

The reinvention of the victim: civil society and comprehensive reparation in grand corruption cases

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Abstract

The transformation of civil society organizations into procedural subjects in criminal proceedings for grand corruption cases is one of the most significant developments in criminal procedural law in the Americas. This process already has an initial guideline in the recommendation issued in 2024 by the Inter-American Juridical Committee, which proposes recognizing procedural standing for civil society organizations as victims, plaintiffs, or private accusers authorized to exercise prosecutorial functions in criminal proceedings concerning corruption.

This opinion maintains that extending the concept of victim to civil society organizations is an evolution consistent with inter-American standards of access to justice, comprehensive reparation, and democratic strengthening.

Based on a normative, jurisprudential, and comparative analysis—incorporating Latin American and European experiences—it is argued that the main obstacle for that recognition lies in legislative fragmentation and lack of harmonization, as well as restrictive judicial interpretations that limit the collective dimension of the right to effective judicial protection and full procedural participation. The rectification of these limitations requires legal reform, and to that end, it is proposed to advance a model legal statute within the framework of the OAS.

This opinion is structured in 10 points intended to argue in favor of a model law for institutional victims of grand corruption in Latin America, namely, I. Structural corruption and human rights Socially oriented administration of recovered assets and comprehensive reparation; II. From complainants to victims: transformation of procedural status; III. Procedural participation and comprehensive reparation; IV. Comparative

regulatory framework: formal recognition and practical gap; V. The Mirror of Consumer Law; VI. The French model as an ethical horizon; VII. Governance of reparation and guarantees of institutional legitimacy VIII. Socially oriented administration of recovered assets and comprehensive reparation; IX OAS Model Law; X. Proposed Inter-American Model Law on Institutional Victims in Cases of Grand Corruption

I. Structural corruption and human rights

In recent decades, grand corruption has ceased to be conceived exclusively as an offense against the public administration and has come to be understood as a structural threat to human rights. The systematic diversion of public resources compromises the State's ability to guarantee economic, social, cultural, and environmental rights (ESCER), disproportionately affecting vulnerable sectors.

The Inter-American Commission on Human Rights has recognized that corruption erodes the rule of law and weakens the effective enjoyment of fundamental rights. At the global level, the United Nations adopted the United Nations Convention against Corruption, consolidating a global regulatory framework that links corruption, development, and governance.

We are witnessing a phenomenon of structural and diffuse harm, whose victim is not only the State as an abstract entity, but the community. Moreover, there are situations in which the State itself is the wrongdoer. This conception makes it possible to overcome the individualistic matrix of classical criminal law and underpins the need for mechanisms of institutional representation of the public interest. From this perspective, if one adopts a restrictive definition of "victim," can leave no legally identifiable victim and thereby create a gap in accountability. Hence, it should be understood that the victims of corruption include all those individuals or groups who have suffered harm to their rights, directly or indirectly, as a result of an act of corruption.

II. From complainants' to victims: transformation of procedural status

In scenarios of structural corruption—where ESCER and good public administration are compromised—CSOs act as direct

victims due to the impact on good administration and as a necessary institutional vehicle for citizens to exercise their rights of participation and democratic accountability in face of human rights violations that occur as a result of acts of corruption.

If one adopts a restrictive definition of "victim," this can leave no legally identifiable victim and thereby create a gap in accountability.

Civil society organizations are among the few actors currently capable of representing collective victims in corruption cases. Owing to their legal status, organizational capacity, strategic expertise, and ability to mobilized resources, they are uniquely positioned to pursue complex and long-term proceedings. This underscores the importance of granting them legal standing, rather than limiting access to justice to individual citizens alone.

In this scenario the distinction between complainant and victim is not merely terminological, but substantive. While the complainant activates the criminal justice system, the victim has autonomous procedural rights, including access to the case file, the right to propose evidence, and the right to claim full reparation. Civil society organizations are among the few actors currently capable of representing collective rights.

In this context, the 2024 Final Report of the Inter-American Juridical Committee recommends that States recognize civil society organizations as victims, plaintiffs, or private accusers. The rationale is that corruption harms collective and diffuse interests, and therefore the participation of CSOs constitutes a manifestation of the right of access to justice in its collective dimension.

