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## **Tackling corruption from a human rights-based approach**

**Submission to the CoSP10 by the Due Process of Law Foundation<sup>1</sup>, November 2023**

Corruption undermines the ability of States to respect, protect and fulfil human rights, by adversely affecting the independence and impartiality of state institutions such as the judiciary, siphoning off public funds,<sup>2</sup> and damaging the social trust and confidence needed for a democratic society. When judges are unable or unwilling to issue fair rulings because they are unduly influenced (through financial incentives or by threats) by corrupt actors, or when financing for healthcare is appropriated for personal gain instead of to pay for public hospitals, it is impossible for human rights to flourish. Despite this inextricable link, the anticorruption and human rights fields have traditionally tended to operate in separate spheres. However, as both kleptocracies and the corporate sector concentrate their power throughout the world, the impact of corruption on human rights – and the utility of a human rights approach to combat the effects of corruption – have motivated these movements to engage, exchange perspectives, and collaborate. States parties should encourage this synergy and apply lessons learned from both movements to promote human rights and accountability for corruption as mutually reinforcing goals.

In contexts of grand corruption, defined as a “systematic or well-organized plan of action involving high-level public officials that causes serious harm, such as gross human rights violations”<sup>3</sup>, traditional efforts by civil society, such as monitoring and reporting, must adapt to promote a more active citizen participation. A human rights-based approach can offer much-needed tools to the fight against corruption by focusing on its victims and the right to information and participation. This approach focuses responsibility on the State for structural issues that enable corruption rather than solely on alleged individual perpetrators of corruption. A human rights-based approach also centers and reinforces the status of the victim, which helps open the door for positive steps towards reparation. At the same time, raising awareness of the

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<sup>1</sup> The Due Process of Law Foundation (DPLF) is a non-profit civil society organization with the mandate to promote the rule of law and human rights in Latin America. Headquartered in Washington D.C. with staff based throughout the Western Hemisphere, DPLF works with organizations throughout the region to provide technical legal assistance, promote dialogues with government representatives and civil society, and create opportunities for the exchange of information and best practices on a variety of issues including the fight against corruption from a human rights perspective. DPLF also conducts research and produces publications to analyze and discuss the major human rights challenges in the region, in light of international law and comparative perspectives. See [www.dplf.org](http://www.dplf.org)

<sup>2</sup> <https://www.ohchr.org/en/good-governance/corruption-and-human-rights>

<sup>3</sup> Transparency International, [Grand corruption - Our priorities - Transparency.org](https://www.transparency.org/en/grand-corruption)

multitude of ways that corruption, especially grand corruption, affects human rights, is necessary to dispel the myth or common perception that corruption is a victimless crime or that the only victim is the state.

The Due Process of Law Foundation (DPLF) has witnessed the important role that independent justice sector officials, including prosecutors and judges, have played in exposing corruption and holding offenders accountable. In many contexts in the Western hemisphere, justice sector officials are also human rights defenders and should be granted protections accordingly. However, in recent years many of these officials have been persecuted and forced to flee their home countries. This has severely compromised affected states' abilities to guarantee basic rights of their inhabitants and to prosecute corruption. This dynamic reflects a fundamental premise of the corruption and human rights perspective<sup>4</sup>: that the phenomenon of corruption has a serious impact on democratic governance and on human rights, because corruption generates the conditions for, precipitates, or aggravates human rights violations; and in some cases, corruption in itself is a violation of human rights. Therefore, combating corruption is necessary to increase the protection of human rights.

As such, DPLF affirms the main conclusions of the report on corruption and human rights issued by the Inter-American Commission on Human Rights<sup>5</sup> on 1) the importance of a victim-centered approach to corruption and 2) the need for civil society organizations to be involved in legal processes against corruption, including investigations, prosecutions, and civil litigation. This approach is also consistent with the standards established by a wide range of UN organs and mechanisms.<sup>6</sup>

### **The involvement of victims and civil society in anticorruption proceedings**

The human rights perspective discussed above sheds light on the role of victims and civil society in combatting corruption. Various legal systems throughout the world allow for some involvement of victims in corruption cases (both civil and criminal). Depending on the country and type of case, victims may be involved as plaintiffs, private accusers, and/or witnesses. Some countries have established that civil society organizations can participate as plaintiffs in judicial processes when it is claimed that collective property or diffuse interests have been affected, but it is not always clear if corruption crimes fall under this category. Latin America has witnessed

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<sup>4</sup> Highlighted by the Inter American Commission of Human Rights in its 2019 thematic report <http://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>. See also [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/346.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/346.asp)

<sup>5</sup> Ibid.

<sup>6</sup> See e.g. UN Human Rights Council Resolution [A/HRC/RES/53/17](#), The negative impact of corruption on the enjoyment of human rights (2023). See also UN Human Rights Council Resolution [A/HRC/RES/52/21](#), The negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, and the importance of improving international cooperation (2023); Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights (2015) available at <https://digitallibrary.un.org/record/794127?ln=en>.

some positive developments by states, but remaining challenges demonstrate the need to more broadly guarantee the rights of victims to reparations and to be involved in the legal process to achieve greater accountability and justice.

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, defines victims as persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws in force in member states, including laws proscribing criminal abuse of power. If we understand corruption as a crime of power, this concept includes the victims of corruption.

Corruption has concrete direct and indirect impacts on individuals, communities, and society as a whole. It is particularly important to understand the impact of corruption on historically disadvantaged groups. For example, women often bear the burden of corruption's impact on the right to health; whereas corruption has fueled social conflicts around natural resource extraction in indigenous' peoples' territories. Large-scale projects posing a special burden to the rights of said groups often operate in a context of bribery, graft, corruption and other related crimes.

These dynamics should reinforce the legal status of those affected by corruption as victims, and thus their participation in anti-corruption criminal proceedings as well as their standing in civil actions for corruption cases. However, in practice, criminal proceedings have tended to be carried out on the theory or assumption that corruption is a victimless crime or that the only victim is the State; victims have encountered challenges to participation in civil actions as well. The lack of victim participation in anti-corruption prosecutions or other legal actions has contributed in many cases to the lack of transparency and accountability for corruption, as well as a failure to provide reparations for its victims.

In recent years, the centrality of individual and collective victims of corruption, and the ways in which corruption violates their human rights, have become increasingly visible. The UN Convention against Corruption, in its article 32-5, establishes that States parties shall, subject to domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. Article 35 of the Convention raises the possibility that these victims can claim compensation for the damages suffered as a result of corruption, and Article 57 establishes that, when defining the disposition and restitution of confiscated property, priority consideration should be given to previous legitimate owners or to the compensation of the victims of the crime. DPLF urges the States Parties to implement and promote the rights of victims according to the Convention, including through respecting and protecting the rights of civil society organizations to engage with anticorruption mechanisms and legal proceedings, and to create enabling environments for a human rights approach to corruption.