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Recognizing Victims of Corruption

Submission by the
UNCAC Coalition's Victims of Corruption Working Group¹
to the 9th Session of the UNCAC Conference of States Parties

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Corruption is not a victimless crime. Corruption is responsible for widespread damage, both directly and indirectly, to institutions, communities, the public, and individuals. The collective damage inflicted by corruption translates into financial losses, as well as intangible yet consequential losses, for example, degraded trust in institutions and loss of socio-economic opportunities. It often harms basic healthcare (no access to affordable and effective medical treatment, unbuilt hospitals) and limits access to education; it leads to prohibitively high costs of water and electricity, poor infrastructure, inadequate public services, and destroys livelihoods (land-grabbing, environmental resource exploitation). It increases crime, injustice, gender inequality, and climate vulnerability, and diminishes the quality of life. Corruption also directly affects the enjoyment and protection of basic human rights and destroys the wellbeing of individuals, families, communities and societies. Furthermore, corruption is a driver and enabler of violent conflict and an obstacle to peacebuilding and post-conflict socio-economic development.

The rights of victims of corruption are recognized by the UN Convention against Corruption (UNCAC) under Article 32, on the protection of witnesses, experts and victims of corruption, enabling the testimony of victims to be presented and considered at appropriate stages of criminal proceedings, Article 33 on the protection of whistleblowers, Article 34 on consequences of acts of corruption, calling on States to provide for remedial actions, and Article 35 on compensation² for damage. However, UNCAC implementation reviews indicate that **while**

¹ <https://uncaccoalition.org/victims-of-corruption-working-group/>.

² On compensation, see: 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, available at: <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

many countries do have legal frameworks that allow for participation in proceedings, recovery of damages and reparations³ to victims⁴ of corruption, this only happens in very few cases.⁵

International framework

The Principle of *Restitutio ad integrum* under international law calls for redress to victims of serious human rights and humanitarian law violations. This justifies the need for rehabilitation as a form of reparation, since victims have a right to reconstruct, as far as possible, their lives.⁶

The term “redress” encompasses the concepts of “effective remedy” and “reparation”. The comprehensive reparative concept⁷ therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations,⁸ including access to justice.

In addition to the UNCAC, the rights of victims are also addressed in other international fora, including the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,⁹ the 2011 UN Guiding Principles on Business and Human Rights¹⁰ - which provide a protect, respect and remedy framework - and the 2015 UN Doha Declaration on Crime Prevention and Criminal Justice.¹¹ In addition to the relevant UNCAC Articles, the Political Declaration¹² adopted at the 2021 UN General Assembly Special Session (UNGASS) against Corruption acknowledges

³ On reparation see: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

⁴ On a definition of “victims”, see the definition provided by the UN Committee against Torture, which in the context of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishments defines victims in its General Comment No 3: “(...) A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim”, https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf, para 3.

⁵ See: UNODC (2017): State of implementation of the UN Convention against Corruption, https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V.17-04679_E-book.pdf.

⁶ REDRESS (2009): Rehabilitation as a form of reparation under international law, <https://www.refworld.org/pd/4c46c5972.pdf>.

⁷ See: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, para. 3(d) and 18, available at: <https://www.ohchr.org/en/professionalinterest/pages/remedyandrepairation.aspx>.

⁸ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee against Torture (2012) https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf, point 2.

⁹ OHCHR: 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, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

¹⁰ OHCHR: Guiding Principles on Business and Human Rights, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹¹ UNODC: Doha Declaration, adopted at the 13th Congress on Crime Prevention and Criminal Justice, https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf.

¹² UN General Assembly: Political Declaration adopted at the Special Session against Corruption, A/S-32/2/Add.1, June 2021, <https://undocs.org/A/S-32/2/ADD.1>.

victims of corruption in its text, reiterating commitments to protect these individuals from threats, and to compensate victims appropriately.

Furthermore, the Council of Europe Civil Law Convention on Corruption¹³ explicitly expresses the need for adequate compensation for the damages inflicted on victims of corruption. In a 2012 resolution,¹⁴ the European Parliament called for a horizontal application of collective redress principles for all areas across the EU, followed by a 2013 recommendation¹⁵ for the European Commission on common principles for an injunctive and compensatory collective redress mechanism in EU Member States. The EU Victims' Rights Directive, to be implemented by each EU Member State, establishes minimum standards on the rights, support and protection of victims of crime in criminal proceedings and seeks to ensure that persons who have fallen victim to crime are recognised and treated with respect.¹⁶

Developments on the national level

Enforcement bodies in one European country have developed principles for compensation of overseas victims in corruption cases,¹⁷ with victims regularly featuring in foreign bribery cases. In another European country, the CSOs Sherpa and TI France through their *bien mal acquis* litigation¹⁸ effected changes in statutory law, the criminal proceedings they initiated in grand corruption cases and have resulted in two convictions. In a Central American country, the Criminal Procedural Code¹⁹ allows for state attorneys to launch civil action in cases of damage to collective interests stemming from criminal offences, and recognizes organizations such as NGOs as victims if they are directly affected. State attorneys have made good use of this framework, for instance, in corruption cases involving high-ranking officials.²⁰ In a country situated in the Pacific region, individuals as well as communities can write victim impact statements on the harm they suffered, which Magistrate Courts have taken into account in their

¹³ Council of Europe: Civil Law Convention on Corruption, <https://rm.coe.int/168007f3f6>.