At the international level, Article 32 (5) of the United Nations Convention against Corruption states that: "Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings ...". Likewise, Article 35 opens up the possibility for these victims to claim compensation for damages suffered as a result of an act of corruption. Furthermore, Article 57(3)(c) establishes that,

when determining the disposition and restitution of confiscated property, priority consideration shall be given to "returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime."

Articles 8 and 25 of the American Convention on Human Rights enshrine the right to effective judicial protection. A restrictive interpretation of the concept of victim that excludes actors capable of representing collective interests may constitute a disproportionate limitation of that right.

The jurisprudence of the Inter-American Court of Human Rights in the case of *Huilca Tecse v. Peru*, as well as the UN Declaration on Human Rights Defenders, have established that freedom of association and the pursuit of collective goals are an indivisible part of the exercise of fundamental rights. Similarly, the European Court of Human Rights, in the case of *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, established clear criteria for associative legitimacy: prior legal existence, defined statutory purposes, non-profit status, and institutional transparency.

Finally, the upcoming EU Anti-Corruption Directive (that reached a political agreement in 2025 and should be adopted by the European Parliament on March, 9th), requires Member States to grant legal standing to anti-corruption associations where such standing is granted to civil society organisations in other policy areas.

III. Procedural participation and comprehensive reparation

Recognition of victim status has direct consequences for the architecture of reparation. It allows for requests for restitution, satisfaction, and guarantees of non-repetition.

Since the case of *Velásquez Rodríguez v. Honduras*, the Inter-American Court of Human Rights has established that the State's duty involves investigating, prosecuting, and providing adequate reparation. Subsequently, in *González and Others ("Campo Algodonero") v. Mexico*, it reaffirmed the obligation to remove obstacles that impede effective judicial protection.

If corruption has structural impacts on fundamental rights, reparation cannot be limited to individual sanctions. It must incorporate a restorative and transformative dimension, aimed at rebuilding public trust and restoring conditions of equality.

IV. Comparative regulatory framework: formal recognition and practical gap

Various Latin American legal systems recognize mechanisms for collective participation in criminal proceedings related to diffuse interests. However, judicial practice reveals a gap between normative recognition and effective application, according to the Interamerican Judicial Committee, where "it can be concluded that there is no single or pure model for legislating this issue in the region..."

In Colombia, Article 132 of the Code of Criminal Procedure (Law 906 of 2004) states that victims are "natural or legal persons and other subjects of rights who, individually or collectively, have suffered direct damage as a result of the injustice." In Peru, Article 94 (4) of the Criminal Procedure Code considers associations to be victims in crimes that affect collective or diffuse interests, where the ownership of rights harms an indeterminate number of persons, or in crimes included as international crimes in international treaties approved and ratified by Peru. Associations may exercise the rights and powers attributed to persons directly offended by the crime, provided that the social purpose of the association is directly linked to those interests and that it was recognized and registered prior to the commission of the crime that is the subject of the proceedings.

In Costa Rica, Article 70 of the Criminal Procedure Code defines victims as "d) Associations, foundations, and other entities that are registered, in crimes that affect collective or diffuse interests, provided that the purpose of the group is directly related to those interests" (Amended by Article 16 of the Law on the Protection of Victims, Witnesses, and Other Participants in Criminal Proceedings No. 8720 of March 4, 2009).

In Mexico, both the National Code of Criminal Procedure and Article 4 of the General Victims Law of 2003 recognize as victims groups, communities, or social organizations whose collective rights, interests, or legal assets have been affected as a result of the commission of a crime or the violation of rights." Article 5 establishes the principle of joint participation, whereby the State must implement reparations measures and "victims may execute plans or measures that contribute to these objectives."

Paradoxically, the case of the TOJIL organization highlighted the judicial resistance to broadening the concept of victimhood in Mexico. In October 2018, TOJIL, a Mexican NGO, with a clear statutory definition, as to the aim and purpose of becoming an anti-corruption defender in criminal proceedings, filed a criminal complaint in a corruption case and sought victim status under Article 108 of the National Criminal Procedure Code and Article 4 of the General Victims Law. As it was said, Mexican law grants "victims" various legal rights, including formal cooperation with the prosecution, access to information during investigations and trials, and the right to be heard – a set of rights not available to those with only complainant status. Citing its role as a human rights organization whose mandate focuses on combating corruption, TOJIL argued that it represented collective legal interests affected by corruption. Despite this, the Federal Public Prosecutor recognized TOJIL only as a complainant, a decision affirmed by the Federal Supervisory Judge on December 20, 2018. After being denied full standing in a major corruption case, reducing it to the status of complainant, the organization appealed to the Inter-American Commission on Human Rights (P-1550-20). The obstacle, therefore, is not normative, but interpretative.

