

## Letter of support to Todos por Medellín, Colombia

**We call on the Colombian State and its Judicial institutions to recognise the victims of corruption and to involve Civil Society Organisations (CSOs) as their representatives in the search for reparation for the damage caused by corruption<sup>1</sup> in compliance with international law.**

Vienna, March 14, 2024

The UNCAC Coalition's Working Group of Victims of Corruption urges the Republic of Colombia to comply with international Conventions to which it is a party, and acknowledge the victims of corruption within judicial proceedings, and to facilitate avenues for Civil Society Organizations (CSOs) to engage in these legal processes as advocates for the victims, and secure redress for corruption related damages.

In a world where corruption is on the rise and judicial institutions are faltering, the pivotal role of NGOs in securing evidence, denouncing corruption cases, and advocating for victims cannot be overstated. Corruption causes both individual and collective harm and such damage needs to be addressed. This is why we highlight the "Buen Comienzo" (which translates as "Good Start")<sup>2</sup> case, led by the CSO Todos por Medellín, as an example of how CSOs play a crucial role in identifying victims and seeking redress for the harm caused by corruption:

### I. Background

In March 2021, the CSO Todos por Medellín reported to the Fiscalía General de la Nación (the Colombian prosecution authority) irregularities in the signing and execution of contracts entered into by the Education Department of Medellín City with the organisation Colombia Avanza related to the Buen Comienzo programme in Medellín. The purpose of the contract was to provide health and nutrition services and management support to the delivery of care for pregnant and lactating mothers and children from zero to two years of age. The programme is aimed at guaranteeing the rights to a balanced diet, health, and equality, in connection with other fundamental rights, especially in the context of the health crisis around the COVID-19 pandemic.

Todos por Medellín was created in 2020 with the aim of implementing a programme of monitoring, accompaniment and evaluation of the management of the public entities of the Municipality of Medellín<sup>3</sup>.

On 7 February 2023, a first judicial hearing was held in which charges were brought against the former Secretary of Education of Medellín, the former technical director of Buen Comienzo, and the legal representative of Colombia Avanza, for contracting without compliance with legal requirements, undue interest in the execution of contracts and embezzlement by appropriation in favour of third parties in the Buen Comienzo program.

On 20 November 2023, an accusation hearing was held in which Todos por Medellín requested the judge of first instance to represent two mothers as victims of the alleged corruption, based on the damage they suffered due to the failure to deliver the food supplies and the lack of technical assistance from the programme's interdisciplinary team. It also

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<sup>1</sup> Article 35 of the United Nations Convention Against Corruption (UNCAC) establishes the duty of States Parties to implement measures to enable persons "who have suffered damage as a result of an act of corruption" to initiate legal action for the reparation of such damages. Retrieved from: [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/04-56163\\_S.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/04-56163_S.pdf)

<sup>2</sup> For more information:

<https://www.infobae.com/colombia/2023/05/02/procuraduria-formulo-pleigo-de-cargos-contra-la-exsecretaria-de-educacion-de-medellin-alexandra-agudelo-por-el-caso-buen-comienzo/>

<sup>3</sup> For more information about the organisation, please visit the following link: <https://todospormedellin.org/quienes-somos/>

requested that it be recognised as an organisation that had suffered damages in the case, arguing that the good name of the association had been damaged for having filed a complaint alerting the authorities to possible irregularities, as well as for its role as overseer, in its exercise of social oversight for the public interest<sup>4</sup>.

The judge of first instance recognised Todos por Medellín as a victim of corruption for having been the organisation that denounced the alleged irregularities, in connection with its particular interest in exercising oversight and monitoring the public administration as a watchdog. The judge ruled out the representation of the organisation of the two mothers as victims, as such direct damage would be subject to debate during the proceedings.

The defence appealed the decision of the judge of the first instance before the Tribunal Superior de Medellín. On February 6, 2024 its Criminal Chamber decided to revoke the recognition of the watchdog organisation Todos por Medellín as a victim in this case. The Chamber argued that the CSO lacks legitimacy to be a party in the process since there is no regulation that empowers the organisation to intervene in the criminal proceeding. They also argued that recognizing their intervention on behalf of the victims could jeopardise the balance of the parties in the process, to the detriment of the defendants.

