

Thirtieth Court of Preliminary Investigation Specializing in Corruption of Public Officials and Organized Crime in Lima:

The UNCAC Coalition, a global network of civil society organizations (CSOs) registered in Vienna, Austria, respectfully appears before this court as *amicus curiae* in the present proceedings, in order to offer legal analysis that may be useful for the interpretation and application of Article 94.4 of the Peruvian Criminal Procedure Code in a case as relevant to civil society and human rights as *the Qali Warma – Abia Acumulado case*.

The UNCAC Coalition was founded in August 2006 and is a global network of more than 400 CSOs in over 120 countries committed to promoting the ratification, implementation, and monitoring of the United Nations Convention against Corruption (UNCAC). The Coalition promotes civil society action in favor of the UNCAC at the international, regional, and national levels, and its mission is to strengthen integrity and reduce corruption by supporting and empowering civil society to collectively promote transparency, accountability, and good governance, and to advance the implementation and strengthening of legal frameworks resulting from international agreements, specifically the UNCAC.

The national and international non-governmental and civil society organizations that are part of the Coalition work on a wide range of issues related to advancing anti-corruption efforts, transparency, and accountability, as well as in policy areas linked to specific provisions of the UNCAC.

The UNCAC Coalition's participation in this *amicus curiae* brief responds to its legitimate and well-founded interest in contributing to a legal interpretation that guarantees the full effectiveness of the rights of civil society organizations to participate in proceedings and to have legal standing in cases of corruption, particularly when collective or diffuse interests are affected.

The purpose of this brief is to support, from a comparative legal perspective and based on international standards, the request for the recognition and incorporation of *PROÉTICA*—the Peruvian chapter of Transparency International—as an aggrieved party in the present criminal proceedings, in accordance with Article 94.4 of the Peruvian Criminal Procedure Code.

Respectfully,

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Qali Warma Case – Abia Acumulado
Amicus Curiae Brief

On behalf of the UNCAC Coalition

July 24, 2025

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I. INTRODUCTION

At the request of PROETICA, the Peruvian chapter of Transparency International, the world's leading global anti-corruption organization with offices in 114 countries, the UNCAC Coalition respectfully submits this report as *amicus curiae*, pursuant to Article V of the Constitutional Procedural Code of Peru.¹

The UNCAC Coalition is a global network of more than 400 CSOs in over 120 countries committed to promoting the ratification, implementation, and monitoring of the UNCAC. The Coalition promotes civil society action in favor of the UNCAC at the international, regional, and national levels. The UNCAC Coalition is grateful for the pro bono assistance in preparing this amicus brief to the Cyrus R. Vance Center for International Justice, a program of the New York City Bar Association and a member of the UNCAC Coalition.

This *amicus curiae* brief is submitted in the context of the proceedings for the protection of rights before the Thirtieth Court of Preliminary Investigation Specialized in Crimes of Corruption of Public Officials and Organized Crime of Lima, in relation to the *Qali Warma case*, which is of particular relevance because it involves acts that allegedly affect the collective and diffuse interests of society, particularly the right of children and adolescents to receive adequate food, the right to health, as well as the public interest in transparency and the human right to an environment free of corruption.

The purpose of this *amicus* brief is to provide legal reasoning that may contribute to the proper interpretation of Article 94.4 of the Peruvian Code of Criminal Procedure (CPP) in accordance with universal standards, which recognizes the standing of associations to intervene as aggrieved parties in cases affecting collective or diffuse interests. Through a review of the national regulatory framework, international standards on the fight against corruption, defense and comprehensive reparation for victims of corruption crimes, and the participation of civil society, as well as a comparative analysis of relevant experiences, the UNCAC Coalition seeks to support the court in evaluating PROÉTICA's request to be included as an aggrieved party in the present criminal proceedings.

The interpretation of this procedural provision takes on special significance in a context where corruption generates structural impacts that transcend the State as the sole injured party, affecting the citizenry as a whole. For this reason, this *amicus brief* argues that the participation of

¹ Article V.- Amicus curiae

The judge, the court, or the Constitutional Court, if they deem it appropriate, may invite individuals or legal entities to act as amicus curiae to express their legal opinion on a complex matter in writing or orally. The amicus curiae may also be invited to inform the judge of non-legal, technical, or specialized knowledge that is relevant to the resolution of the case. The following requirements must be met for the participation of the amicus curiae:

1. They are not a party to the proceedings and have no interest in the proceedings.
2. They have recognized competence and suitability in the matter in question.
3. Their opinion is not binding.
4. Their admission to the proceedings is at the discretion of the court.

The amicus curiae has no jurisdiction to file appeals or bring legal challenges.

organizations such as PROÉTICA is not only compatible with current legislation, but necessary to strengthen access to justice and accountability in cases of public interest.

II. STATEMENT OF INTEREST OF THE UNCAC COALITION *AMICUS CURIAE*

The UNCAC Coalition's participation is based on the work and purpose of its *Working Group on Victims of Corruption*, which seeks to facilitate debate, information exchange, and joint promotion among civil society experts on the fundamental role played by CSOs, on the one hand, as whistleblowers of acts of corruption, and, on the other hand, as key actors in raising awareness of victims and promoting reparation and compensation for the harm caused by corruption.²

The *Working Group on Victims of Corruption* organizes regular meetings, maintains an email discussion list, and has created an international database on legal frameworks and comparative practices around the world for the recognition of victims and their active legitimization.³ In addition, it promotes creative activities such as short film competitions to highlight the experiences of victims, and develops advocacy tools such as blogs, open letters, presentations at international conferences, and specialized publications. The group also collaborates with other thematic bodies within the Coalition to articulate a common agenda that promotes effective mechanisms for participation and redress. Through these actions, the *Working Group on Victims of Corruption* seeks to strengthen the legal and political recognition of victims as key actors in the fight against corruption.⁴

Finally, the UNCAC Coalition submits this brief as *amicus curiae* in an independent and technical capacity, without representing the particular interests of the parties to the proceedings, and with the sole purpose of providing the court with elements of comparative legal analysis and international standards that may serve as guidance in the specific case.

III. FACTS

This case concerns an investigation into alleged acts of corruption in the Qali Warma National School Feeding Program, in which public officials and supplier companies allegedly formed a criminal organization to secure irregular contracts for the supply of canned meat. According to the investigation, between 2019 and 2024, illegal payments were made to officials with the aim of manipulating health controls and fabricating false documentation, affecting the quality of food

² UNCAC Coalition, "Victims of Corruption Working Group," UNCAC Coalition, accessed July 14, 2025, <https://uncaccoalition.org/victims-of-corruption-working-group/>

³ UNCAC Coalition, International Database on Corruption Damage Reparation and Legal Standing for Victims of Corruption, accessed July 14, 2025, <https://uncaccoalition.org/get-involved/working-groups/victims-of-corruption-working-group/database-on-legal-standing/>

⁴ UNCAC Coalition, "Victims of Corruption Working Group," UNCAC Coalition, accessed July 14, 2025, <https://uncaccoalition.org/victims-of-corruption-working-group/>

delivered to vulnerable schoolchildren. Given that the facts implicate officials from different regions of the country, the Public Prosecutor's Office opened investigations in the respective judicial districts in accordance with their territorial jurisdiction.

On November 12, 2024, the organization PROÉTICA, as a civil association dedicated to the fight against corruption, filed a first statement of appearance before the Fourth Office of the First Provincial Prosecutor's Office Specializing in Corruption Crimes by Public Officials in Lima, under file No. 522-2024. This request was rejected by Prosecutor's Order No. 15 on November 12, 2024, stating that, as this was a crime of corruption by public officials, the only aggrieved party would be the State represented by the Specialized Public Prosecutor's Office, and that the intervention of multiple actors with similar interests would fragment the criminal proceedings.

Another appearance was filed by PROÉTICA on January 6, 2025, before the Third Office of the Provincial Prosecutor's Office Specializing in Corruption Crimes by Public Officials in the context of the investigation contained in case file No. 377-2024. In this case, through Ruling No. 19-2025, dated January 9, 2025, PROÉTICA was recognized as an interested party for the relevant purposes, acknowledging its participation as an interested party in the investigation and granting it access to the contents of the case file.

Subsequently, these files were combined, and the Ninth Transitory Office of the Supraprovincial Prosecutor's Office Specializing in Crimes of Corruption by Public Officials (hereinafter, the Ninth Office) was designated as the competent office. Following this consolidation, PROÉTICA filed a new statement of appearance in case file No. 1-2025, requesting to be included as an aggrieved party on the basis of Article 94.4 of the Criminal Procedure Code.

On February 24, 2025, the Ninth Office, through Ruling No. 13-2025, declared this request inadmissible without analyzing the procedural rule invoked or assessing the collective nature of the interest affected.