V. The Mirror of Consumer Law

Collective standing is not foreign to Latin American law. In Brazil, the Lei da Ação Civil Pública (Law of Public Civil Action) recognizes the standing of civil associations to defend diffuse interests. In Chile, Law No. 19,496 allows for collective actions in defense of consumers. These mechanisms constitute institutional representation of diffuse interests.

In the Chilean consumer protection system, structured under Law No. 19,496, the protection of collective and diffuse rights constitutes a manifestation of the recognition of supra-individual interests whose impact transcends the merely individual sphere of the consumer. In contrast, collective and diffuse consumer rights are supra-individual in nature. Collective action is not a mere accumulation of individual rights, but rather an autonomous mechanism for protecting common interests affected by the same event. In diffuse rights, the group holding the rights is indeterminate; in collective rights, it is determinable, but always exceeding the strictly individual logic of the classic subjective right.

In this context, diffuse rights can be defined as those whose ownership corresponds to an indeterminate plurality of persons, united by a common factual circumstance arising from the supplier's conduct, without any prior legal relationship existing between them that would allow for their prior identification. The defining characteristic lies in the indeterminacy of the affected group, which justifies the intervention of special parties and the use of a special collective procedure. In this regard, the Supreme Court of Chile has indicated that the action is brought "for violation of the collective or diffuse interests of consumers," recognizing its supra-individual nature.

Collective rights, for their part, correspond to those interests belonging to a specific or identifiable group of consumers, united by a common legal bond with the supplier. Unlike diffuse rights, in this case the universe of those affected can be objectively defined—for example, those who entered into the same contract or are subject to a uniform clause—thus establishing a legal homogeneity that allows the identification of the group holding the injured interest.

In short, the distinction between diffuse and collective rights does not rest on the nature of the interest—which in both cases is supra-individual—but on the degree of determination of the group holding the rights: indeterminate in diffuse rights, determinable in collective rights. This differentiation has both substantive and procedural relevance, as it affects

standing to sue, the delimitation of the group benefiting from the judgment, and the expansive effects of the ruling.

Applying this logic, by way of analogical interpretation, to the anti-corruption sphere—which likewise involves harm to collective or diffuse interests—could strengthen the protection of such rights under Latin American legislation. This approach would also contribute to clarifying the role of Civil Society Organizations (CSOs) as legitimate representatives of affected communities, while drawing upon their accumulated experience as social trustees operating under judicial oversight and administering recovered assets in major corruption cases for the benefit of the injured group. Though it has to be recognised that both spheres differ in nature, being consumer law related to civil law whereas anti-corruption law belongs to the criminal area.

VI. The French model as an ethical horizon

Through strategic litigation, French civil society organizations progressively secured judicial recognition of their standing to act in corruption cases. This development emerged from the so-called “ill-gotten gains” proceedings initiated in 2007, when several NGOs sought to trigger investigations into foreign heads of state accused of laundering misappropriated public funds in France.

After initial complaints were dismissed by the public prosecutor, Transparency International France (TI-France) filed a complaint with civil party status (*constitution de partie civile*), seeking to compel judicial investigation. Although an investigating judge declared the action admissible, the Court of Appeal reversed that decision in 2009, holding that TI-France lacked standing because the harm invoked was not distinct from the general societal interest protected by the public prosecutor.

In a landmark ruling of 9 November 2010, the French Court of Cassation quashed that decision and recognized the admissibility of TI-France’s civil party status. The Court thereby accepted that anti-corruption associations may rely on a specific, legally protected interest sufficient to establish standing in corruption cases.

This jurisprudential breakthrough was subsequently codified by Law No. 2013-1117 of 6 December 2013, which expressly grants duly registered anti-corruption associations the right to bring legal proceedings. The reform introduced by Law No. 2013-1117 incorporated Article 2 (23) into the Code of Criminal Procedure, allowing accredited associations to bring civil action in corruption cases. Organizations such as Transparency International have exercised this power under a state accreditation system.