## **II. International Law**

The Tribunal's decision violates de civil rights of Todos por Medellín as a CSO to access justice and seek remedy for the damage to collective interests caused by corruption and also their rights to due process, by not recognising them as victims in a grand corruption case. This also violates international obligations acquired by the Colombian State to grant such access under the United Nations Convention against Corruption (UNCAC). According to Article 35 of the UNCAC, State Parties are under the obligation 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 for that damage in order to obtain compensation." The UNCAC makes no distinction between individuals or legal entities, or individual or collective damages, to recognise their character of victims of corruption. There is also the States' obligation under UNCAC's Article 13 to "promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption." On this basis, the Working Group on Asset Recovery operating under the UNCAC Conference of the States Parties has argued that "while the Convention does not provide a definition of who is a victim of corruption, it is important to adopt a broad and inclusive approach, recognising that individuals, entities, and States can be considered victims of corruption and furthermore, civil society and non-governmental organisations play an important role in ensuring that victims are represented in corruption proceedings, and as such should be able to report crimes, give evidence, represent victims or bring public interest litigation."

By denying Todos por Medellín the character of victims also violates Article 25.1 of the American Convention, which states that any State has the general obligation to provide effective judicial means to victims of human rights violations (Article 25), which must be substantiated in accordance with the rules of due legal process (Article 8.1).

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<sup>4</sup> In accordance with the provisions of Law 850 of 2003, amended by Law 1757 of 2015, citizen oversight bodies in Colombia are focused on exercising social control; reporting when there are elements to do so does not constitute an act of persecution, thus Article 68, which amended Art. 16 of Law 850 of 2003, states that in order to achieve their objectives and the fulfilment of their functions in an agile and timely manner, the veedurías may exercise before the judges of the Republic all the actions that the Constitution and the law provide for; as well as "intervene in public hearings in the cases and terms contemplated in the law". Taken from: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=10570>

The Inter-American Commission on Human Rights (IACHR) has argued in its report on Corruption and Human Rights of 2019<sup>5</sup> that every State must adopt the necessary measures to facilitate access —both for victims and for those who report acts of corruption— not only to adequate and effective means to report these crimes, but also to effective means to achieve a proper damage reparation and thus contribute to avoiding its repetition. Likewise, during the process of investigation and prosecution of such cases, the victims must have wide opportunities to participate and be heard, both in the clarification of the facts and in the punishment of those responsible, as well as in the search for fair remedy.

The Commission has also indicated that States are obliged to identify the victims — who may be social groups represented by human rights defenders — to ensure a fair reparation of the damage since corruption is not an abstract crime without a passive subject. On this basis, any person whose enjoyment of any human right because of a corrupt practice is entitled to be recognized as a victim. In this case, the petitioners' right to effective access to judicial means was affected, and through this, their right to seek enforcement and reparation for the damage caused by corrupt practices.

Because corruption affects human rights, this individual right of access to justice and due process is also connected to the protection of collective and fundamental rights. The public administration is in charge of delivering public goods that secure the fulfilment and protection of citizens' fundamental rights through the non-discriminatory use and investment of public funds. There is, therefore, a collective right and a legally protected interest in the good and righteous public administration, so those public goods are secured and a non-discriminatory access is ensured. Corruption directly affects fundamental rights, among others, through a biased and discriminatory public administration that fails to fulfill its duty. There is, therefore, a direct connection between the citizen's rights to access to justice and freedom of association to defend the collective interests, and the protection of their collective rights damaged or at risk in a corruption case. Assuming citizens or civil society organisations are not entitled to be represented in a corruption case would imply that they are not victims or not entitled to represent victims of violations of collective rights.

Therefore, States should encourage and promote the recognition of victims of corruption, as well as the participation of CSOs in proceedings before judicial and/or administrative bodies, in order to guarantee the rights to truth, justice, and reparation. CSOs must have the capacity to represent and intervene in judicial and administrative proceedings, acting as guarantors and defenders of the collective rights and interests of victims and citizens against acts of corruption that violate human rights.

On this basis, we urge judicial authorities in Colombia to comply with international conventions to which Colombia is a party and adopt the necessary decisions and measures to recognize victims of corruption and issue reparation for the damage caused by corruption.

### **III. The National Law**

Corruption not only affects institutions and the economic development of States, but it also affects individuals, communities and society as a whole in different ways. These effects translate into damages that, for the most part, intensify the conditions of vulnerability of populations and individuals, giving rise to human rights violations.<sup>6</sup> As a result, corruption is a

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<sup>5</sup> Given the State's obligation to investigate acts of corruption: (...) State authorities (...) should promptly initiate serious, impartial and effective investigations by all available legal means aimed at establishing the truth of the facts and the prosecution and eventual punishment of those responsible. During the investigation process and the judicial process, victims should have ample opportunity to participate and be heard, both in the clarification of the facts and the punishment of those responsible, and in the search for fair compensation. paragraph 263.  
<https://www.oas.org/es/cidh/informes/pdfs/CorrupcionDDHHES.pdf>

<sup>6</sup> CIDH. Graves violaciones a los derechos humanos en el marco de las protestas sociales en Nicaragua, OEA/Ser.L/V/II. Doc. 86, 21 junio 2018.

phenomenon with tangible victims. The case of Todos por Medellín shows the impact of corruption on pregnant women and breastfeeding mothers in the Buen Comienzo programme, whose rights to a balanced diet, health, and equality, in connection with other fundamental rights, were affected.

Victims of corruption, particularly victims of collective damage, face tremendous difficulties obtaining representation in judicial scenarios, documenting loss and damages, and claiming compensation. For this reason, CSOs have an important role to play in judicial proceedings, acting not only as witnesses but also intervening in the proceedings to represent both the general interest and particularly the collective interests of victims, and facilitating their legal representation before courts. Additionally, they are actors with the capacity to approach victims in concrete cases and explore possible avenues for their participation, not only in investigations and criminal proceedings but also in the implementation of collective actions. This is clearly the case of Todos por Medellín, who was not only created to work for the protection of the public interest but also denounced the wrongdoing in this case, provided support to the Attorney General in the process, sought to intervene in the process to provide evidence and brought two mothers who should have benefited from the Buen Comienzo Programme to provide concrete examples of the collective damage caused by corruption in this case.

We observe that the decision by the Tribunal Superior of Medellín ignored the role of the organisation as representative of the interests of the community and that in cases related to crimes against public administration, it has a direct interest that justifies intervening in the process due to the social damage generated by the possible act of corruption. A harmonious perspective on Colombian law and jurisprudence, as well as international instruments for fighting corruption and for the protection of human rights, allow for a broad and non-rigid interpretation of the nature of who is a victim in criminal proceedings.

Concerning the Tribunal's argument that the recognition of the organisation as a victim in the process could generate an imbalance between the parties, we observe that such balance should also consider the respect of basic human rights. The right of victims to be represented and damages to be repaired can not be denied with an argument of imbalance without creating another imbalance: the absence of the victim. This is even more relevant in cases of collective damage resulting from corruption, as is the Buen Comienzo case, where rights to food security and the health of vulnerable populations are at stake. Granting the right of victims' participation can not be understood to affect the rights of the accused to their own defence, without denying the victims' right to participate.

Finally, the Tribunal de Medellín finds collective damage of a "speculative" nature, given that it will take place in the future. This ignores the nature of collective damage, precisely in the case of collective human rights of vulnerable populations, and violates any principle of justice and reparation. The reality of the existence of collective damage lies not in how concrete it is, or how it has affected specific individuals, and according to the Sentence C-228 of 2002 of the Constitutional Court of Colombia, it only requires it to be *real*<sup>7</sup>. Corruption's damage is real the moment corruption has been undertaken, particularly in this case, as the damage towards both potential beneficiaries of the contract – lactant mothers and children under 2, and citizens of Medellín who receive services usually contracted by the Education Department of the City of Medellín –is foreseeable.

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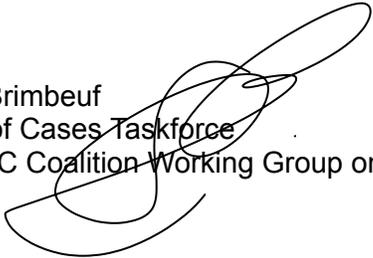
<sup>7</sup> According to Colombian jurisprudence, the real damage "does not necessarily have to be of a monetary nature, concrete and specific , that legitimises the participation of the victim and those damaged in the criminal procedure to search for truth and justice, {the interest} which will be determined by judicial authorities in each case".. Supreme Court of Justice of Colombia. Special Trial Chamber. Judgement of October 25, 2022, among others.

In this specific case, Todos por Medellín has the right to intervene in the process to seek truth and justice and to ensure that damages will be repaired, due to its capacity as a victim in the process and its role of representing collective interests in this case.<sup>8</sup>

The UNCAC Coalition's Working Group on Victims of Corruption highlights the fundamental role played by Todos por Medellín as a CSO, both in its role of denouncing the act of corruption and in its work to make visible the collective victims and the related damages. In this regard, we call on the Colombian State and its institutions to guarantee effective participation, access to justice, comprehensive reparation, and the necessary measures to prevent the repetition of these acts, for the benefit of those affected in this and other cases of corruption. This is in line with the provisions of Law 2195 of 2022<sup>9</sup> of the Republic of Colombia, which emphasises the importance of recognising the victims of corruption and guaranteeing full reparation for the damage caused.



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<sup>8</sup> For more on the nature of collective damage arising from corruption see "Victims of Corruption: Back for Payback" 2023. StAr Publication available here: <https://star.worldbank.org/publications/victims-corruption-back-payback>

<sup>9</sup> For further information, please click on the following link: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=175606>