



# **“Social Damage”**

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## Social Damage



A life was left behind for lack of attention  
Corruption: a crime against health



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## Social Damage



This forest was swept away.  
Corruption: a crime against the environment



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## Social Damage



These voters were deceived.  
Corruption: a crime against democracy



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## Social Damage



This case was rejected.  
Corruption: a crime against justice



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## Social Damage



These children never received lessons at school.  
Corruption: a crime against education



## Social Damage

### Concept

The conference of Ministers of Justice of the Ibero-American countries held in Madrid in 2011 (COMJIB) agreed to use Costa Rica's proposal to create a concept of social damage. As a first approximation, they considered our concept proposal, as follows:

**"The social damage is defined as the impairment, impact, detriment or the loss of social welfare ( within the context of the right to live under a healthy environment); caused by an act of corruption and suffered by a plurality of individuals without any justification whereby their material or immaterial diffuse or collective interests are affected, and so giving rise to the obligation to repair."**



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### Difuse Interests

Difuse interests are those entitled by a group of people, nor formally organized but bound together by a particular social need, a physical characteristic, their ethnic background, gender or sexual etc. **In general, they belong to a plural number of people, as members of a society**, linked by the entitlement to use and enjoy of a certain legally protected advantage. Such interests are part of the same prerogative and posses a double nature: difuse or individual.



## Social Damage

**Social Welfare** (Legally protected interest that is affected when referring to social damage)

“In general, the social welfare refers to the set of sentiments of material and immaterial satisfaction that certain material conditions produce on people and communities, which can't be reduced only to income levels, and include other important dimensions relevant for human existence such as health, education, infrastructure, housing, safety, environment, etc.



## Social Damage

### Legal Basis in Costa Rica

- **Art. 41 of the Constitution of the Republic of Costa Rica** states that: “According to the laws, all shall find reparation to injuries or damages to their person, property or moral interests. They shall receive prompt and effective justice, without denial and in strict accordance to the Law.”
- Art. 1045 and ss of the Civil Code**, which state the general principle of extra-contractual liability indicating that anyone that willingly or negligently causes damage to other, has the duty to repair and compensate it.



## Social Damage

### Legal Basis in Costa Rica

#### **-Art. 38 of Criminal Procedural Code**

“Civil Action for Social Damage.- The Civil Action can be initiated by the General Prosecutors Office of the Republic, when it concerns criminal acts that affect collective or difuse interests”.

This article gives the Prosecutors Office (GPR) standing to initiate civil action in cases where collective or difuse interest have been affected.



## Social Damage

### Costa Rica's Experience

Costa Rica has experienced two cases of grand corruption. The first, related to the award of a public bid of medical equipment from Finnland to the Caja Costarricense de Seguro Social (Social Security Agency), known as the “Finland case”. The other relates to the award of a mobile phone license, known as “the Alcatel case”. In both cases a monetary compensation for the social damage caused was acknowledged, in sentencing public officials, private companies and individuals.



## Social Damage

### Need to create national legislation regarding:

- a.- Typification of corruption together with its corresponding civil liability.
- b.- The recognition of the right to claim redress. It is also relevant to define the concept and the forms of reparation including the range of protection. For example, we refer to the licit and illicit acts and not just to acts of corruption under the criminal law, but also related to the environment, health, education, development, security, etc. This is on public interest, public goods that affect the collectivity and violate the collective or diffuse interests.



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## Social Damage

### **Need to create national legislation regarding:**

- c.- identifying authorities, organizations or people with standing to undertake legal action.
  
- d.-Broad and appropriate evidence to dimension the magnitude of the different types of damage caused.



## Social Damage

### **Need to create national legislation regarding:**

- e. The mechanisms to determine and the economic magnitude of the collective damage and the rules of attribution of civil liability. It is useful also to rule on “forms of reparation” due to the diverse regulations that exist.
- f.- The destination and utilization of the amounts recovered under this concept in order to achieve a true social benefit that indeed may not always be able to return things to their condition before the incident, at least the aim is to compensate the collective in the form of a social initiative that reverts the negative effects caused by corruption.



**Muchas gracias !**