The "Biens Mal Acquis" case culminated in the conviction of Teodoro Nguema Obiang Mangue in 2017. The court recognized the standing of the complainant organizations and admitted the existence of collective institutional damage, establishing mechanisms for the confiscated assets to be returned to the people of origin countries and used for social purposes. Following advocacy efforts led by TI-France, the French Parliament adopted a law in August 2021 requiring French authorities to return confiscated ill-gotten gains to their countries of origin, in accordance with principles of transparency and accountability.

The French model does not privatize criminal proceedings or replace the Public Prosecutor's Office; it introduces a technical counterweight under state control that strengthens the restorative and democratic dimension of the process. It also provides for sanctions against malicious or unfounded use of legal proceedings, including temporary disqualification or loss of accreditation.

Granting legal standing to French anti-corruption CSOs has fundamentally transformed the fight against corruption, both domestically and internationally. It has enabled successful cases targeting French companies involved in foreign bribery, French public officials who accepted bribes, and foreign kleptocrats who laundered in France the proceeds of corruption and embezzlement of public funds. It has also fostered new investigative dynamics and prosecutorial strategies, creating constructive synergies and structured dialogue between civil society organizations and public prosecutors.

VII. Governance of reparation and guarantees of institutional legitimacy

Within the framework of the Inter-American System, it is legally necessary to move toward for the creation of a specific statute for institutional victims in cases of grand corruption, taking as a reference the work carried out by the Inter-American Juridical Committee. The evolution of corruption toward structural forms of infringement of fundamental rights requires a corresponding adaptation of traditional procedural categories, so that the concept of victim expressly incorporates collective subjects capable of representing diffuse or supra-individual interests.

In this context, a reform of the criminal procedural codes must explicitly recognize the full participation of civil society organizations as collective victims, not in a subordinate or merely collaborative capacity, but as holders of autonomous procedural rights. This implies guaranteeing their access to the case file, as well as their power to offer and challenge evidence, to challenge decisions that affect the collective interest, and to actively intervene in the determination of reparations.

Likewise, the regulatory design must establish objective accreditation criteria: legal existence prior to the events under investigation, direct statutory link to the defense of the interests affected, verifiable standards of transparency and accountability, as well as sufficient technical and professional capacity to intervene in highly complex processes. Such requirements do not constitute restrictive barriers. Rather, they serve as safeguards to preserve the seriousness and legitimacy of the criminal process, to ensure equality of arms between the parties, and to protect the institutional legitimacy of associative intervention.

Finally, the reform must incorporate clear mechanisms to guide the judiciary regarding the intervention of these organizations in the recovery, administration, and eventual allocation of confiscated assets, always under strict judicial supervision. In this way, the criminal process would acquire a restorative dimension consistent with the principles of effective judicial protection recognized in the American Convention on Human Rights, strengthening the democratic legitimacy of the justice

system in the face of the structural challenges posed by grand corruption.

VIII. Socially oriented administration of recovered assets and comprehensive reparation

In comparative practice in grand corruption proceedings, recovered assets are usually returned to the general treasury, which dilutes their link to the directly affected community. Although this solution is formally compatible with state budgetary logic, it weakens the restorative dimension of the criminal process and limits the possibility of reparation having a tangible impact on the reconstruction of the social fabric and the effective restitution of violated rights.

From an inter-American perspective, the socially oriented administration of recovered assets is a logical extension of the right to comprehensive reparation enshrined in Article 63(1) of the American Convention on Human Rights. This provision does not restrict reparation to individual financial compensation, but rather enables measures aimed at restoring the prior situation, satisfying the victims, and adopting guarantees of non-repetition. When corruption causes structural damage to collective rights, reparation must also take on a structural and transformative dimension.

In this context, the Mexican experience—particularly since the enactment of the General Victims Law—offers a relevant regulatory precedent. This legislation recognizes the active participation of victims in the definition and implementation of reparation plans, incorporating a comprehensive approach that goes beyond financial compensation and includes measures of restitution, satisfaction, and guarantees of non-repetition with a collective scope. This model introduces a participatory logic that strengthens the democratic legitimacy of the reparation process.