On April 3, 2025, PROÉTICA filed a motion for reconsideration, requesting the annulment of Prosecutor's Order No. 13-2025 on the grounds that it had been issued without a substantive analysis of Article 94.4 of the Code of Criminal Procedure and failed to adequately assess the collective nature of the rights affected. In that brief, it was argued that PROÉTICA's participation did not conflict with the functions of the Public Prosecutor's Office, but rather sought to contribute to the clarification of the facts, in exercise of a legitimacy recognized both by national legislation and by international standards in the fight against corruption.

On April 28, 2025, the Prosecutor declared the request for reconsideration unfounded, adopting a restrictive interpretation of Article 94.4 of the Criminal Procedure Code. The Prosecutor's Office stated that it would be the only entity with standing to intervene in proceedings for corruption of public officials, and then asserted that, although there could be collective interests affected, PROÉTICA should have proven a direct link with the victims affected by the crime (who, in its opinion, would only be the students from Puno identified in another prosecutor's file). The

response to the request for reconsideration indicates that the authority ruled contrary to the legal concept of collective and diffuse interests, which by definition do not require the individual identification of those affected, precisely because they are legal rights that transcend specific individuals.

Beyond providing a substantive response, the prosecutor's office asserts its preeminence in the defense of diffuse interests by invoking Article 82 of the Civil Procedure Code, which regulates the representation of diffuse interests and recognizes that, among others, "the Public Prosecutor's Office and ... non-profit associations and institutions" may intervene in these proceedings.

Although this rule does not apply to criminal proceedings and could only be invoked on a supplementary basis in the absence of a specific criminal law, which is not the case here, the prosecutor fails to expressly recognize the rule regarding the legitimacy of the participation of civil associations such as PROÉTICA in such cases. Instead, this interpretation seeks to impose an erroneous interpretation of the rule, suggesting that it confers an exclusive right of intervention to the Public Prosecutor's Office, which is incorrect.

On May 27, 2025, PROÉTICA filed a request for protection of rights before this court, stating that fundamental rights had not been respected, seeking to remedy the omission of the ninth order. In this request, the petitioners stated that the prosecutor's office violated the right to access to justice, due process, and to a sufficient and consistent reasoning by rejecting the organization's standing. They further contended that this rejection constituted a violation of the principles of legality and equality of arms, which are explicitly recognized in Article 94.4.⁵

⁵ TITLE IV: THE VICTIM
CHAPTER I: THE AGGRIEVED PARTY
Article 94. Definition

1. Any person who is directly offended by the crime or harmed by its consequences shall be considered an aggrieved party. In the case of incapacitated persons, legal entities, or the State, representation shall be provided by those designated by law.
2. In crimes resulting in the death of the aggrieved party, the persons established in the order of succession provided for in Article 816 of the Civil Code shall have that status.
3. Shareholders, partners, associates, or members shall also be considered aggrieved parties in crimes affecting a legal entity committed by those who direct, administer, or control it.
4. Associations in crimes affecting collective or diffuse interests, whose ownership harms an indeterminate number of persons, or in crimes included as international crimes in international treaties approved and ratified by Peru, may exercise the rights and powers attributed to persons directly offended by the crime, provided that the association's corporate purpose is directly related to those interests and that it has been recognized and registered prior to the commission of the crime that is the subject of the proceedings.

IV. LEGAL ANALYSIS

Having set out the facts of the case, we consider it necessary to pose a series of questions aimed at clarifying its various aspects and identifying the relevant legal sources. After addressing these questions, we will present certain international obligations and standards concerning the fight against corruption, as well as and the protection and promotion of human rights, that are applicable to this specific case.

A. Specific questions

1. Do corruption offenses affect collective or diffuse interests held by an indeterminate number of persons? What are these interests?

To answer this question, we will define what collective or diffuse interests are.

Diffuse interests refer to those that correspond to a group of people who cannot be precisely determined or identified, but who share the same factual circumstance. What matters is not how many people make up that group, but the fact that it is not possible to identify them individually. A common example includes environmental protection or advertising campaigns aimed at consumers, since in these cases it is not possible to know exactly who is affected. The Peruvian legal system recognizes diffuse interests and defines them in Article 82 of the Civil Procedure Code, stating that "a diffuse interest is one whose ownership corresponds to an indeterminate group of people, with respect to assets of inestimable patrimonial value, such as the environment or cultural or historical heritage or consumer interests."⁶ This provision also establishes who has standing to intervene in defense of these interests, including the Public Prosecutor's Office, regional governments, local governments, peasant communities, and/or native communities within whose jurisdiction the environmental damage or damage to cultural heritage occurred, as well as non-profit associations or institutions that, according to the law and the judge's criteria, have standing.

Collective rights, on the other hand, "are those that belong to an indeterminate but determinable group of subjects who are united by a legal relationship. The members of the community can be identified precisely by the existence of this prior legal relationship among themselves or with the counterparty."⁷

⁶ Article 82.- Representation of diffuse interests*

A diffuse interest is one whose ownership corresponds to an indeterminate group of persons, with respect to assets of inestimable patrimonial value, such as the environment or cultural or historical heritage or consumer heritage.

The Public Prosecutor's Office, regional governments, local governments, peasant communities, and/or native communities in whose jurisdiction the environmental damage or damage to cultural heritage occurred, as well as non-profit associations or institutions that, according to the law and the judge's criteria, the latter by means of a duly reasoned decision, are entitled to do so, may promote or intervene in this process.

⁷ McGregor, Stephano. "Diffuse, collective, and homogeneous individual rights." *LP Derecho*. May 21, 2017. https://lpderecho.pe/los-derechos-difusos-colectivos-e-individuales-homogeneos/#_ftnref1

Collective and diffuse interests belong to groups and not to individuals in isolation. Collective interests (or collective rights) correspond to a group of persons united by a legal or factual relationship. This group is usually identifiable and organized, and the rights in question derive from the shared circumstances or the relationship between its members. In contrast, diffuse interests (or diffuse rights) belong to all persons or to an indeterminate group linked by general and contingent circumstances, without there necessarily being a prior legal or factual relationship between them.⁸

Collective interests usually involve specific and tangible rights related to the shared situation of the group, such as the right of a community to manage common property. Diffuse interests, on the other hand, comprise broader and intangible rights that affect society as a whole or a group of society that cannot be identified in advance, such as the right to a healthy environment, public health, or access to accurate information in the public sphere. Given that diffuse interests affect an indeterminate number of people, their protection often requires special legal mechanisms and public action to ensure the preservation of these generalized social goods.

In the present case, the impact of the alleged acts of corruption in the Qali Warma program does not constitute a collective right, but rather a diffuse right. This is because collective rights presuppose the existence of a determinable group of persons united by a specific legal relationship either between themselves or with the counterparty.

In contrast, diffuse rights belong to an indeterminate and indeterminable group of individuals who are not legally linked to each other but who share a common factual situation. It is precisely this latter situation that characterizes the present case: the children who are beneficiaries of the food program constitute a large group—there are thousands of them, given the scope of this program throughout Peru—that is heterogeneous and cannot be individually identified within the criminal proceedings. The impact is not only on an individual right, but on a collective and indivisible legal right, such as access to adequate school meals free from corruption and the right to health of the beneficiaries of the program at the national level.

In addition, acts of corruption such as those described in this report also affect Peruvian society in general, insofar as they distort the proper administration of public affairs, affecting the Peruvian State's ability to provide the public services it is obliged to provide (health, education, drinking water, security, etc.) and prevent the equitable distribution of public funds by diverting funds that should be used for the common good and in favor of the most vulnerable members of society, for the illegal benefit of a few.

Therefore, given the impact that these acts and situations of corruption have on human rights, there is a collective interest in their eradication, and this is an international obligation of States and not merely an economic, moral, or political duty. The IACHR considers that the eradication

⁸ PELLEGRINI GRINOVER, Ada. Collective actions for the protection of the environment and consumers. In: AA. VV. Studies in Honor of Dr. Héctor Fix Zamudio on his 30 years as a researcher in Legal Sciences. Volume III. Procedural Law. Mexico: Autonomous University of Mexico, 1988. p.2328

of corruption, when it has structural characteristics as in the region, obliges States to adopt all consistent, coordinated, adequate, and effective measures to that end. If States do not adopt all measures within their power to eradicate corruption, they are failing to fulfill their duty to respect and guarantee human rights and are therefore in breach of their international obligations in this area. Consequently, they have a duty to repair the damage caused.⁹

Corruption, as a structural phenomenon that distorts the functioning of the State and weakens the entire service system, affects collective and diffuse interests in most cases. It affects collective interests when it violates the rights of identifiable groups of people united by a legal or factual relationship—such as user associations, trade unions, local communities, or social organizations—who see the effectiveness of public services or the allocation of state resources for their well-being compromised. At the same time, corruption impacts diffuse interests, as its consequences fall on society as a whole, affecting indivisible legal assets such as trust in institutions, the proper use of public funds, equality before the law, administrative transparency, and equitable access to fundamental rights such as education, health, and justice. Corruption therefore constitutes a structural legal infringement of shared rights, which in turn requires collective and institutional mechanisms for prevention, control, punishment, and redress.

