



## Recovery of Damages and Compensation for Victims of Corruption

### UNCAC Coalition statement to the 7<sup>th</sup> Conference of States Parties in Vienna

**Corruption causes a wide range of direct and indirect damage** to institutions, communities, the public and individuals. In the case of grand corruption,<sup>1</sup> this damage includes widespread violations of human rights, increased costs and the deterioration of public services. This weakens the integrity of and public confidence in state institutions, creating instability and conflict, and lack of economic development, including the absence of basic infrastructure. In communities, the harms are often to health (tainted medicines, hospitals not built) and livelihoods (land-grabbing, environmental harm), and include loss of opportunity (reduced access to education) and diminished quality of life (prohibitively high costs of water, electricity and other public services). Corruption has many victims: states and public entities, companies, individuals and communities.

The UNCAC Coalition believes that in line with the UNCAC, **every State Party's legal system should ensure that it is possible to take into account, penalise and compensate the whole gamut of harms in criminal and civil proceedings.** The harm that specific acts of grand corruption inflict on communities and the public cannot be as easily quantified as damage to companies or the state, but legal avenues for ensuring that these damages can be claimed for and fully compensated must be ensured. This submission focuses on **empowering victims of corruption and ensuring the damage of grand corruption is properly compensated.**

Communities, public interest groups, civil society organisations (CSOs) and individuals must be empowered so that they can initiate or become parties to civil and criminal proceedings. They should also be empowered to participate in and strengthen criminal proceedings for acts of grand corruption and help ensure that remedial action is taken. **Victims should have a central role within criminal proceedings on grand corruption** to ensure restorative justice; bringing those affected by grand corruption together with those who committed it. Ensuring harm is compensated and victims are represented would help **strengthen deterrence for grand corruption and build confidence in the criminal justice process.**

The determination of actual and potential losses to different groups of victims should occur at different phases in the law enforcement process:

1. Communities, CSOs and individuals can play an effective role in fighting corruption by bringing corruption offences to the attention of public bodies, pressing for the opening of investigations and becoming parties to criminal and civil or administrative proceedings. Private enforcement is not a substitute for public action but a necessary

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<sup>1</sup> Transparency International defines grand corruption as the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society. It often goes unpunished.

complement, especially where public enforcement agencies lack the will or the resources to take action themselves.

2. Decentralised public entities and local communities can play a useful participatory role in enforcement action by state institutions and should be given the right to recover damages for specific losses during criminal and civil proceedings.
3. Public interest organisations can be encouraged and given the space to present evidence of the damage done by specific acts of corruption to law enforcement and criminal justice processes and assist in identifying victims.

The proper representation of the harm of corruption, recognition of the rights of victims in enforcement proceedings and empowerment of communities and victims to bring and participate in legal action would help ensure that:

- Corruption is treated on a par with other serious crimes
- The damage caused by corruption is weighed properly when assessing financial and other penalties for corrupt acts
- Sufficient and dissuasive penalties are imposed
- Those that have suffered through corrupt acts both collectively and individually find redress through legal action

These considerations are relevant wherever corruption occurs and enforcement action is taken, whether in the context of domestic or international transactions. The **UNCAC appropriately lays out the legal basis for representation of harm and the rights of victims** at Article 32 (5) (views of victims to be presented in criminal proceedings); Article 34 (addressing the consequences of corruption); Article 35 (right of those who have suffered damage to initiate legal proceedings against those responsible); Article 53 (b) (permitting courts to order compensation or damages to another State Party harmed by such offences); and Article 57 (3 (c)) (priority consideration to returning confiscated property not subject to the situations in 3 (a) and (b) to legitimate owners or compensating victims of crime).

The rights of victims of corruption have also been recognised in various international inter-state forums including:

- The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- The UN Guiding Principles on Business and Human Rights (2011), which provide a protect, respect and remedy framework
- The 2015 UN Doha Declaration on Crime Prevention and Criminal Justice (5 (I) (effective measures for recognition, protection and support for victims of corruption)).

Furthermore, at the London Anti-Corruption Summit in May 2016, 40 countries from all regions of the world recognised that compensation is important to, “support those who have



suffered from corruption”, and committed to developing “principles to ensure that such payments are made safely, fairly and in a transparent manner to the countries affected”.

However, the UNODC’s work on identifying victims of corruption, as mandated by Resolution 6.2 at the last CoSP, concludes that “while legal avenues exist for victims to claim compensation, only very few compensation cases concerning victims of corruption have been reported and how the existing legal frameworks operate in practice remains largely unknown”.

We note that some good practice has emerged in this area. For instance, in the UK compensation is becoming a regular feature of foreign bribery cases and the enforcement bodies have developed principles for compensation in corruption cases. In France, the fact that CSOs can initiate criminal proceedings in grand corruption cases is an important precedent that needs proper examination to understand how it can be replicated in different legal frameworks. In Costa Rica, the development of legal norms that look at non-financial damage from grand corruption, including the concept of “moral damage”, is an important addition to the range of options that are available for assessing the harm corruption causes.

Exchanges of actual experiences in this area have been limited to forums such as the UN Working Group on Asset Recovery. However, these forums fail to allow for broader contributions, particularly from civil society, partly due to their lack of openness and prohibition on mentioning individual countries. This impedes the identification and deepening of good practices in this area.

The **UNCAC Coalition urges State Parties to:**

- 1) Recognise the rights of victims to initiate and participate in grand corruption proceedings** and the importance of assessing and representing harm in grand corruption proceedings. To this end, they should ensure that their legal frameworks have comprehensive interpretations of harm and a broad definition of “victim”; that prosecutors develop suitable criteria for identifying victims of and harm from corruption at the earliest possible stage of criminal proceedings; and that the views of victims and evidence of harms are present in proceedings, including out of court settlements.
- 2) Encourage civil society organisations, nationally and internationally, to set up and operate corruption observatories** to collect information, provide advice to victims, help determine damages and support action for recovery.
- 3) Establish mechanisms for civil society and non-governmental actors to report crimes of corruption** directly to anti-corruption bodies (in line with UNCAC Article 13 (2)), and be treated as an official complainant.
- 4) Permit and encourage courts and prosecutors to recognise and seek civil society and other expert 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.

- 5) **Make public in a timely and accessible form, information on the rights of victims of grand corruption** to initiate and participate in criminal and civil proceedings, including out of court settlements and provide full public access to such proceedings and relevant court documents from such proceedings.
- 6) Ensure that **compensation is based on a full analysis of the broader harm caused by an act of corruption**. Sanctions and remedial action, including settlements, should include recognition of collective and social damage.
- 7) **Ensure that asset return, reparation and compensation of damages will not fuel the same system that caused the damage in the first place**, and that their use is transparent and accountable to the people where corruption took place.
- 8) **Adopt a resolution at the 2017 CoSP** that specifically urges the **Secretariat to continue to share good practices and experiences**, working with a broad range of interested groups including with UN and regional human rights mechanisms to learn from and collaborate with them, and to **work towards guidelines for the identification and compensation of victims in corruption cases** and in particular victims in grand corruption cases.

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