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Enhancing Preventative Measures for Money Laundering and Corruption

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About the Author

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About the Global Governance Innovation Network

The Global Governance Innovation Network brings world-class scholarship together with international policy-making to address fundamental global governance challenges, threats, and opportunities. Research will focus on the development of institutional, policy, legal, and normative improvements in the international global governance architecture. GGIN is a collaborative project of the Stimson Center, Academic Council on the United Nations System (ACUNS), Plataforma CIPÓ, and Leiden University.

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This series provides a platform for leading and up-and-coming authors' thinking on major contemporary global governance challenges with view to stimulating further debate and influence policy debates. This Global Governance Innovation Network policy brief represents the perspective of the author alone and not necessarily the views of the Stimson Center or other co-sponsoring partner institutions of the Global Governance Innovation Network (GGIN). This GGIN policy brief was funded by the Stockholm-based Global Challenges Foundation, which has not played an editorial role nor necessarily endorses the conclusions reached by the author.

Qatar is explored as a country case study in this policy brief. The State of Qatar is a funder of the Global Governance, Justice & Security Program at the Stimson Center, but is not a funder of this GGIN policy brief.

Editor's Note

While the GGIN policy brief series usually focuses on issues of multilateral cooperation from a policy perspective, this policy brief with a country-specific and legal focus was considered an appropriate additional for the series as well. The implementation of international norms into domestic legal systems in different parts of the world is one of the main challenges for making international law effective. Qatar serves here as a relevant, non-Western country case study, which, as the author explains, has not only ratified relevant international conventions, but has also adopted domestic implementing legislation and applies the principle of universal jurisdiction. Due to the detailed legal appraisal of the policy brief, a comparative analysis of other country case studies and a broader policy assessment were beyond the scope of this policy brief.

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Enhancing Preventative Measures for Money Laundering and Corruption

By Dr. Aisha Al-Ammari

As part of the Global Governance Innovation Network Policy Brief Series, Dr. Aisha Al-Ammari discusses the effectiveness of international measures aimed at preventing corruption and money laundering.

This policy brief aims to evaluate the implementation of international measures aimed at preventing corruption and money laundering. The United Nations Convention against Corruption (UNCAC), as well as additional anti-corruption and money laundering treaties, are considered for their contribution to anti-corruption efforts globally. The international nature of such crimes poses several challenges for countries. Universal jurisdiction and bilateral international agreements could help in overcoming difficulties to uncovering and persecuting crimes involving illicit financial activities. As a case study, anti-money laundering laws in Qatar are evaluated against global standards set out in international and regional treaties. Anti-corruption and money laundering organizations in Qatar are also examined for their role in preventing these crimes, both domestically and internationally. Solutions to the shortcomings of anti-money laundering and corruption mechanisms are introduced, and suggestions on how to implement educational and regulatory approaches between two or more countries to strengthen such mechanisms, are further presented. The future of effective prevention and prosecution of perpetrators of financial crimes ultimately rests with countries that wield considerable international authority and administrative capacities. Ideally, these countries can promote high standards against money laundering and corruption and set an effective example for countries with weaker governance systems to emulate.

Introduction

Corruption is a worldwide problem that disproportionately affects developing countries, costing these countries U.S. $1.26 trillion annually.[1] It is estimated that each year between 2 and 5 percent of the world's annual GDP is laundered.[2] This poses a unique challenge to states seeking to prevent money laundering and corruption, by establishing more effective measures to recognize and stop illicit financial activity.