IX OAS Model Law

On that basis, a regional model in the form of an OAS model law could enable organizations recognized as institutional victims to propose reparations plans with a transformative approach, aimed at reinvesting recovered assets in direct benefits for the affected communities. Such plans could take

the form of mechanisms for implementing the model law and, ultimately, targeted public policies, specific social programs, or community projects with verifiable impact.

Under strict judicial supervision and through robust transparency and accountability mechanisms, a model law could illustrate the role of these organizations as social trustees, ensuring that the proceeds of crime are translated into concrete actions for comprehensive reparation. This approach does not imply the privatization of the punitive function of the State, but rather the incorporation of a participatory dimension that reinforces the restorative purpose of the criminal process and contributes to restoring public confidence in democratic institutions.

For this scheme to be legally sound and compatible with the principles of legal certainty and procedural equality, it must be accompanied by precise regulatory guarantees. In particular, a model law should establish public registers of authorized organizations; defined periods of validity for their appearance in court; verifiable standards of transparency and accountability; technical and professional suitability requirements for involvement in highly complex proceedings; and clear mechanisms of responsibility in the event of reckless litigation or abuse of rights.

These safeguards do not constitute undue restrictions on participation, but rather necessary conditions to ensure that institutional legitimacy effectively contributes to strengthening the criminal process and consolidating restorative justice with a genuine democratic outlook.

In this way, criminal justice in matters of grand corruption will cease to be a strictly bilateral process between the State and the accused and become an institutional space for democratic reconstruction. In this scenario, the collective interest will not only be invoked in an abstract manner, but will also have formal, qualified, and effective representation within the criminal process itself, reinforcing its restorative dimension and social legitimacy. Close look should be taken to consumers law in practice, for a better understanding of the concepts of diffuse and collective rights.

The adoption of an inter-American model law on institutional victims would make it possible to harmonize state legislation and practices, strengthen regional regulatory coherence, and consolidate a common approach that recognizes the structural dimension of the damage caused by grand corruption. An instrument of this nature, developed within the framework of the Organization of American States, could serve as a technical parameter to guide internal procedural reforms and establish minimum standards for accreditation, participation, and reparation.

In this way, broadening the concept of victim would not be limited to formally expanding access to justice, but would contribute to redefining the very function of criminal proceedings in contexts of structural corruption. By incorporating institutional representation of the collective interest and articulating mechanisms of reparation with social impact, the criminal process would be projected as an instrument of democratic restoration and effective guarantee of human rights, in line with the principles enshrined in the American Convention on Human Rights.

In conclusion, the recognition of civil society organizations as institutional victims in cases of grand corruption is not an exceptional concession, but rather a requirement derived from the evolution of international human rights law and the contemporary concept of criminal justice itself. When corruption causes structural and diffuse damage directly affecting fundamental rights and eroding public trust, the response of the legal system cannot be limited to a bilateral arrangement between the state and the accused, nor can it reduce the concept of victim to a strictly individual dimension.

The recommendation made in 2024 by the Inter-American Juridical Committee, together with the standards developed within the framework of the Organization of American States and the United Nations, provides a sufficient normative basis for consolidating this conceptual expansion. However, the effectiveness of such recognition depends on clear legislative reforms, objective accreditation criteria, and an interpretive

change that embraces the collective dimension of the right to effective judicial protection.

Comparative experience shows that it is possible to reconcile the participation of organizations with adequate procedural safeguards, preventing abuse and preserving public ownership of criminal proceedings. Far from privatizing justice, the intervention of CSOs as victims strengthens transparency, promotes reparations with social impact, and contributes to democratic reconstruction. Particular reference should be considered to the experience of consumer laws and practice in the region.

In short, moving toward a regional model legal statute within the OAS framework for institutional victims in cases of grand corruption will not only expand access to justice, but also enable OAS member states to undertake local reforms and improvements in practices so that the criminal process becomes an instrument of transformative reparation, restoring a sense of justice to the affected community and reaffirming the State's commitment to the effective protection of human rights.

X. Proposed Inter-American Model Law on Institutional Victims in Cases of Grand Corruption

Preamble

The member states, inspired by the principles of access to justice, effective judicial protection, and comprehensive reparation enshrined in the American Convention on Human Rights, the Inter-American Convention against Corruption, and the United Nations Convention against Corruption,

Recognizing that grand corruption causes structural and diffuse damage that affects human rights and erodes democratic legitimacy,

Considering the recommendations of the Inter-American Juridical Committee regarding the recognition of the standing of civil society organizations in corruption proceedings,

Adopt the following Model Law:

CHAPTER I

General Provisions

Article 1. Purpose.+-

The purpose of this law is to recognize and regulate the standing of civil society organizations as institutional victims in criminal proceedings for grand corruption crimes that affect collective or diffuse interests.

Article 2. Definition of institutional victim.

An institutional victim shall be understood to be a legally constituted civil society organization which, in accordance with its statutory purpose, represents collective or diffuse interests directly or indirectly affected by a crime of grand corruption.

Article 3. Guiding principles.

The interpretation and application of this law shall be governed by the principles of:

- a. Access to justice.
- b. Comprehensive reparation.
- c. Effective participation.
- d. Transparency and accountability.
- e. Procedural equality.
- f. Good faith in proceedings.

CHAPTER II

Accreditation and Registration

Article 4. Registration of authorized organizations.

A National Registry of Authorized Organizations shall be established to act as institutional victims in cases of grand corruption.

Article 5. Accreditation requirements.

To be registered, the organization must prove:
a) Legal existence prior to the commission of the act under investigation.

- b) Statutory purpose directly linked to the defense of the interests affected.
- c) Non-profit status with respect to legal proceedings.
- d) Verifiable standards of financial transparency and internal governance.
- e) Adequate technical and professional capacity to intervene in complex proceedings.

Article 6. Validity and review.

The accreditation shall have a specific term and shall be reviewed periodically by the competent authority.

CHAPTER III

Procedural Rights

Article 7. Rights of the institutional victim.

Accredited organizations shall have the following rights in criminal proceedings:

- a) Access to the case file.
- b) To offer and challenge evidence.
- c) To participate in hearings.
- d) To challenge decisions that affect the collective interest represented.
- e) To request precautionary or protective measures regarding assets.
- f) To participate in the determination and execution of reparations.

Article 8. Coordination with the Public Prosecutor's Office.

The intervention of the institutional victim does not replace or limit the Public Prosecutor's Office's entitlement over the criminal proceedings.

CHAPTER IV

Comprehensive Reparation and Asset Management

Article 9. Transformative Reparation Plans.

Institutional victims may propose reparation plans aimed at:

- a) Restitution of affected collective rights.
- b) Social programs linked to the harm caused.
- c) Structural guarantees of non-repetition.

Article 10. Social use of recovered assets.

The judge may order that assets recovered in cases of grand corruption be used, in whole or in part, for the implementation of judicially approved reparation plans.

Article 11. Role of social trustee.

Organizations may act as administrators of funds allocated for reparation, under strict judicial supervision and with robust mechanisms for transparency and independent auditing.

CHAPTER V

Guarantees and Liability

Article 12. Litigation in good faith.

Procedural intervention shall be exercised with loyalty and good faith.

Article 13. Liability for abuse.

In the event of reckless litigation or abuse of rights, the court may:

- a. Impose procedural sanctions.
- b) Suspend or revoke accreditation.
- c) Impose corresponding civil liabilities.

Article 14. Permanent judicial control.

The judicial authority shall ensure that the intervention of the institutional victim respects due process and equality of arms.

CHAPTER VI

Final Provisions

Article 15. Regulatory harmonization.

States shall align their criminal procedural codes and complementary legislation with the standards established in this model law.

Article 16. Consistent interpretation.

This law shall be interpreted in accordance with the standards developed by the Inter-American Court of Human Rights on access to justice and comprehensive reparation.

Transitional Provision

States shall establish a reasonable time frame for the creation of the registry and the institutional adjustments necessary for the effective implementation of this law.

Final Justification

This Model Law proposes a balanced architecture: it expands the procedural standing of civil society organizations as institutional victims, but conditions it on objective accreditation criteria and a robust system of judicial oversight. In this way, the criminal process in cases of grand corruption is projected as a space for democratic restoration, without undermining public ownership of the criminal action or the guarantees of due process.