



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

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St. Petersburg, Russia

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## Why the victims of corruption?

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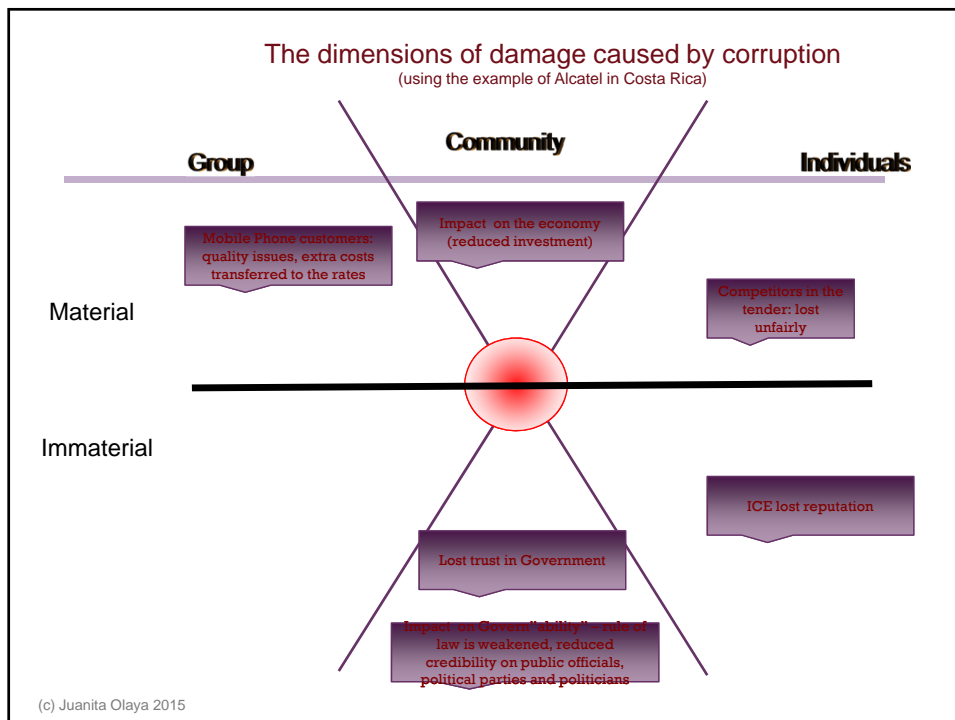
- What are we really working for?
- Great focus on offenders and on States: where is the people?
- **Corruption is about the damage to the public good**
- The UNCAC already makes an emphasis on repairing the damage and containing its consequences at the domestic and the international levels
  - UNCAC 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.

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## 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.

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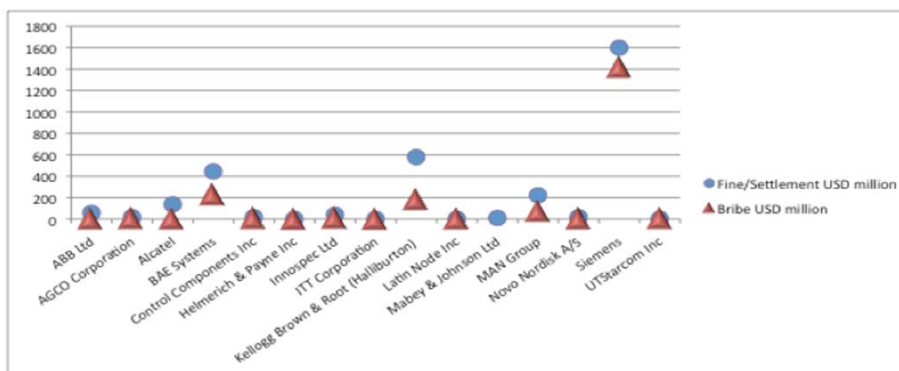
## Challenges (policy, operational)

- 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)



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.

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## Measurement

### Costo Total del Daño Social causado por el caso de corrupción ICE-ALCATEL

Rubro	Monto (US\$)
Implicaciones a la economía nacional <sup>1</sup>	30,895,613
Implicaciones en el abstencionismo electoral – 2006 <sup>2</sup>	3,626,492
<b>Total de costos indirectos</b>	<b>34,522,105</b>
Dinero destinado por ALCATEL para distribuir en “Premios” <sup>3</sup>	17,657,406
<b>Monto total del daño ocasionado por el caso de corrupción ICE-ALCATEL</b>	<b>52,179,511</b>

Fuente:

1. Cuadro 33

2. Cuadro 28

Corresponden a todos los dineros que se distribuyeron entre funcionarios públicos y privados

## Actionable next steps

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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

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**THANK YOU!**

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