The conclusion of the 13th United Nations (UN) Congress on Crime Prevention and Criminal Justice, which was held in Qatar in 2015, led to the adoption of the "Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation."[3] Endorsed by the UN General Assembly, the Doha Declaration has at its center the understanding that the rule of law and sustainable development are interrelated and mutually reinforcing. Among its stated objectives is to: "to strengthen or, as appropriate, adopt procedures to more effectively prevent and counter money-laundering and enhance measures for the identification, tracing, freezing, seizure and recovery of the proceeds of crime" and to enhance international cooperation to this effect.[4] The topic remains high on the international agenda. In his report *Our Common Agenda*, published in September 2021, UN Secretary-General António Guterres proposed stronger international cooperation to tackle, *inter alia*, "money-laundering and illicit financial flows, including through a new joint structure on financial integrity and tackling illicit financial flows."[5]

Universal jurisdiction plays a critical role in addressing serious crimes committed around the world. Specifically, it gives states the ability to prosecute individuals who have committed serious crimes which pose a risk to the international community. This applies even when the crime was not committed in the state's territory. It also allows prosecution of perpetrators who are not nationals of the state or who are not physically present in the state that prosecutes them.[6]

Money laundering rarely takes place in a single state. In most cases, perpetrators will commit a crime in one state, which provides a large amount of cash, and then will launder the cash in another state, or several other states. Money launderers often rely on states that do not share jurisdictions and that will not co-operate with each other in money laundering investigations.[7] A similar pattern is observed in corruption cases; the crime is divided throughout multiple states, and it is, therefore, extremely difficult to prosecute without universal jurisdiction measures.

As introduced in this policy brief, Qatar offers a relevant case study for an in-depth legal assessment of anti-money laundering measures for several reasons. It has ratified multiple treaties on financial crimes, while also adopting a range of domestic measures to prevent such crimes. Qatar also recognizes money laundering as a crime serious enough to fall under universal jurisdiction.[8] It has further ratified several international conventions related to crimes of corruption and money laundering, such as the Arab Convention against Transnational Organized Crime,[9] the UN Convention Against Corruption (UNCAC)[10] and the Protocol to Eliminate Illicit Trade in Tobacco Products.[11] Given that the latter two instruments are signed and ratified by nearly every country in the world, they fall within the practice of universal jurisdiction. Moreover, the State of Qatar has taken the measures to assert jurisdiction over the criminal acts established in accordance with Article 14 of the UNCAC, which outlines measures to prevent money laundering.

Addressing the crimes of corruption and money laundering, UNCAC represents a significant international convention. It places international recognition of the seriousness of such crimes at the same level as other well respected international conventions, such as the four Geneva Conventions of 1949[12] and the Convention against Torture.[13] Additionally, having served as a member of the International Criminal Police Organization (INTERPOL), since 1974, Qatar hosts an INTERPOL National Central Bureau, connecting its national law enforcement agencies with other countries and with the General Secretariat of INTERPOL through "I-24/7", a secure global police communications network.

The issue of corruption and money laundering is widespread and damaging to the global economy. Several treaties, such as the UNCAC, have helped in reducing the severity of the issue, but there remains a need for greater global cooperation to stop money laundering and corruption. Therefore, while the analysis of other country case studies is beyond the scope of this policy brief, its findings will, nonetheless, prove valuable for policy and legal debates on fighting corruption and money-laundering in other countries, especially through multilateral efforts.

As elaborated below, universal jurisdiction is key in the prosecution of perpetrators, due to the multinational quality of such crimes. States with greater international influence and administrative capacities should use their authority to promote broader awareness about the international impact of money laundering. They should also support effective domestic, bilateral, and multilateral measures to stop money laundering and corruption at the source, rather than treating the symptoms of such crimes after they occur.

Following a brief overview on the UN Convention against Corruption, this policy brief outlines Qatar's domestic measures to combat money-laundering, reflecting and incorporating the expectations and obligations set forth in UNCAC. Based on an analysis of these measures, several recommendations to combat money-laundering more effectively are proposed. The brief concludes with a reflection on what measures against these crimes have been most effective, with an eye toward strengthening future anti-corruption and money-laundering efforts worldwide.

A Brief Overview of UNCAC and Money Laundering

Corrupt acts take many forms, including money laundering. International anti-corruption instruments have existed since 1996, when the Inter-American Convention Against Corruption (IACAC)[14] was first established. Before 1996, laws against corruption were national in character, thus, IACAC represented a first step towards broader measures regionally and internationally. Many other international instruments have been created since the IACAC, including, in 2003, the UNCAC.