Given that the present case involves the infringement of a diffuse right, Article 94.4 of the CCP is fully applicable, which recognizes the procedural legitimacy of associations whose corporate purpose is directly linked to the interest affected. In addition to covering diffuse rights in its wording, the article also recognizes collectives. Denying the legitimacy of civil organizations to participate in such criminal proceedings would be tantamount to disregarding the very nature of diffuse rights, whose defense depends on collective mechanisms, especially when the victims cannot be identified or exercise their rights in criminal proceedings themselves.

2. Who are the subjects directly offended by crimes that affect collective or diffuse interests?

Traditionally, only states were seen as victims of corruption. However, in recent decades, this view has begun to change, and laws and courts have been recognizing that individuals and communities, as well as society as a whole, suffer losses and need to be both represented and compensated in cases involving corruption.

For example, the 1999 Council of Europe Civil Law Convention on Corruption provided that persons suffering damage as a result of corruption could bring civil claims, although it never

⁹Inter-American Commission on Human Rights. Corruption and human rights. OEA/Ser.L/V/II. Paragraph 274 Doc. 236, December 6, 2019, paragraphs 250-252. <https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>

defined who those persons might be.¹⁰ Similarly, the United Nations Convention against Transnational Organized Crime, in Article 35, stated that States should establish appropriate procedures to enable restitution and compensation for victims. Additionally, the UNCAC understands that corruption harms not only States but also has collective victims, who have the right to participate in proceedings seeking the recovery of the damages they have suffered.¹¹

As explained by the UN Working Group on Asset Recovery: “Corruption can victimize individuals directly, but also indirectly, and can also negatively affect society as a whole. Consequently, some groups of people may not be easily considered victims and their legal standing may be denied when they do not have a direct and specific interest. In this context, mention should be made of the concept of social harm, which exists in some jurisdictions and allows for compensation for damage to the public interest. It could include damage to the environment, to the credibility of institutions, or to collective rights such as health, safety, peace, education, or good governance.”¹²

Given the wide range of potential victims affected by corruption, in addition to the State itself, two main categories of cases recognize participation in corruption-related proceedings. The first includes cases where a direct link can be established between a corrupt act and the harm suffered by a specific and identifiable group or individual. The second involves situations where public interest organizations engaged in anti-corruption efforts are allowed to act on behalf of victims,

¹⁰ Article 3. Compensation for damages.

1. Each Party shall provide in its domestic law that persons who have suffered damage resulting from an act of corruption have the right to take action to obtain full compensation for such damage.

2. Such compensation may cover pecuniary damage, loss of earnings, and non-pecuniary damage.

Council of Europe, *Civil Law Convention on Corruption* (No. 174), Strasbourg, November 4, 1999, published in the *Official State Gazette (BOE)* No. 78, March 31, 2010, entered into force on November 1, 2003 (for Spain on April 1, 2010),

<https://www.derechoshumanos.net/normativa/normas/europa/corrupcion/1999-Conventiono-civil-sobre-corrupcion.htm#a3>

¹¹ Article 25. Assistance and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of the crimes covered by this Convention, in particular in cases of threat of reprisal or intimidation.

2. Each State Party shall establish appropriate procedures to enable victims of the crimes covered by this Convention to obtain compensation and restitution.

3. Each State Party shall, subject to its domestic law, allow the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders without prejudice to the rights of the defense.

United Nations, *United Nations Convention against Transnational Organized Crime and its Protocols*, 2004 <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-s.pdf>

¹² See “Corruption can victimize individuals directly, but also indirectly, and can negatively affect society as a whole. As a result, some groups of people may not be easily considered victims and may be denied legal standing when they do not have a direct and specific interest. In this context, mention should be made of the concept of social harm, which exists in some jurisdictions and allows for redress for harm to the public interest. This may include damage to the environment, to the credibility of institutions, or to collective rights such as health, safety, peace, education, or good governance.” (Own translation) In U.N. Office on Drugs & Crime, *Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation*, U.N. Doc. CAC/COSP/WG.2/2016/CRP.1, Par. 12 (Aug. 4, 2016) Available at: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993_e.pdf

typically in jurisdictions where the law authorizes such groups to represent diffuse interests. In some cases, these categories may overlap.

The difference will usually rest on whether the victim was “offended” or “harmed.”

3. What is the difference between being offended and harmed by a crime? Who is the victim in the case of corruption crimes?

In recent decades, criminal proceedings have been marked by rapid developments in substantive criminal law, focused mainly on protecting the rights of the accused against the punitive power of the state. This rights-based architecture, which prioritizes principles such as the presumption of innocence, the right to defense, to a fair trial, and to silence, among others, has been fundamental in preventing abuses in contexts of institutional weakness. However, this structure has neglected an essential actor: the victim. Although constitutional and procedural frameworks formally recognize their rights, in practice victims have been rendered invisible, to a greater or lesser extent in different Latin American countries. The prosecution, as the head of criminal proceedings, has assumed a kind of monopoly on criminal prosecution, displacing those who directly suffered the consequences of the crime and depriving them of their voice in the process. This institutional appropriation of criminal conflict not only denies agency to the victim, but also subjects them to a form of revictimization.

This exclusion is exacerbated in corruption crimes, where the protected legal interest—public administration—has traditionally been understood as the property of state institutions, rather than a collective interest belonging to the citizenry. This view is incorrect. In reality, public administration is a legal interest of a collective nature, intended to guarantee rights and services to the population. Therefore, its impairment by acts of corruption directly harms citizens, who are not only taxpayers who finance the state apparatus, but also holders and users of rights that are violated when public funds are diverted or embezzled. In this context, both individuals and civil society organizations should be recognized as legitimate victims—including in their role as civil actors—with broad procedural powers to intervene in criminal proceedings.

This possibility is provided for in regulations such as the Peruvian Criminal Procedure Code and the General Victims' Law in Mexico, which recognize that physical, financial, or emotional harm can result from both individual harm and a violation of collective or diffuse interests.

However, in judicial practice, there is still strong resistance to recognizing such participation, as pointed out in the report *Victims of corruption: damage reparation and legal standing* prepared by the UNCAC Coalition's Working Group on Victims of Corruption, which analyzed the regulatory framework and judicial practice in Peru regarding the recognition, participation, and reparation of victims of corruption. This report notes that although the CCP (Articles 94 to 106) recognizes the procedural standing of citizens and CSOs in criminal cases, in practice, judicial and prosecutorial authorities take a restrictive approach, considering only the State as a legitimate victim of corruption crimes. While CSOs and citizens may participate as *amicus curiae* or experts, they are not usually admitted as direct parties to the proceedings. In addition,

this report has highlighted that, in terms of bringing cases to court, civil society and investigative journalism have played a crucial role in revealing corruption scandals that are then prosecuted by the Public Prosecutor's Office, such as the "Lava Jato," "Cuellos Blancos del Callao," and "Petroaudios" cases.¹³

In this regard, the importance of civil society's legitimacy to bring such cases has not been recognized. It is often argued that if the victim has filed a civil claim, they cannot intervene in the criminal proceedings for fear of violating the principle of *ne bis in idem*. Or they are denied standing on the grounds that their role is limited to demanding financial compensation and not to participating in criminal prosecution. This narrow view is not only anachronistic, but also incompatible with a contemporary approach to human rights. In corruption crimes, where victims cannot always be identified individually, it is perfectly reasonable—and necessary—to recognize the procedural standing of organizations representing collective interests so that they can intervene as civil parties or assistants to the Public Prosecutor's Office.

