

## **Repairing the Damage: Redress for Victims of Corruption**

**Side event at the 10<sup>th</sup> resumed session of the**

**Implementation Review Group**

**Tuesday, 3 September 2019, 17:00 – 18:00**

**Vienna International Center**

**Organisers:** UNCAC Coalition

**Moderator:** **Juanita OLAYA**, Chair, UNCAC Coalition

**Panellists:** **Sara BRIMBEUF**, Advocacy Officer – Stolen assets restitution,  
Transparency International France

**Vladimir KOZIN**, Crime Prevention and Criminal Justice Officer,  
UNODC/StAR

**Fabiano ANGELICO**, Consultant and Researcher, Transparency  
International Brazil

The meeting sought to facilitate an expert panel discussion on approaches and best practices for addressing redress for the damage caused by corruption in line with UNCAC Articles 34 and 35, and with this the identification of different types of victims of corruption and the establishment of mechanisms for compensation and redress.

- **Juanita Olaya** highlighted that there are various practical approaches to redress and reparation in cases of national, as well as international, enforcement but there is no perfect experience. She suggested the way to make governance compliance complete is through a case by case solution. There is no international standard and it would be difficult to achieve one without designing a very concrete approach for each case and country.
- **Vladimir Kozin** gave input on best practices for the identification and compensation of different types of victims in accordance with the Convention, third-party challenges and their impact on asset recovery under Chapter V. He noted that the UNCAC does not impose any limitations on the definition of a victim, which could be a natural person, a legal person or a state. Very few states have specific laws defining victims of corruption offences. There are several approaches for victims to seek redress through criminal procedures as well as civil

courts. Action can be initiated by individual victims or collective action, as well as by legal counsels, by the prosecutor or by the attorney general. During the review process, the option of compensation orders was found to be an inadequate approach to victim compensation. The most popular approach to claiming compensation is through civil proceedings within criminal proceedings. Good practice were those cases where damaged parties would come in and participate in criminal proceedings. Some provisions allow victims to claim compensations for inadequate actions. Offenders themselves and those who facilitated acts e.g. managers of banks, compensate for damages. In terms of enforcement, damages themselves are paid by offenders but in some states special funds have been created.

- **Sara Brimbeuf** spoke on reparations and the reform of the French legal framework. For years, France allowed corrupt leaders to invest on its territory. Ten years ago, Transparency International (TI) France, together with other civil society organisations, started judicial proceedings by filing a law suit against three high-level African leaders. In 2017, there was a historic decision to convict a high-level official for embezzlement of public funds and to confiscate all of foreign leader's assets in France which amounted to 150 million. According to a Human Rights Watch report, this represented the health sector budget of the country of origin for the year 2011, the last year for which data are available. Due to French law, it was not possible to give this money back to the people in the country of origin as conviction was autonomous and outside of the UNCAC Convention. NGOs were the civil party in the case. TI France started to meet decision makers and MPs to raise attention to adapt reform in France to allow repatriation of the stolen money. In May 2019, this led to the adoption of the law proposal in the first reading, allowing French authorities to repatriate stolen money. The main challenges are to isolate confiscated assets from the general budget in order to repatriate it, and to legally translate into the future law GFAR inspired principles of transparency, accountability, integrity, solidarity and effectiveness.
- **Fabiano Angelico** discussed options and mechanisms of redress for victims of corruption. He underlined the need for more transparency and accountability for the management of repaired funds and that compensation does not work properly when it is at the total discretion of the prosecutor and judge. He mentioned a case where someone sued a company for an environmental crime, the prosecutor suggested a fine to be paid to an NGO in the environmental area and it transpired the NGO is owned by the wife of the prosecutor. Mechanisms for redress should bring people confidence in democratic institutions. He cited a good practice case where the prosecutors reached a leniency agreement with a company

and judge ratified that the company had engaged in corruption and caused collective damage to Brazil, so the company should pay ca. 700 million dollars within 25 years as compensation. This is a good practice because the prosecutors agreed to have TI Brazil suggest a governance system for the fund to be formed by the payments. Such fund should be governed by both the company and civil society representatives and should be disposed to prevent corruption (strengthening social accountability) and promoting access to basic rights, what is denied when corruption stops people to having access to their rights. He highlighted one of the most challenging aspects as the mindset of who recovered assets belong to e.g. some believe that all funds or assets covered must return in its entirety to the government, this is wrong, especially because corruption affects society, not only the government agencies that are affected.

**In the Q&A, Marcelo Guilitti Oliva from the Civil Association for Equality and Justice (ACIJ)** and UNCAC Coalition Committee Coordination Member shared an example of civil society in Argentina representing society itself to participate in judicial cases investigating corruption. It was not possible to give land or property to anyone else until there was a conviction. A number of audience members also commented on factors contributing to the success of the French reform of the legal framework of asset repatriation.