¹⁴ European Parliament: Towards a coherent European approach to collective redress, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012IP0021&from=EN>.

¹⁵ EU: Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013H0396&from=EN>.

¹⁶ EU Victims' Rights Directive, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1421925131614&uri=CELEX:32012L0029>. An open evaluation of the Directive was launched in 2021, following a 2020 report on the implementation of the Victims' Rights Directive by the EU Commission, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/protecting-victims-rights/victims-rights-eu_en.

¹⁷ Serious Fraud Office: Compensation Principles to Victims Outside the UK, <https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/compensation-principles-to-victims-outside-the-uk/>.

¹⁸ See TI France: Biens mal acquis, <https://transparency-france.org/aider-victimes-de-corrupcion/biens-mal-acquis/>.

¹⁹ Código Procesal Penal, www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297.

²⁰ Dr. Juanita Olaya Garcia, Kodjo Attisso, Anja Roth (2011): Repairing Social Damage Out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1779834.

sentencing of corruption cases.²¹ A country in Africa recognizes the rights of federal states as victims if the funds recovered were stolen from the state treasury in exceptional cases. In a country in Central America, a recent Supreme Court ruling²² granted to indigenous communities and organizations the right to be recognized as victims in corruption cases and to participate in all stages of legal proceedings affecting them.

Recommendations

Recognizing that corruption is not a victimless crime, States Parties should commit to using – and when absent, to **establishing – legal frameworks to enable and facilitate the participation of victims in proceedings and the reparation of both individual and collective damage caused by corruption to victims (communities)**, including when cases are resolved through settlements and when cases are linked to transnational corruption. **Rules to claim reparations²³ should be simple** (so they can be easily used) and **allow for collective action** (class and representative actions).

Non-governmental organizations should be given legal standing to represent in any legal procedure the interests of individual and collective victims of corruption (including diffuse groups of individuals), be **given the space, funds and recognition to present** law enforcement, prosecutors, regulatory bodies or civil courts with **evidence of the damage done by specific acts of corruption**, and **assist in identifying victims**.

Authorities and courts dealing with civil, administrative or criminal cases linked to corruption offenses should undertake every effort to secure and enable victims' involvement in all stages of the proceedings, including during the investigation and trial stage, resorting to reasonable means that do not jeopardize the proceedings. In addition, views and concerns of victims should be presented and considered at appropriate stages of these proceedings.²⁴ People and civil society organizations should be able to access sufficient information to promptly initiate or contribute to those proceedings.

Judicial and non-judicial proceedings shall respect the decision-making processes of indigenous communities and apply gender sensitive procedures which avoid re-victimization and stigmatization of victims.

Victims should be adequately informed of their right to pursue redress. In this regard, the **procedures for seeking reparation should be transparent**. The State Party should moreover provide assistance and support to minimize the hardship to complainants and their representatives. Civil proceedings, or other proceedings, should not impose a financial burden

²¹ Magistrates Court of South Australia (2017), *Police v Templeton*.

²² COPINH: Recurso de Amparo Penal SCO-0974-2019, <https://copinh.org/wp-content/uploads/2021/08/AMPARO.-COPINH.GUALCARQUE.pdf>.

²³ Entailing restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as to the full scope of measures required to redress violations, including access to justice.

²⁴ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guidelines 7 and 8, https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

upon victims that would prevent or discourage them from seeking redress.²⁵ Consistent with the UN Guidelines on Legal Aid, “[w]ithout prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.”²⁶

States Parties should further commit to stepping up efforts to **repair damages caused by corruption by providing victims with full redress, including material and/or symbolic reparations.**

States Parties should consider setting up dedicated funds and mechanisms to provide timely compensation to victims of corruption, so that victims do not have to wait until lengthy civil or criminal proceedings are concluded. Civil liability should be available independently of the criminal proceeding and necessary legislation and institutions for such purposes should be in place. If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then the absence or undue delay of those criminal proceedings constitute a failure on behalf of the State Party to fulfil its obligations.²⁷

The members of the UNCAC Coalition Working Group on Victims of Corruption contend that an accurate depiction of the harm that corruption inflicts, recognition of victims’ rights in enforcement proceedings, measurement of their loss both in financial and non-financial terms and the empowerment of communities and victims to initiate and participate in legal action will help ensure that:

1. Societies can better understand and contextualize the consequences of corruption, promoting more preemptive and preventive actions against it, and dissuading some of the future perpetrators;
2. The different types of damage caused by corruption are taken into account when imposing actual sanctions in concrete corruption cases;
3. Legal entities and powerful individuals are held to account for the full damages their corrupt acts have caused;
4. Individuals’ trust in prosecuting authorities, public and private institutions and the rule of law is reinforced;
5. Those who have suffered from corrupt acts (whether individually or collectively) are able to find redress and justice through legal action.

²⁵ United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee against Torture (2012), para. 29, https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf.

²⁶ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 4, https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

²⁷ See: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 3 of the Committee against Torture (2012), para. 26, https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf.