Repairing the Social Damage Resulting from Corruption: challenges, approaches and ways forward.

Dr. Juanita Olaya - UNCAC Coalition
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Why the victims of corruption?

- What are we really working for?
- Great focus on offenders and on States: where is the people?
- Corruption is about the damage to the public good
- The UNCAC already makes an emphasis on repairing the damage and containing its consequences at the domestic and the international levels
  - UNCAC Article 34, 35, 53-b
  - There are also other instruments: CoE Civil Law Convention
- Prevention is not enough and enforcement is necessary. Increased prosecution brings about other challenges.
- Corruption will not be eliminated – all needs to be made to contain the damage.
Defining social damage

- Damage (for lawyers) –
  - Harm to a legally protected interest (not all feelings and wishes are)
  - Certain
  - Caused by… (direct)
  - Material or immaterial

- Social damage: membership to a community, citizenship is the entitlements

- Difficulties and limitations:
  - Damages to ideals and not realities (legally protected rights - interests)
  - Not a tool to fight corruption but to build trust
  - Not a source of funding.

The dimensions of damage caused by corruption

(using the example of Alcatel in Costa Rica)

- Material
  - Impact on the economy (reduced investment)
  - Lost trust in govern
- Immaterial
  - Competitiveness in the tender: lost unfairly
  - ICE lost reputation

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Challenges (policy, operational)

- **Legal tools:**
  - What is at hand? Is a special tool necessary?
  - Mechanisms may be different (public interest litigation)
    - Constitutional Law
    - Criminal Law
    - Civil Law
    - Administrative Law
    - Human Rights’ remedies, Environmental damage mechanisms
    - Settlements
    - Asset recovery
    - International proceedings
    - Other collective litigation instruments

- **Legal standing (entitlement):**
  - Is there an ideal model?
  - Problem when there is no access, or it is not explicit

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Challenges (policy, operational)

- **Measurement (Example…most fines are very close to the value of the bribe):**

![Graph showing fines and settlements vs. bribe amounts](image)

Source: media reports on the cases. Calculations Juanita Olaya.
Challenges (policy, operational)

- Measurement
  - Measuring non pecuniary and immaterial damage
  - Is it really possible to repair?
  - Causality is a problem

- Evidence:
  - How to prove a damage to something that “should be”?
  - Experience from moral damage – to develop an approach awareness, and knowledge are required

- Designing, managing and implementing reparation and compensation schemes
  - Transparent and accountable
  - On purpose: may be different or not directly connected to the actual conduct
  - Proportionality
  - The shape of reparation: sometimes money is not the ideal way. Try at real material reparation: address quality of life issues that refer directly to the population.

Measurement

<table>
<thead>
<tr>
<th>Rubro</th>
<th>Monto (US$)</th>
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</thead>
<tbody>
<tr>
<td>Implicaciones a la economía nacional</td>
<td>30,895,613</td>
</tr>
<tr>
<td>Implicaciones en el abstenecionismo electoral – 2016</td>
<td>3,626,492</td>
</tr>
<tr>
<td>Total de costos indirectos</td>
<td>34,522,105</td>
</tr>
<tr>
<td>Dinero destinado por ALCATEL para distribuir en “Premios”</td>
<td>17,657,406</td>
</tr>
<tr>
<td>Monto total del daño ocasionado por el caso de corrupción ICE-ALCATEL</td>
<td>52,179,511</td>
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</tbody>
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Fuente:
1. Cuadro 33
2. Cuadro 28

Corresponden a todos los dineros que se distribuyeron entre funcionarios públicos y privados.
Actionable next steps

Let us join forces to:

- Spread capacity and knowledge (prosecutors, judges, law enforcement officials, civil society)
- Think about measurement and evidence
- Join effort to make compensation for social damage effective
- Support/undertake public interest litigation
- Seek ways to finance and cover costs involved in ways that are transparent
- Reflect on risks involved and ways to address them

THANK YOU!

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