Article 94 establishes that "anyone who is directly offended by the crime or harmed by its consequences is considered aggrieved," noting that "associations in crimes that affect collective or diffuse interests, whose ownership harms an indeterminate number of persons (...) may exercise the rights and powers attributed to persons directly offended by the crime, provided that the association's corporate purpose is directly linked to those interests and has been recognized and registered prior to the commission of the crime that is the subject of the proceedings."¹⁴

The Supreme Court of Peru, in Cassation 646-2019, specified that Article 94.1 of the Criminal Procedure Code establishes two ways of being considered aggrieved: as a *direct victim* (owner of the legal right protected by the crime) or as an *injured party* (a person who suffers material or personal consequences of the crime, even if they are not the owner of that legal right). Both conditions may coincide in a single person, but they may also fall on different subjects. In this

¹³ Benites, Vargas & Ugaz. Victims of Corruption: Damage Reparation and Legal Standing – International Database 2022: Peru. UNCAC Coalition, 2022. <https://uncaccoalition.org/get-involved/working-groups/victims-of-corruption-working-group/database-on-legal-standing/peru/>

¹⁴ Article 94. Definition

1. Anyone who is directly offended by the crime or harmed by its consequences is considered aggrieved. In the case of incapacitated persons, legal entities, or the State, representation shall be provided by those designated by law.
2. In crimes resulting in the death of the aggrieved party, the persons established in the order of succession provided for in Article 816 of the Civil Code shall have such status.
3. Shareholders, partners, associates, or members shall also be considered aggrieved parties in crimes affecting a legal entity committed by those who direct, administer, or control it.
4. Associations in crimes affecting collective or diffuse interests, whose ownership harms an indeterminate number of persons, or in crimes included as international crimes in international treaties approved and ratified by Peru, may exercise the rights and powers attributed to persons directly offended by the crime, provided that the association's corporate purpose is directly related to those interests and has been recognized and registered prior to the commission of the crime that is the subject of the proceedings.

context, Article 98 of the CPP allows anyone who is *harmed by the crime* to bring a civil action, without necessarily being the passive subject of the criminal offense.¹⁵

In summary, a distinction has been made between the aggrieved party and the injured party as follows: the aggrieved party is the person who has been directly offended by the crime and has suffered criminal damage, while the injured party is the person who has suffered damage that can be compensated financially, as they are the owner of the interest affected by the unlawful act. Thus, the aggrieved party is the person whose rights—whether personal or property rights—are directly affected as a result of criminally defined conduct. Although they do not always have to be the legal holder of the violated right, their involvement in the criminal proceedings is key to proving the facts and countering the presumption of innocence of the accused. On the other hand, the injured party is the holder of the right affected. In the case of legal persons, this status corresponds to their partners, shareholders, or members. They must be guaranteed access to the truth, justice, and compensation for the damage suffered as a result of the crime.¹⁶

On the other hand, the distinction between the aggrieved party and the injured party is key to defining who is entitled to request their inclusion as a civil party in criminal proceedings. Some jurists point out that the civil party is a secondary and contingent procedural figure who files a claim for compensation based on an alleged right to compensation, which gives them the legitimacy to actively participate in the proceedings. When the same person meets the conditions of both aggrieved party and injured party, there is no further complexity. However, if these qualities fall to different subjects, as occurs in certain cases, the provisions of Article 98 of the Criminal Procedure Code must be followed, which expressly states that "the action for reparation in criminal proceedings can only be brought by the person who has been harmed by the crime." Therefore, it is the injured party—that is, the person who has suffered compensable damage—who is entitled to bring a civil action.¹⁷

In the case of the alleged acts of corruption in the Qali Warma School Program, the protected legal interest—proper public administration and integrity in government contracting—has been violated through the alleged payment of bribes and the manipulation of health controls to benefit suppliers to the detriment of the right to health and food of children and adolescents. In accordance with Article 94.1 of the Peruvian Criminal Procedure Code and the doctrine established by the Supreme Court in Cassation 646-2019, the Peruvian State can be identified as

¹⁵What is the difference between aggrieved and injured? [Cassation 646-2019, Huaura], *LP • Passion for Law*, December 15, 2020, section "Highlights: Fifteenth," LPDerecho, accessed July 8, 2025, citation from Cassation 646-2019, Huaura, available at: <https://lpderecho.pe/agraviado-perjudicado-diferencia-casacion-646-2019-huaura/>

¹⁶ What is the difference between injured party and aggrieved party?, LP, *Pasión por el Derecho*, October 24, 2019, accessed on July 8, 2025, <https://lpderecho.pe/diferencia-perjudicado-agraviado/>.

¹⁷ Article 98. Constitution and rights

Reparatory action in criminal proceedings may only be brought by the person who has been harmed by the crime, i.e., the person who, under civil law, is entitled to claim reparation and, where appropriate, damages for the harm caused by the crime.

In the case of victims who are minors, the public defender for victims or the lawyer from the Women's Emergency Center of the Ministry of Women and Vulnerable Populations shall assume legal representation for the criminal proceedings and may file the corresponding application for civil action.

the injured party, as the direct holder of the legal right to the "proper functioning of public administration." However, this does not exclude the existence of injured parties—in this case, vulnerable children and adolescents who received inadequate food—as well as society in general, whose resources were diverted and whose institutional trust was affected. As these harms fall on an indeterminate and indeterminable group of people, this constitutes a case of harm to diffuse interests.

4. What is the current universal trend regarding the role of victims of corruption crimes?

The 1985 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines "victims" as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of fundamental rights, as a result of actions or omissions that violate the criminal law of Member States, including those that prohibit the abuse of power."¹⁸

In the context of corruption offenses, the State is always the injured party as the owner of the legal right affected, but a person or group may be considered injured when they suffer direct harm resulting from corrupt acts such as embezzlement or bribery, especially when these acts result in defective, unsafe, or substandard public goods or services. For example, a road, school, or bridge that collapses due to the use of low-quality materials because part of the public funds allocated were diverted reflects direct damage caused by corruption.

International case law illustrates this dynamic. In the Once case in Argentina, a deadly train accident was linked to the misappropriation of funds intended for maintenance.¹⁹ Similarly, in the IGSS-Pisa case in Guatemala, a corruption scheme involving public health officials led to the award of a dialysis contract to an unqualified company, resulting in hundreds of deaths and injuries.²⁰ "In terms of personal injury law, corruption transforms what would otherwise be a negligence claim into a case of recklessness or intentional harm, giving rise to moral damages and, in some legal systems, punitive or exemplary damages. In addition, injured parties may have

¹⁸ United Nations. *Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power*. Adopted by the General Assembly in its resolution 40/34, November 29, 1985. Office of the United Nations High Commissioner for Human Rights. <https://www.ohchr.org/es/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>.

¹⁹ "In an unprecedented ruling, the courts allowed Poder Ciudadano to be a plaintiff in a corruption case," *Poder Ciudadano*, November 6, 2018, *Citizen Participation* section, accessed July 8, 2025, cited in *Las ONG a la carga*, *Diario Judicial*, November 7, 2018. Available at: <https://poderciudadano.org/en-un-fallo-sin-precedente-la-justicia-permitio-a-poder-ciudadano-ser-querellante-en-causa-de-corrupcion/>

²⁰ Nómada. "Pisa's payment to IGSS survivors seems like a humane gesture, but it seeks something more." *Nómada*, February 27, 2018. Accessed July 8, 2025. <https://nomada.gt/pais/la-corrupcion-no-es-normal/el-pago-de-pisa-a-los-sobrevivientes-del-igss-parece-un-gesto-humano-pero-busca-algo-mas/>.

other reasons, unrelated to economic compensation, for wanting to participate in corruption proceedings.”²¹

In contrast, a person or group is considered aggrieved when they are indirect victims and the harm suffered is diffuse or social in nature. This typically refers to harm experienced by citizens or society as a whole when a collective or diffuse interest is violated. In cases of corruption, this harm may result from lost opportunities, for example when public services such as health, education, or infrastructure are left unfunded or unprovided due to the misappropriation of public funds. Although the impact may not be immediately visible or attributable to a single person, the broader social consequences are substantial and long-lasting.

To conclude this section on victims, the final recommendations of the thematic report on Corruption and Human Rights by IACHR emphasized the need to "ensure that victims of corruption are at the center of the fight against this phenomenon and are part of the analysis, diagnosis, design, and implementation of mechanisms, practices, policies, and strategies to prevent, punish, and eradicate corruption, taking into account the principles of non-discrimination and equality, accountability, access to justice, transparency, and participation.”²²

5. Is the State the only entity with the legitimacy to participate in an investigation or criminal proceeding for the crime of corruption?

As discussed above, both international standards and domestic legislation in several countries have evolved beyond the notion that the State is the only legitimate party to act as a victim in criminal investigations or proceedings related to corruption. On the contrary, there is growing recognition of broader procedural frameworks that grant standing to individuals and groups who have been directly offended or harmed by acts of corruption.

International standards, particularly the UNCAC and the ICC, have progressively broadened the notion of "victim" in corruption cases. These instruments have recognized that corruption causes both direct and diffuse harm that can affect individuals, communities, and society at large.

For example, Article 35 of the UNCAC requires States to adopt measures to ensure that "entities or persons who have suffered damage as a result of an act of corruption" have the right to initiate legal proceedings against those responsible. This provision establishes a broad concept of victimhood, no longer restricted to the State, and recognizes that private individuals, companies, or civil society organizations may also suffer concrete harm and therefore deserve standing.²³

²¹ Roht-Arriaza, Naomi. *Fighting Grand Corruption: Transnational and Human Rights Approaches in Latin America and Beyond*. 2025.

