not better utilized to fight corruption, no amount of international aid or private investment will make it go away.