

UNCAC Coalition statement

Best practices for victim representation and compensation

At the 6th Conference of States Parties in St Petersburg in 2015, under Resolution 6.2, States Parties mandated the inter-governmental working group on asset recovery to start work on best practices for identifying victims of corruption and the parameters of compensation. The London Anti-Corruption Summit in May 2016, meanwhile, resulted in 40 countries committing to developing principles for the payment of compensation in a safe, fair and transparent manner. The issues of victim representation and compensation are critical to ensuring public confidence in enforcement of foreign bribery laws and in asset repatriation. For this reason, the UNCAC Coalition is submitting this set of recommendations to the 7th session of the UNCAC Implementation Review Group.

1. Representation of victims – implementing existing commitments

Article 32 (5) of UNCAC requires states to enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings. The Convention itself does not define the term ‘victim’ and the issue of who is identified as a victim of corruption in legal systems around the world remains undeveloped. Ensuring that victims of corruption are able to present their views in court proceedings and out of court settlements is essential to giving victims a voice as well as recognizing their rights and to ensuring that the full harm of corruption is reflected in such proceedings.

The UNCAC Coalition recommends that State Parties should:

- take a comprehensive and inclusive interpretation of the term ‘victim’, recognising that the ultimate victims of corruption are usually the people of the country concerned and particularly the socially and economically vulnerable;
- ensure that courts and prosecutors are encouraged and enabled to seek representations from civil society representatives such as community groups or national coalitions of Non-Governmental Organisations as to evidence and witness of the harm caused by corruption;
- ensure that prosecutors identify at the earliest possible stage who the victims of an offence are, inform them of the case and provide information as to how their views and concerns can be presented in criminal proceedings;
- ensure that victims’ rights are as integral to corporate settlements as they are to criminal proceedings, and that victims are given timely advanced notification of any out of court settlement negotiations.

2. Transparency and accountability of all proceedings

Transparency and accountability of all proceedings involving corruption cases are essential to ensuring effective victim representation and developing public confidence in the enforcement of corruption offences. This includes criminal, civil and administrative proceedings, out of court settlements and asset recovery proceedings.

The UNCAC Coalition recommends that State Parties should:

- make public in a timely and accessible form information on national and foreign corruption proceedings, including out-of-court settlement negotiations; and
- ensure that there are mechanisms for third parties to participate and contribute evidence.

3. Role of civil society

Article 13 of UNCAC recognizes the importance of civil society organizations in the prevention of and fight against corruption. Civil society and non-governmental actors have a significant role to play in ensuring victims are represented in corruption proceedings and that adequate compensation is awarded by:

- helping to identify the harm caused by corruption;
- helping to identify those who have been directly affected by the corruption and provide evidence of it;
- helping to ensure that compensation and asset restitution are used in a transparent and accountable manner which benefits the public good;
- helping to ensure the transparency and accountability of proceedings in corruption cases through monitoring.

The UNCAC Coalition urges State Parties:

- to establish formal mechanisms for civil society and non-governmental actors to be able to report crimes of corruption directly to prosecutors, investigators and anti-corruption bodies (in line with UNCAC Article 13 (2)), and to be treated as an official complainant in doing so;
- to ensure that states have in place appropriate mechanisms to allow civil society organisations to bring public interest litigation in relation to corruption;
- to permit and encourage courts and prosecutors to recognize and seek civil society assistance in identifying the harm and potential victims of corruption, and in helping determine how compensation can be used for the public good, in a transparent and accountable manner.

4. Legal standing to claim for individual and collective reparation and compensation

Article 35 of UNCAC requires States to ensure that those who have suffered damage from corruption have the right to initiate legal proceedings against those responsible for the damage in order to receive compensation. Individual and collective victims should be both entitled to participate and raise claims for compensation on all proceedings.

The UNCAC Coalition urges State Parties:

- to ensure that public procurement contracts include sleeping beneficiary clauses which specify the beneficiaries of the project who, in the event of an act of corruption, become the direct victims;
- to ensure that states have in place appropriate mechanisms to allow non-state victims, both individual and collective, to bring civil actions for damages.

5. Compensation and reparation

UNCAC Article 53 (b) requires State Parties to permit its courts to order that those who have committed offences under the Convention pay compensation or damages to another State Party harmed by such offences. Prompt, adequate and effective compensation or reparation for damage caused is integral to a full recognition of the harm that corruption causes. In 2015, the UNCAC Coalition urged the UNODC to work with StAR to issue guidelines and facilitate best practice on compensation. Work has now begun at an international level, following the UK Anti-Corruption Summit to develop common principles for compensation.

The UNCAC Coalition recommends that:

- Compensation should not be based on a narrow interpretation of damage, for instance solely the amount of bribe paid, but on a full analysis of the broader harm caused by an act of corruption. This should include recognition of collective damage, or social harm. This requires courts and prosecutors to adopt standards of measurement and evidence that are feasible, realistic and accessible to victims and to identify means of compensation that address the public interest directly.
- Compensation should be paid in a manner that is transparent and accountable, and that adds value to the public interest, for instance by substituting public goods that were not provided for as a result of wrongdoing.
- Adequate monitoring mechanisms need to be put in place to ensure that compensation is properly implemented and managed, fully and publically accounted for, with participation of non-governmental actors for verification.
- Where there are legitimate concerns that a State Party is unable or unwilling to use compensation in a manner that benefits the public good and particularly those communities most affected by corruption, or where a State Party does not seek compensation for damages, consideration should be given to enabling a credible and legitimate third party to distribute the compensation for the public benefit of the people of the affected country. Where this is not possible, consideration should be given to compensation being allocated, as described in Article 62 (2, c) of UNCAC, for general anti-corruption work and support, or being put in 'trust' for the people of the affected country.
- Principles for compensation being given to affected State Parties should include that the affected State has instituted meaningful proceedings against the actors implicated in the wrongdoing in its jurisdiction, has transparent public management systems and is able to provide verifiable evidence that the compensation has been used specifically in the public interest and to address the harm caused by the corruption.