²² Inter-American Commission on Human Rights. *Corruption and Human Rights*. OEA/Ser.L/V/II. Doc. 236, December 6, 2019, paragraph 524.1. Available at: <https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>

²³ Article 35. Compensation for damages Each State Party shall take such measures as may be necessary, in accordance with the principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to take legal action against those responsible for such damage in order to

Following this expanded notion of victimhood, standing in corruption-related proceedings is not limited to public institutions. Individuals who can demonstrate that they were directly offended or harmed by corrupt acts—such as having been exposed to poor public services or having suffered economic losses due to a tainted public procurement process—may obtain standing to participate in criminal or civil proceedings. In addition, civil society organizations may be authorized, under domestic law or public interest doctrines, to represent collective or diffuse interests, particularly in cases where corruption has affected broad social goods such as public health, education, or the environment.²⁴

This evolution is also supported by Inter-American human rights jurisprudence, such as in the case of *Ramírez Escobar v. Guatemala*, decided by the Inter-American Court of Human Rights. In that case, the Court recognized that corruption can undermine human rights beyond the immediate administrative interest of the State, including the rights to health, life, and access to justice. When corruption leads to preventable harm, such as unsafe public services, misallocation of health resources, or environmental damage, the victims of such harm are entitled to effective remedies. These judgments provide a framework for interpreting domestic law in a way that empowers individual victims and strengthens democratic accountability.²⁵

Peruvian law has begun to reflect this change. According to the letter of the CCP, the *aggrieved party* is not limited to the State. It includes any natural or legal person who has suffered harm as a result of a criminal act. Furthermore, Article 94.4 goes further and recognizes organizational standing, providing that civil society organizations may act as affected parties "in crimes that affect collective or diffuse interests that harm an indeterminate number of persons, or in crimes classified as international crimes in international treaties approved and ratified by Peru."

In this regard, Professor and Supreme Court Judge César San Martín Castro, commenting on paragraph 4 of Article 94 of the CCP, states the following:

"The fourth rule enshrines an international trend of granting associations that protect diffuse and collective interests, or that are involved in cases of alleged international crimes, a role in criminal proceedings. The first category includes those interests "that identically belong to a plurality of subjects, as members of groups, classes, or categories of persons, bound by the claim of each to enjoy the same prerogative. Thus, the satisfaction of the fragment or portion of the interest

obtain compensation. United Nations. *United Nations Convention against Corruption*. New York, 2004. https://www.unodc.org/pdf/corruption/publications_unodc_convention-s.pdf.

²⁴ United Nations Office on Drugs and Crime, *Good Practices in Identifying the Victims of Corruption and Parameters for Their Compensation*, U.N. Doc. CAC/COSP/WG.2/2016/CRP.1, ¶¶ 15–16, August 4, 2016. Available at: https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993_e.pdf

²⁵ Inter-American Court of Human Rights, *Case of Ramírez Escobar et al. v. Guatemala: Judgment of March 9, 2018 (Merits, Reparations, and Costs)*, Series C No. 351, accessed July 8, 2025, https://www.corteidh.or.cr/docs/casos/articulos/seriec_351_ing.pdf.

that concerns each individual naturally extends to all. Likewise, the harm done to one simultaneously and globally affects the interests of all members of the community as a whole" [cited by Llobet, from flah/Smayevsky]. his would be the case, for example, of environmental crimes and crimes affecting consumer rights. The second category refers to international crimes, which are those established in international treaties approved and ratified by Peru, such as crimes of genocide, forced disappearance, torture, and others. In both cases, since the individuals affected – those directly offended by the crime – are more or less identified, associations may intervene in the proceedings, even as civil actors, provided that two conditions are met: a) they are recognized and registered prior to the crime being committed; and b) their corporate purpose is directly linked to the interests affected by the crime. It is not enough, therefore, that the association be dedicated to the protection of these interests. The specific crime must also affect collective or diffuse interests or be included in the list of international crimes [Llobet].²⁶

6. In order to exercise the right conferred by Article 94.4 of the Peruvian Code of Criminal Procedure, must an association be "legitimized" (i.e., have been affected by the crime or be represented by a direct victim)?

Article 94.4 of the Peruvian Criminal Procedure Code establishes that associations may exercise the rights and privileges granted to parties directly offended in criminal proceedings relating to crimes affecting collective or diffuse interests. These interests refer to those belonging to an undefined number of persons. The article also applies to crimes classified as international crimes in treaties that have been approved and ratified by Peru. To be eligible, the association must have a social purpose directly related to the protected interest and must have been legally recognized and registered prior to the commission of the crime under investigation.

Peruvian law, in line with international standards, clearly affirms the right of non-governmental organizations (associations) to represent victims of collective harm. The only two exclusive requirements are 1) that the organization's purpose be directly related to the collective interest at stake and 2) that it have been legally established prior to the commission of the allegedly criminal acts. Consequently, denying an association the right to participate on grounds other than these two criteria would constitute a violation not only of national law but also of international legal instruments protecting these rights.

Any contrary interpretation would violate both the international legal framework and the letter of national legislation recognizing the standing of civil society organizations to represent victims of corruption and seek redress for damage caused to collective and diffuse rights.

Some exemplary precedents for interpreting the scope of civil associations' interest in cases of collective rights violations come from the Supreme Court of Justice of the Nation of Mexico (SCJN).

²⁶ San Martín Castro, César, *Criminal Procedural Law Lessons*, Revised, Expanded, and Updated, Third Edition, June 2024

In Amparo in Review 323/2014, resolved in March 2015, two civil associations filed an indirect amparo lawsuit against various omissions by Mexican authorities related to the oversight of public spending on education for the 2009 and 2010 fiscal years. The organizations denounced the State's failure to investigate and punish the misuse of resources from the Fund for Basic and Normal Education (FAEB) and Branch 25, which affected the human right to education. However, the district judge dismissed the case on the grounds that the associations lacked legitimate interest, since they were not individual holders of the right allegedly violated.

The First Chamber of the SCJN took up the case because of its importance and, in a unanimous decision, overturned the ruling. It established that in order to assess whether a civil association has a legitimate interest in an amparo proceeding, a comprehensive analysis of three elements must be carried out: (a) the nature of the right invoked; (b) its connection with the organization's social purpose; and (c) the possible impact on its legal sphere. In this case, the Court determined that the right to education has a collective and composite dimension and that the promoting association, whose corporate purpose is to evaluate the education system and oversee public spending in this area, occupied a special position with regard to the right affected.

The Court also reaffirmed that, following the 2011 constitutional reform, the amparo proceeding must be interpreted in accordance with the pro persona and effectiveness principles of human rights. In this sense, legitimate interest allows the intervention of actors who, without having a traditional subjective right, do have a qualified link to the right in question and whose legal sphere is affected by omissions of the State. Finally, the Court held that granting amparo would generate a specific benefit for the association by allowing it to freely exercise its corporate purpose, reinforcing its standing and confirming that the principle of relativity of judgments cannot be invoked to unduly restrict the protective scope of amparo in matters of collective rights.²⁷

This approach was subsequently reinforced by a second relevant precedent, Amparo en Revisión 839/2019, which affirmed that civil society organizations may bring legal actions in defense of collective rights, such as a healthy environment, even when their corporate purpose is the general defense of human rights and without having previously intervened in that specific field.

The SCJN emphasized that certain human rights, such as the right to health and the right to a healthy environment, have a particular social relevance or impact that distinguishes them from other human rights. Therefore, in order to protect these rights of social and diffuse importance, any civil association or non-governmental organization whose corporate purpose is the protection of human rights—even in a generic sense—is entitled to bring an *amparo* action in their defense, insofar as these are human rights susceptible to judicial protection under *amparo* proceedings.

²⁷ Supreme Court of Justice of the Nation, First Chamber. *Amparo in Review 323/2014*, decided on March 11, 2015, in *Case Law Notebooks: Legitimate Interest in Amparo Proceedings*, first edition (Mexico City: Supreme Court of Justice of the Nation, 2024), 97–101. Available at: https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2025-01/CDJ_Intere%CC%81s%20legi%CC%81timo_digital.pdf.

The Court emphasized that the analysis of legitimate interest must be made from an objective and flexible perspective, evaluating the legal interests at stake and the special position of the organization in their defense, rather than applying strict criteria focused on the subjective nature of the complainant or a rigid literal interpretation of the organization's purpose. This standard is based on the *pro actione*, *pro persona*, and environmental precaution principles, and emphasizes that the participation of non-governmental organizations in the defense of public goods, such as health or the environment, must not be limited by formal requirements that render access to justice meaningless.²⁸

This interpretation has also been extended not only to challenge against specific acts but also to challenges brought through *amparo* proceedings against general rules via abstract constitutional review. In 2023 when resolving such *amparo* in review 79/2023 the court held that civil society organizations may resort to *amparo* proceedings to challenge general rules that affect collective human rights without the need to demonstrate individualized harm, provided that their corporate purpose is linked to the defense of such rights.²⁹

Based on the aforementioned precedents, it is reasonable to conclude that the interpretation of Article 94.4 of the Peruvian Criminal Procedure Code should be expansive and functional, and not limited to a formalistic or literal reading of the corporate purpose contained in the association's articles of incorporation. Decisions in comparative law show that what is relevant is to identify whether the organization is in a position to contribute to the defense of a collective right, whether because of the nature of its mission, its daily activities, or the concrete impact that the infringement would have on its legal sphere.

Therefore, although in the specific case, PROETICA does have a specific mandate in its statutes related to the promotion of integrity and the fight against corruption, in general, associations should not be required to have as their express and exclusive purpose "to combat corruption" in order to be legitimized in criminal proceedings related to damage to collective property resulting from this phenomenon.

It is sufficient that their corporate purpose is linked to the general promotion or defense of human rights and that it can be reasonably inferred—based on their history, public activities, or lines of work—that their participation in the proceedings is consistent with their institutional purpose. Limiting the analysis exclusively to the literal wording of the articles of association would be to ignore the dynamic and cross-cutting nature of the work of many civil society organizations, as well as undermine the guarantee of access to justice recognized by both national legislation and international standards.

²⁸ Supreme Court of Justice of the Nation, Second Chamber. *Amparo in Review 839/2019*, decided on May 6, 2020, in *Case Law Notebooks: Legitimate interest in amparo proceedings*, first edition (Mexico City: Supreme Court of Justice of the Nation, 2024), 146–151. https://www.sitios.scjn.gob.mx/cec/sites/default/files/publication/documents/2025-01/CDJ_Intere%CC%81s%20legi%CC%81timo_digital.pdf.

²⁹ Supreme Court of Justice of the Nation, “Legitimate interest in indirect amparo proceedings,” *Federal Judicial Weekly*, digital record 2027536. Available at: <https://sjfsemanal.scjn.gob.mx/detalle/tesis/2027536>

Consequently, an interpretation in accordance with international human rights standards of Article 94.4 requires the court to interpret the link between the association and the collective right affected in a broad, reasonable, and effective manner, thus allowing the participation of organizations that—although they do not define themselves exclusively as " " or "anti-corruption" organizations—actively promote values such as transparency, legality, public integrity, and democratic control of power. This interpretation is not only consistent with the legal text, but also strengthens the protection of diffuse interests and reinforces the role of civil society as a key actor in the fight against impunity.

B. International standards on corruption applicable to Peru

The UNCAC Coalition highlights that there are sources of international law that are relevant to addressing Peru's international obligations on corruption and human rights, and that can be translated into an understanding of the system of legitimacy that includes a civil society organization such as PROÉTICA to pursue criminal proceedings such as this one.

Peru signed the United Nations Convention against Corruption (UNCAC) on December 10, 2003, during the High-Level Conference on the UNCAC held in Mérida, Mexico, and ratified it by Supreme Decree No. 075-2004-RE on October 19, 2004, becoming the first country in South America to ratify and approve the convention.³⁰

Article 13³¹ of the UNCAC establishes the importance of society's participation in the fight against corruption, and states that each country shall take appropriate measures, within its means and in accordance with the fundamental principles of its domestic law, to encourage the active participation of persons and groups outside the public sector, such as civil society, non-governmental organizations, and community-based organizations, in the prevention of and

³⁰Huaita, Marcela. *UN Convention Against Corruption Civil Society Review: Peru 2011*. Proética, National Council for Public Ethics, 2011, page 1. <https://uncaccoalition.org/files/cso-review-reports/year1-peru-report.pdf>.

³¹ Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its available means and in accordance with the fundamental principles of its domestic law, to promote the active participation of persons and groups outside the public sector, such as civil society, non-governmental organizations, and community-based organizations, in the prevention of and the fight against corruption, and to raise public awareness of the existence, causes, and seriousness of corruption, as well as the threat it poses. Such participation should be reinforced by measures such as the following:

- a) Increasing transparency and promoting citizen participation in decision-making processes;
- b) Ensuring effective public access to information;
- c) Carry out public information activities to promote intolerance of corruption, as well as public education programs, including school and university programs;
- d) Respect, promote, and protect the freedom to seek, receive, publish, and disseminate information concerning corruption. This freedom may be subject to certain restrictions, which must be expressly provided by law and necessary to:
 - i) Ensure respect for the rights or reputation of others;
 - (ii) Safeguard national security, public order, or public health or morals.

2. Each State Party shall take appropriate measures to ensure that the public is aware of the relevant anti-corruption bodies referred to in this Convention and shall facilitate access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offense established in accordance with this Convention.

the fight against corruption. It also states that such participation shall be reinforced by measures such as the following:

"Each State Party shall take appropriate measures to ensure that the public is aware of the relevant anti-corruption bodies mentioned in this Convention and **shall facilitate access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offense established** in accordance with this Convention."³² Furthermore, the Inter-American Convention Against Corruption (IACC) establishes in Article III the preventive measures that countries have committed to implement in their institutional systems, specifically aimed at creating, maintaining, and strengthening mechanisms to **encourage the participation of civil society** and non-governmental organizations in efforts to prevent corruption.³³

Additionally, Article 2 of the Inter-American Democratic Charter recognizes that *"...representative democracy is strengthened and deepened by the permanent, ethical, and responsible participation of citizens within a framework of legality in accordance with the respective constitutional order."*³⁴ The signatory states of that Charter, such as Peru, have consistently recognized that civil society participation is an essential element in strengthening democratic governance and, in particular, in combating corruption. For example, the 2018 Lima Declaration reaffirmed the commitment of member states to adopt measures to actively involve civil society in the prevention and fight against corruption. In particular, the countries agreed to *"encourage the effective participation of the private sector in public policies to prevent and combat corruption"*³⁵, as well as *"...improve conditions for the effective participation of civil society, social organizations, academia, the private sector, citizens, and other social actors in monitoring government management, including the establishment of prevention mechanisms, channels for reporting possible acts of corruption, and facilitating the work of citizen*

³² Ibid.

³³ Article III Preventive measures

For the purposes set out in Article II of this Convention, the States Parties agree to consider the applicability of measures, within their own institutional systems, aimed at creating, maintaining, and strengthening:
(...)

8. Systems to protect public officials and private citizens who report acts of corruption in good faith, including protection of their identity, in accordance with their Constitution and the fundamental principles of their domestic legal system.

³⁴ Organization of American States. Inter-American Democratic Charter, art. 2, AG/RES. 1 (XXVIII-E/01), adopted in Lima on September 11, 2001. Accessed on July 10, 2025. https://www.oas.org/charter/docs_es/resolucion1_es.htm.

³⁵ Organization of American States. Lima Commitment: Democratic Governance against Corruption, point 12, VIII Summit of the Americas (Lima, Peru, April 13–14, 2018). Accessed July 10, 2025. https://www.summit-americas.org/LIMA_COMMITMENT/LimaCommitment_es.pdf.

*observatories or other social control mechanisms, encouraging the adoption of electronic participation mechanisms."*³⁶

Other obligations that the Peru has under the American Convention on Human Rights, and that the Inter-American Court of Human Rights has developed for cases of corruption that have very specific applicability, are explained below:

a) The obligation to respect human rights

Article 1.1 of the American Convention establishes the obligation of States to respect and guarantee human rights without discrimination. This implies that the State must not interfere with, nor hinder, the exercise of those rights. Any violation attributable to an act or omission by a public authority, even if it acts outside its competence, engages the State's international responsibility. It is not necessary to identify the individuals responsible or prove their intent; it is sufficient to demonstrate a breach of a State obligation. In the context of corruption, such responsibility may arise when corrupt acts lead authorities to act or omit actions contrary to protected rights, such as when business interests are privileged to the detriment of human rights, without adequate justification.³⁷

b) Obligation to adopt measures to prevent the violation of rights linked to acts of corruption.

States have a responsibility to ensure that all necessary and appropriate measures are taken to prevent acts of corruption that may constitute human rights violations. This duty of prevention includes legal, political, administrative, and cultural measures that effectively protect these rights and ensure that any violation is treated as an unlawful act, subject to sanctions against those responsible and entailing the obligation to compensate victims for the harm caused.³⁸

c) Obligation to investigate acts of corruption

The Inter-American Court has defined impunity in the cases of *Ivcher Bronstein v. Peru*, *the Constitutional Court v. Peru*, and *Bámaca Velásquez v. Guatemala* as "the absence of any investigation, prosecution, arrest, trial, and conviction of those responsible for violations of the rights protected by the American Convention"³⁹ and has pointed out the obligation of States to "combat such a situation by all legal means available, since impunity encourages the chronic repetition of human rights violations and the total defenselessness of victims."⁴⁰

This obligation to investigate conduct that affects human rights derives from the general obligation to guarantee established in Article 1.1, in conjunction with the substantive right that must be protected and guaranteed. In this regard, the Inter-American Court has stated that

³⁶ *Ibid.*, point 13.

³⁷ Inter-American Commission on Human Rights. Corruption and Human Rights. OEA/Ser.L/V/II. Doc. 236, December 6, 2019, paragraphs 250-252. <https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>

³⁸ *Ibid.*, paragraph 255.

³⁹ *Ibid.*, paragraph 262.

⁴⁰ *Ibid.*, paragraph 261.

*“Article 25 is closely linked to the general obligation in Article 1.1 thereof, which attributes functions of protection to the domestic law of the States Parties, from which it follows that the State has the responsibility to **design and enshrine in law an effective remedy, as well as to ensure the proper application of that remedy by its judicial authorities.** In turn, the general duty of the State to adapt its domestic law to the provisions of the Convention in order to guarantee the rights enshrined therein, established in Article 2, includes the enactment of laws and the development of practices conducive to the effective observance of the rights and freedoms enshrined therein, as well as the adoption of measures to suppress laws and practices of any nature that entail a violation of the guarantees provided for in the Convention.”⁴¹*

In compliance with this duty, when state authorities become aware of conduct that has violated rights protected by the American Convention and that may be prosecuted *ex officio*, they are obliged to immediately initiate a serious, impartial, and effective investigation, using all available legal means, in order to clarify the facts, identify those responsible, and bring them to trial. Throughout the investigation process and during the judicial proceedings, victims must have ample opportunities to participate actively and be heard, both in relation to the clarification of the facts and the punishment of the guilty parties, and in obtaining fair reparation. This investigation must be undertaken by the State as its own legal obligation and not as a matter of private interest dependent on the actions of the victims, the complainants, or evidence provided privately.⁴²

In its report on Corruption and Human Rights, the IACHR stated that States must adopt the necessary measures to "facilitate access by victims and complainants of acts of corruption to adequate and effective remedies both to report the commission of such acts and to obtain reparation for the harm suffered, thereby contributing to the prevention of their recurrence."

These obligations are consistent with and complementary to the commitments undertaken by the State under the UNCAC. Article 32 of the UNCAC establishes that States Parties shall allow victims to appear and have their views and concerns considered at appropriate stages of the criminal proceedings. Article 35 adds that States shall take the necessary measures to ensure that entities or persons who have suffered harm as a result of an act of corruption have the right to take legal action to obtain compensation. At no time are these provisions limited to a certain type or number of victims or injured parties, whether individual or collective.

d) The obligation to guarantee the exercise of human rights on an equal footing and without discrimination

The principle of equality and non-discrimination is a fundamental pillar of international human rights law, expressly recognized in the inter-American system through Article II of the American Declaration, Articles 1 and 24 of the American Convention on Human Rights, and Article 3 of the Protocol of San Salvador. This principle, inseparable from human dignity, prohibits any form

⁴¹ *Ibid*, paragraph 262.

⁴² *Ibid*, paragraph 263.

of privileged or discriminatory treatment. Corruption violates this principle both in its formal dimension, by granting undue benefits to certain individuals or groups, and in its material dimension, by obstructing affirmative action measures aimed at correcting structural inequalities.⁴³ States have an obligation to ensure that human rights in their dimension of equality and non-discrimination are not violated by corruption.

e) Vulnerable groups facing acts of corruption: children and adolescents

The IACHR has highlighted its particular concern about the impact of corruption on children and adolescents, a group that has historically been discriminated against and treated as objects of protection rather than subjects of rights. International law now recognizes that children and adolescents are rights holders and must receive special and enhanced protection from the State, the family, and society (Article 19 of the American Convention). To guarantee their rights, States must implement comprehensive public policy systems that include planning, implementation, monitoring, and evaluation. These policies must incorporate principles of good governance, social participation, transparency, and accountability, as well as effective mechanisms to combat corruption.

In its report on Human Rights and Corruption, the IACHR has stated that "considering the central role of States in implementing special and enhanced protection measures, and the role of public policies in the effectiveness of these measures, it is possible to affirm that the consequences of corruption have a serious impact on the guarantee of the rights of children and adolescents." Furthermore, "in the field of education, various forms of corruption make it impossible to allocate and use resources appropriately, prevent the construction of educational facilities, or lead to deficiencies in materials or buildings. In health care, they affect specialized care and can have serious consequences in the delivery of low-quality services and medicines. These and other practices can cause long-term damage and affect the overall development of children and adolescents."⁴⁴

f) Adequate resources and the importance of civil society organizations for monitoring

The report highlights that complaint mechanisms and access to adequate and effective judicial remedies constitute the first line of defense for human rights. The duty of States to provide judicial remedies is not limited to formal availability; such remedies must also be adequate to remedy human rights violations.⁴⁵

These remedies include the participation of civil associations that can act on behalf of victims of corruption crimes that affect collective or diffuse interests in order to contribute to their defense and balance the usual asymmetrical relationship with the perpetrators, especially in public affairs.

⁴³ *Ibid*, paragraphs 270-272.

⁴⁴ *Ibid*, paragraph 464.

⁴⁵ *Ibid*, paragraphs 333-343.

This approach is supported by Article 23.1 of the American Convention on Human Rights, which recognizes the right of every person to participate directly in public affairs, as well as by Article 13 of the same Convention, which guarantees freedom of expression and incorporates social control over public administration by protecting the right to seek, receive, and impart information of general interest. Likewise, the Inter-American Court of Human Rights, in its Advisory Opinion OC-32/25, has reaffirmed the right to defend human rights and that States must guarantee the effective possibility of exercising such defense without undue restrictions.⁴⁶

g) Relevant domestic case law

In the area of corruption, the Constitutional Court of Peru has issued some relevant criteria. For example, in resolving *Case 00016-2019-PI/TC*, it recognized the fight against corruption as an implicit constitutional principle, in accordance with the interpretation of Articles 39 and 41 of the Peruvian Constitution. In a landmark case, when analyzing the constitutionality of Law No. 30737—the Law ensuring the immediate payment of civil damages to the Peruvian State in cases of corruption and related crimes—the Court ruled that *"The principle of fighting corruption has not been included in the 1993 Constitution as an express constitutional principle. It is therefore an implicit constitutional principle with equal normative force. Hence, it is affirmed that the State, by constitutional mandate, has the duty to combat all forms of corruption."*⁴⁷

The Peruvian Constitutional Court has consistently relied on international standards and comparative jurisprudence, expressly citing the case of *Ramírez Escobar et al. v. Guatemala* before the Inter-American Court of Human Rights to affirm that "corruption not only affects individual rights, but also impacts society as a whole, as it erodes public trust in the government and, over time, in the democratic order and the rule of law."⁴⁸

C. Application of international and national standards to the specific case

Based on the facts described and the relevant rules of domestic and international law, this section discusses how the Public Prosecutor's Office's refusal to recognize PROÉTICA's participation in the present case is incompatible with current legal standards on the fight against corruption, access to justice, and the protection of human rights. In particular, it analyzes the legitimacy of civil society organizations under Article 94.4 of the CCP, as well as international obligations. Given that the facts directly affect a historically vulnerable group such as children and adolescents, it emphasizes the need to adopt a broad and *pro persona* interpretation that guarantees effective and inclusive protection against the structural effects of corruption on vulnerable groups.

⁴⁶ Inter-American Court of Human Rights, Advisory Opinion OC-32/25, Series A No. 32 (Climate Emergency and Human Rights), 2025, available at: https://www.corteidh.or.cr/docs/opiniones/seriea_32_esp.pdf

⁴⁷ Constitutional Court of Peru, *Judgment 1035/2020, Case File 00016-2019-PI/TC*, Plenary Session (case of civil reparations in favor of the State), 2020, available at: <https://tc.gob.pe/jurisprudencia/2020/00016-2019-AI.pdf>

⁴⁸ *Ibid.*

a) Civil society's right to participate in the fight against corruption

Article 94.4 of the Peruvian Criminal Procedure Code expressly recognizes that associations may intervene as aggrieved parties in criminal proceedings when collective or diffuse interests are affected, provided that there is a direct link between the organization's corporate purpose and the protected legal interest. In this case, PROÉTICA is an organization dedicated to the fight against corruption, legally registered prior to the events under investigation, which fully satisfies the requirements established in the law.

The Public Prosecutor's refusal to recognize its participation also disregards the international commitments assumed by the Peruvian State. In particular, Article 13 and other articles of the UNCAC require States Parties to adopt measures to ensure the participation of civil society and non-governmental organizations in the prevention and combating of corruption. A similar provision is found in Article III of the ICC, which obliges States to strengthen mechanisms for social participation in these efforts.

h) Obligation to investigate acts of corruption that compromise human rights

The Inter-American Court of Human Rights has repeatedly established, among other cases, in *Bámaca Velásquez v. Guatemala*, *Ivcher Bronstein v. Peru*, and *Constitutional Court v. Peru*⁴⁹, that the duty to investigate possible human rights violations implies a legal obligation on the part of the State, which must be carried out in a serious, impartial, and effective manner. This duty also includes respect for the right of victims to participate in all stages of the process.

In this case, the acts of corruption reported—which include the manipulation of health controls and the delivery of potentially harmful food to vulnerable children and adolescents—directly affect fundamental rights such as health, personal integrity, and a dignified life. This triggers the State's reinforced obligation to guarantee respect for the obligation to investigate acts of corruption and, in this case, to allow an investigation to clarify the facts, identify those responsible, and guarantee reparation to the victims, in accordance with Articles 1.1, 8, and 25 of the American Convention on Human Rights (ACHR).

Furthermore, in the case of *Andrade Salmón v. Bolivia*, the Inter-American Court recognized the inextricable link between the fight against corruption and democracy. Specifically, the Court concluded that *"the healthy fight against corruption and the desirable prosecution of crimes against the public administration cannot be perverted by diverting them into a harmful recourse*

⁴⁹ See, among others, the cases: Inter-American Court of Human Rights. Case of Ivcher Bronstein v. Peru. Judgment of February 6, 2001. Series C No. 74, para. 186; Inter-American Court of Human Rights, retrieved from: https://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf. Case of the Constitutional Court v. Peru, Judgment of January 31, 2001. Series C No. 71, para. 123; Inter-American Court of Human Rights, retrieved from: https://www.corteidh.or.cr/docs/casos/articulos/Seriec_71_esp.pdf. Case of Bámaca Velásquez v. Guatemala. Judgment of November 25, 2000. Series C No. 70, para. 211, retrieved from: https://cidh.oas.org/Indigenas/seriec_91_esp.pdf

against democracy..."⁵⁰ On the other hand, the Inter-American Court has protected rights related to participation in public affairs, such as freedom of expression and access to information, to allow citizen scrutiny of state management in terms of Article 13 of the American Convention on Human Rights.⁵¹ It has therefore been established that the scope of Article 13 not only "...contemplates the protection of the right of access to information under the control of the State, which also clearly contains the two dimensions, individual and social, of the right to freedom of thought and expression, which must be guaranteed by the State simultaneously."

Therefore, taking into account the parameter presented, the Public Prosecutor's Office's refusal to allow PROÉTICA to participate in this case constitutes an omission incompatible with the State's reinforced obligation to investigate acts of corruption that affect fundamental human rights. As established in the aforementioned precedents, the duty to investigate is not a mere procedural formality, but a legal obligation of the State that must be fulfilled seriously, impartially, and effectively, while also guaranteeing the active participation of victims and those who represent legitimate collective interests.

In this case, the alleged irregularities in the delivery of potentially contaminated food to vulnerable children and adolescents compromise rights such as health, personal integrity, and a dignified life. In light of this situation, the State has a duty to conduct an effective investigation that not only clarifies the facts and punishes those responsible, but also guarantees the participation of affected actors.

i) Recognition of collective interest and legitimacy under Article 94.4 of the Criminal Procedure Code

The decision of the Public Prosecutor's Office to reject PROÉTICA's intervention on the grounds that it did not prove a "direct link to specific victims" reveals a restrictive interpretation that is incompatible with the very concept of collective or diffuse interests, which by definition do not require the individual identification of affected persons. The requirement of a particular link with specific victims, such as the students from Puno identified in another file, distorts the purpose of the text in Article 94.4 of the Criminal Procedure Code.

⁵⁰ Inter-American Court of Human Rights. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 178. Accessed on July 11, 2025. https://www.corteidh.or.cr/docs/casos/articulos/seriec_330_esp.pdf.

⁵¹ Inter-American Court of Human Rights. Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330, para. 178. Retrieved from: https://www.corteidh.or.cr/docs/casos/articulos/seriec_330_esp.pdf; Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219, para. 197. Retrieved from: https://www.corteidh.or.cr/docs/casos/articulos/seriec_219_esp.pdf; Case of the Kaliña and Lokono Peoples v. Suriname. Merits, Reparations, and Costs. Judgment of November 25, 2015. Series C No. 309, para. 261. Retrieved from: https://www.corteidh.or.cr/docs/casos/articulos/seriec_309_esp.pdf.

It should be noted that special criminal procedural rules take precedence over supplementary rules, and that provisions of the Civil Procedure Code (such as Article 82) cannot be applied to restrict the content of Article 94.4 when there are specific criminal procedural rules on standing. Otherwise, this would constitute a violation of the legal principle of "special law repeals general law" (*lex specialis derogat legi generali*).

j) Impact of corruption on the rights of children and adolescents

As the IACHR has pointed out in its *Report on Corruption and Human Rights*, acts of corruption have particularly serious consequences for vulnerable groups. In particular, the IACHR has emphasized that corrupt practices in education and health programs affect the effectiveness of the enhanced protection measures that States must adopt in favor of children and adolescents, in accordance with Article 19 of the ACHR.⁵²

In the present case, the facts under investigation constitute a direct violation of this protected group. This imposes a reinforced obligation on the State to ensure channels of participation and social oversight that allow for citizen control of these practices. The refusal to allow PROÉTICA, or any other civil society organization, to intervene in a case such as this weakens accountability mechanisms and contributes to the perpetuation of scenarios of impunity.

Given that this case involves the protection of children and adolescents, their status, and the inherent difficulties in representing their interests individually or directly in criminal proceedings, it is essential to adopt a broad and protective interpretation of Article 94.4 of the Code of Criminal Procedure. This provision must be read in accordance with the principles of the best interests of the child, access to justice, and effective protection of rights, allowing associations such as PROÉTICA—whose institutional purpose is directly linked to the collective interest at stake—to adequately represent these diffuse interests. Denying such participation not only weakens the procedural protection of a group particularly exposed to the effects of corruption, but also contravenes international standards that require specific measures to be taken to guarantee effective judicial protection in contexts of special vulnerability, with the support of civil society organizations.

k) Violation of the right to due process, access to justice, and procedural equality

Article 8 of the ACHR guarantees the right of every person to due process of law, which includes the right to a decision based on law, with sufficient and consistent reasoning.⁵³ The prosecutor's rejection, without substantive analysis of Article 94.4 and based on civil rules inapplicable to the

⁵² Article 19. Rights of the Child Every child has the right to the measures of protection required by his or her status as a minor on the part of his or her family, society, and the State.

⁵³ Article 8. Judicial Guarantees

1. Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent, independent, and impartial judge or tribunal, previously established by law, in the substantiation of any criminal charge brought against them, or for the determination of their rights and obligations of a civil, labor, fiscal, or any other nature. [...]

criminal case, constitutes an arbitrary decision that violates the principle of legality, equality of arms, and the right to effective judicial protection (Articles 8, 24, and 25 of the ACHR).⁵⁴

Furthermore, this interpretation denies, without objective justification, the possibility that a social organization may act in defense of the collective interest on an equal footing with other institutional actors, such as the Public Prosecutor's Office. This situation creates unjustified procedural inequality, contrary to the principles of due process and the approach of enhanced protection that should govern cases involving the rights of vulnerable groups.

V. CONCLUSIONS

In conclusion, the UNCAC Coalition maintains that the organization PROÉTICA meets the legal requirements established in Article 94.4 of the Peruvian Criminal Procedure Code to intervene as an aggrieved party in the criminal proceedings related to the Qali Warma case. This case, related to alleged acts of corruption in the provision of food to vulnerable children and adolescents, involves an impact on diffuse interests held by an indeterminate number of persons, which justifies the participation of a civil association whose corporate purpose is directly related to the defense of the collective interest affected. The Public Prosecutor's Office's refusal to allow PROÉTICA to intervene is based on a restrictive interpretation of Article 94.4, contrary not only to its wording and purpose, but also to international standards that recognize the active participation of civil society in the fight against corruption.

The CNUCC, CICC, and CADH establish the obligation of States to facilitate access to justice for individuals and organizations affected by acts of corruption, even when these effects are collective or diffuse in nature. The exclusion of PROÉTICA from the criminal proceedings not only disregards this regulatory evolution, but also violates fundamental principles of due process, access to justice, the right to health, and effective judicial protection, which are especially relevant when the rights affected belong to historically vulnerable groups such as children and adolescents.

Furthermore, the UNCAC Coalition emphasizes that both Peruvian domestic law and the jurisprudence of the Inter-American Court of Human Rights recognize that the State is not the only legitimate actor in cases of corruption, and that the representation of collective victims by civil society organizations is essential to guarantee impartial investigations, effective sanctions, and reparation for damages.

⁵⁴ Article 24. Equality before the Law All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law. Article 25. Judicial Protection 1. Everyone has the right to a simple and prompt remedy or any other effective remedy before the competent judges or courts, which will protect them against acts that violate their fundamental rights recognized by the Constitution, the law, or this Convention, even when such violation is committed by persons acting in an official capacity. 2. The States Parties undertake: (a) To guarantee that the competent authority provided for by the legal system of the State shall decide on the rights of any person who has lodged such a remedy; (b) To develop the possibilities of judicial remedy; and (c) To guarantee the enforcement by the competent authorities of any decision in which the remedy has been granted.

For all these reasons, the UNCAC Coalition considers that in this case, the court should recognize PROÉTICA's standing to sue, as its exclusion not only limits access to justice for the most vulnerable sectors, but also weakens accountability mechanisms in a context of structural corruption that requires coherent and effective institutional responses in line with the Peruvian State's international commitments.