The earliest inception of the ideas outlined in the UN Convention Against Corruption came about during international negotiations in the early 1990s, which identified corruption as an important problem that needed to be resolved. With 189 parties today, the UNCAC is a near-universal legal instrument that undertakes a broad approach to the problem of corruption to prevent and combat it. This reflects not

only the world's recognition of the importance of combating corruption; it manifests UNCAC as a legally binding instrument for most countries around the world. For a global instrument like the UNCAC to realize its potential, the requirements of such conventions must be incorporated into national law and translated into effective domestic policies and practices. Given the strong transnational dimension of money-laundering, countries stand to benefit by cooperating with each other, including through multilateral organizations.

The influence that money laundering schemes may have on a country's political, economic, and cultural systems are considerable. When dealing with money laundering, two overarching methodologies can be distinguished. The first speaks to an *educational approach*. The party with more authority (i.e., a country with more international influence) tends to introduce more courses, workshops, and informative sessions on money laundering red flags, in addition to employing indicators to both spot and prevent money laundering. It is also critical that such classes educate about the means of acknowledging indicators, spotting them, detangling the scheme, and bringing perpetrators to the authority responsible for such matters, whether internally or externally.

The second is more of a *regulatory approach*, in which a state with sufficient resources and authority provides procedural means to identify and disclose money laundering schemes, whether though international treaties, national legislation, or even national or regional bodies dedicated to combating this phenomenon. Some examples of countries capable of executing this kind of approach include the United States, the United Kingdom, and France.

Qatari Law in Response to UNCAC Provisions Against Money Laundering

While the educational and regulatory approaches are the most effective for successfully combatting money-laundering globally, countries must also strengthen their laws nationally. The State of Qatar offers one example of how a state can take practical steps toward strengthening domestic measures against money laundering. In response to the country signing the UNCAC, in 2005, followed by ratification of the convention in 2007, Qatar subsequently introduced many national laws on money laundering and, more broadly speaking, fighting corruption. This is because the United Nations requires states who have signed this treaty to implement certain parts of the treaty into their national law. Although national Qatari laws did not define the term money laundering per se, the Legislation No 20 of 2019 on Combating Money Laundering and Terrorism Financing identifies the acts that typically are considered offences of money laundering:

- Conversion or transfer of funds, knowing that they are proceeds of a crime or an act of participation in the said crime; with a view to concealing or disguising the illicit source of funds or assisting any person involved in the commission of the crime to evade the legal consequences of his actions.

- Concealment or disguise of the true nature, source, location, disposition, movement, ownership, or the rights of funds, knowing that they are the proceeds of a crime.

- Acquisition, possession, or use of funds, knowing, at the time of receipt thereof, that they are proceeds of a crime.

- Participation in, association with or conspiracy to commit, attempt, or aid, abet, facilitate, counsel in, cooperate in, or contribute to the commission of any of the acts stipulated in this Article.[15]

Qatar, as a country that is legally committed to combatting money laundering, went through various legislative changes until it got to where it is now. The year 2002 welcomed Law No. 28 on Combating Money Laundering,[16] which was the first law to address the issue of money laundering in Qatar.[17] It established the National Anti-Money Laundering and Terrorism Financing Committee (NAMLC).[18] That law was updated in 2010; causing the NAMLC to be reestablished.

Finally, in 2019, the country's legislature welcomed a new law regulating money laundering, thereby addressing the root causes of the issue.[19] Consequently, Qatar is now well-positioned to stop money laundering activities before they occur, by focusing on the source of the issue rather than the result. For example, Qatari punishments for money launderers are a lot more severe than punishments for people who simply work for money launderers. Likewise, the NAMLC has progressed with each new law introduced, in order to ensure it remains competent in national anti-money launder and anti-terrorism financing efforts..

An important matter to point out is Article 68 of The Permanent Constitution of The State of Qatar. It states that treaties shall have the power of the law after ratification.[20] Consequently, the country participates in numerous international efforts in the field of combating money laundering, such as the Financial Action and Task Force,[21] which was stood-up initially in 1989 and amended in 2000 after the September 11 attacks.[22] There is also the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[23] the UN Convention Against Transnational Organized Crime and the Protocols Thereto;[24] and, as noted earlier, UNCAC.[25] Qatar had already signed and ratified all those treaties. Therefore, when Law No. 20. of 2019 was drafted, it included the provisions of these international instruments.

Internally, Law No. 20 of 2019 focused on many aspects of these international tools, such as the offences of money laundering, predicate offence conditions and elements, the material element and the *mens rea* (intentionality) of the crime, international cooperation and mutual legal assistance, and many other subsections. Most important among the other subsections is the National Anti-Money Laundering and Terrorism Financing Committee's membership,[26] and a description of the committee's powers.[27]

Moreover, Qatar has established the Rule of Law and Anti-Corruption Center, which provides international technical support on these topics. It also contributed to the Arab Treaty on Anti-Corruption, which Qatar adopted in 2010.[28] This treaty has assisted in establishing, within participating countries, the legal framework and machinery of participating countries to combat corruption. Lastly, in 2016, in collaboration with the UN Office on Drugs and Crime (UNODC), Qatar established the Administrative Control and Transparency Authority. Besides promoting transparency and integrity in

Qatar, this organization has undertaken regional workshops on multiple continents on the means for UNCAC execution.[29]

Additionally, Qatar's global collaboration, from 2016 to 2021, with the UNODC sought to help countries achieve sustainable impacts on crime prevention, criminal justice, corruption prevention, and the rule of law.[30] Financed by the State of Qatar, it encouraged corruption-free societies, and brought awareness to different institutions in society. It also offerned the Tamim Bin Hamad Prize for Excellence in Anti-Corruption, marking December 9 as Anti-Corruption Day.[31] Today, the prize continues to be given out in four different categories: research, creativity, youth involvement, and the achievement of a significant matter in the area of anti-corruption. It is intended to encourage international cooperation and to encourage efforts to promote integrity and transparency worldwide.

Recommendations Going Forward

The crimes of money laundering, and more broadly speaking, corruption, are a great challenge facing states across the world. These crimes are growing more sophisticated and intricate due to the rise of technology and globalization. States should focus on employing tactics against money laundering and corruption that promote transparency, international cooperation, mutual legal assistance, and better education that targets the root causes of the issue.

In theory, many countries (typically in response to their adoption and ratification of the UN Convention Against Corruption, which entered into force in December 2005) have undertaken various measures to combat illicit financing, money laundering, and other crimes falling under the anti-corruption umbrella. What the international community needs to focus on now is the transparency aspect that follows from the committing of a crime. Current international treaties have contributed to the prevention of the crime and have done a good job criminalizing the act after it has occurred. The focus needs to shift now to making transparency procedures mandatory, as they too are part of the deterrence process.

Admittedly, sanctions and penalties play a role in deterrence, but the procedures used in the system need to be made transparent to the public. A transparency strategy needs to be developed that does not slander a person's reputation regardless of the community they come from. For instance, an organization such as the United Nations is well-suited to develop and take forward this strategy, as the UN systems possesses many intergovernmental bodies and operational capabilities with the mandates and resources to provide both support and, at times, direct leadership.

One of the chief principles of criminal law is the personal criminal liability approach. That means that when a criminal act is carried out, we may only punish the person conducting the act; not his family, relatives, business partners, or anyone else (i.e., not affecting the people surrounding the plaintiff). Therefore, one should be careful when suggesting a transparency strategy to efforts to combat money laundering and other forms of corruption, ensuring it does not contradict with this principle. In short, it should only influence the person who has committed the crime and not anyone else.

International cooperation and mutual legal assistance are invaluable to countries when it comes to the prevention and prosecution of financial crimes. The UNCAC repeatedly stresses the importance of mutual legal assistance when it comes to crimes involving corruption. Article 46 of the UNCAC states that countries party to the convention "shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention."[32] Technology and today's globalized economy have allowed criminals greater opportunities for crimes that damage domestic and global economies. The most effective way to combat such offenses, therefore, is through mutual legal assistance. Cross-border coordination does not threaten the sovereignty of a country; rather, it promotes global safety and ensures that criminals are not able to exploit borders in order to carry out their crimes.

States with more advanced systems against money laundering and corruption can do a lot to assist states that are lacking certain capabilities. One way of assisting such states is through bilateral international agreements with countries that allow the opening of bank accounts without high supervision and detailed auditing of the amounts deposited. These states could be provided with the necessary devices and systems to raise the level of security at the bank account level. This would further reduce money laundering crimes and aid in the achievement of sufficient levels of control over banks. In particular, countries with stricter banking standards to inhibit money laundering can provide guidance to those with a softer approach. So, if those individuals or entities previously convicted of money laundering wish to undertake a commercial projects or the like, they must be scrutinized first in a detailed and confidential manner. This is to determine whether their actions are suspicious, in order to avoid further money laundering schemes or, more generally speaking, other forms of corruption.

Ideally, countries around the world should focus on applying both educational and regulatory approaches when it comes to both deterring and responding to money laundering and other forms of corruption. Influential and capable countries guiding and educating countries without strong anti-money laundering measures can further reinforce international measures and improve overall prevention and response measures. Currently, countries falling in this category do far too little to leverage their skills, experiences, and reach to spread more awareness about the damage wrought by money laundering and corruption.

The biannual International Anti-Corruption Conference serves as one critical platform that countries can better utilize to call attention to these crimes and exchange resources and expertise for better combatting them. Another way of promoting anti-corruption and money laundering measures is through increased university-level instruction. This would, in effect, raise awareness of the damage these crimes inflict on communities and stress the necessity to further strengthen measures taken to prevent and prosecute such crimes. Additionally, the upcoming (22-23 September 2024) Summit of the Future in New York could be further leveraged as a platform for the discussion of corruption-related challenges, such as money laundering. This would allow countries from all over the world to raise their concerns and own distinct obstacles to progress. Solutions could also be proposed that take into account the intricacies of money laundering and corruption as an international crime.

Conclusion

Overall, international and domestic mechanisms to prevent, halt, and respond to illicit financial activities have come a long way since the introduction of the UNCAC some two decades ago. However, there is still a great need for enhanced measures, especially in countries where criminals employ the latest technologies and exploit weaknesses in a national governance system. Money laundering and corruption are typically treated as international crimes. Therefore, the solutions to these crimes must follow from effective collective action among the concerned countries. Educational and/or regulatory methodologies, international cooperation, and universal jurisdiction should all be utilized skillfully and judiciously. These are the most effective known tools for preventing and responding to money laundering and corrupt behavior, more broadly speaking, at the source, thereby holding criminals responsible for their actions.

Endnotes

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[18] Law No. 28 of 2002 on Combating Money Laundering, Article 8.

[19] Law No. 20 of 2019 on Combating Money Laundering and Terrorism Financing.

[20] Permanent Constitution of the State of Qatar. 2004. https://www.gco.gov.qa/wp-content/uploads/2016/09/GCO-Constitution-English.pdf. Last visited Dec. 28, 2023. Article 68 states: "The Emir shall conclude treaties and agreements by a decree and refer them to Al- Shoura Council accompanied with appropriate explanatory notes. The treaty or agreement shall have the power of law after ratification and publication in the official Gazette; however, reconciliation treaties and treaties pertaining to the territory of the State or those relating to the right of sovereignty or public or private rights of the citizens, or those that involve an amendment of the laws of the State shall come into force when the same are issued as a law. Under no case may a treaty include secret conditions contradicting its publicized conditions."

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