

Recognizing Victims of Corruption

Submission by the
UNCAC Coalition's Victims of Corruption Working Group to the first
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Corruption is not a victimless crime. Corruption is responsible for widespread damage, both directly and indirectly, to institutions, communities, the public and individuals. The collective damage caused by corruption translates into financial losses, as well as intangible yet consequential losses, for example, degraded trust in institutions and loss of socio-economic opportunities. Corruption often harms basic healthcare (such as access to affordable medical treatment and medicine, unbuilt hospitals, etc.) and livelihoods (through land-grabbing and environmental resource exploitation). Graft can also limit access to education and cause prohibitively high costs of water and electricity, poor infrastructure, and inadequate public services, etc. It increases crime, injustice, gender inequality and climate vulnerability and overall diminishes the quality of life. In turn, corruption directly affects the enjoyment and protection of basic human rights and destroys the wellbeing of individuals, families, communities and societies. Furthermore, corruption is a driver and enabler of violent conflict and an obstacle to peacebuilding and post-conflict socio-economic development.

The rights of victims of corruption (VoC) are recognized by the UNCAC under Article 32 and Article 33 on the protection of witnesses, experts and victims, Article 34 on the consequences of acts of corruption, and Article 35 on compensation¹ for damage.² However, implementation reviews indicate that **while many countries do have legal frameworks that allow for reparations³ to victims of corruption, this only happens in very few cases.**⁴

¹ On compensation, see: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985, available at:

<https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

² Text of the UNCAC: <https://uncaccoalition.org/the-uncac/united-nations-convention-against-corruption/>.

³ On reparation see: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, available at:

<https://www.ohchr.org/en/professionalinterest/pages/remedyandreparation.aspx>.

⁴ See: UNODC (2017): State of implementation of the UN Convention against Corruption, https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V.17-04679_E-book.pdf.

International framework

In addition to the UNCAC, the rights of victims are also addressed in other international fora, by the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power⁵, the 2011 UN Guiding Principles on Business and Human Rights⁶ – which provide a protect, respect and remedy framework – and the 2015 UN Crime Congress Doha Declaration on Crime Prevention and Criminal Justice.⁷ In addition to the relevant UNCAC Articles, the Political Declaration⁸ adopted at the 2021 UN General Assembly Special Session (UNGASS) against Corruption acknowledges victims of corruption in its text, reiterating commitments to protect these individuals from threats, and to compensate victims appropriately.

Furthermore, the Council of Europe Civil Law Convention on Corruption⁹ explicitly expresses the need for adequate compensation for the damages inflicted on victims of corruption. In a 2012 resolution¹⁰, the European Parliament called for a horizontal application of collective redress principles for all areas across the EU, followed by a 2013 recommendation¹¹ on common principles for an injunctive and compensatory collective redress mechanism in EU Member States.

Despite the relatively few documented corruption cases where reparation *was* granted and where victims of corruption were closely considered, established good practices do exist.

Good practices on the national level

Enforcement bodies in one European country have developed principles for compensation in corruption cases¹², with VoC regularly featuring in foreign bribery cases. In another European country, the civil society organizations Sherpa and TI France have used their legal standing to initiate criminal proceedings in grand corruption cases and have successfully initiated two complaints leading to convictions. In a Central American country, the Criminal Procedural

⁵ OHCHR: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power – Adopted by General Assembly resolution 40/34 of 29 November 1985, <https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx>.

⁶ OHCHR: Guiding Principles on Business and Human Rights, https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf.

⁷ UNODC: Doha Declaration, https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf.

⁸ UN General Assembly: Political Declaration adopted at the Special Session against Corruption, A/S-32/2/Add.1, June 2021, <https://undocs.org/A/S-32/2/ADD.1>.

⁹ Council of Europe: Civil Law Convention on Corruption, <https://rm.coe.int/168007f3f6>.

¹⁰ European Parliament: Towards a coherent European approach to collective redress, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012IP0021&from=EN>.

¹¹ EU: Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013H0396&from=EN>.

¹² Serious Fraud Office: Compensation Principles to Victims Outside the UK, <https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/compensation-principles-to-victims-outside-the-uk/>.

Code¹³ allows for prosecutors to launch civil action in cases of damage to collective interests stemming from criminal offences and recognizes organizations such as non-governmental organizations as victims if they are directly affected. Prosecutors have made good use of this framework, for instance, in corruption cases involving high-ranking officials.¹⁴ In a country situated in the Pacific region, individuals as well as communities can write victim impact statements on the harm they suffered, which Magistrate Courts have taken into account when sentencing corruption cases.¹⁵ A country in Africa recognizes the rights of federal states as victims if the funds recovered were stolen from the state treasury in exceptional cases. The states' claim to such funds is made easier if the states cooperate with the federal government during the court proceedings. In a country in Central America, the Supreme Court recently ruled¹⁶ that indigenous communities and organizations have the right to be recognized as victims in corruption cases and to participate in all stages of legal proceedings affecting them.

Recommendations

Recognizing that corruption is not a victimless crime, States Parties should commit to using – and when absent, to **establishing – legal frameworks to enable and facilitate the reparation of both individual and collective damage caused by corruption to victims (communities)**, including when cases are resolved through settlements and when cases are linked to transnational corruption.

Citizens, non-governmental organizations, and local communities can play a useful role in enforcement actions by state institutions. Their right to recover damages for specific losses during criminal and civil proceedings should be enforced and protected. Member States should **grant and protect their right to represent individual and collective victims of corruption before courts and authorities**.

Public interest organizations should be encouraged and given the space to present law enforcement and criminal justice authorities with **evidence of the damage done by specific acts of corruption and assist in identifying victims**.

Member States should further commit to stepping up efforts to **repair damages caused by corruption by providing victims with material and/or symbolic reparations**, ensuring that

¹³ Código Procesal Penal,

www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=1&nValor2=41297.

¹⁴ Dr. Juanita Olaya Garcia, Kodjo Attisso, Anja Roth (2011): Repairing Social Damage Out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1779834.

¹⁵ Magistrates Court of South Australia (2017), *Police v Templeton*.

¹⁶ COPINH: Recurso de Amparo Penal SCO-0974-2019, <https://copinh.org/wp-content/uploads/2021/08/AMPARO.-COPINH.GUALCARQUE.pdf>

compensation is provided at the earliest possible stage, rather than after the conclusion of lengthy civil or criminal proceedings.

Enforcement authorities should undertake every effort to secure and enable victims' involvement in all stages of the proceedings, including during the investigation and trial stage, resorting to reasonable means that do not jeopardize their efforts. Citizens and citizens' organizations should be able to access sufficient information to be able to promptly initiate or contribute to those proceedings.

The members of the UNCAC Coalition Working Group on Victims of Corruption contend that an accurate depiction of the harm corruption inflicts, recognition of victims' rights in enforcement proceedings, measurement of their loss both in financial and non-financial terms and the empowerment of communities and victims to initiate and participate in legal action will help ensure that:

1. Societies can better understand and contextualize the consequences of corruption, promoting more pre-emptive and preventive reactions against it, and dissuading some of the future perpetrators;
2. The different types of damage caused by corruption are taken into account when establishing sanctions for corrupt acts;
3. Legal entities and powerful individuals are held to account for the full damages their corrupt acts have caused;
4. Citizens' trust in public institutions and the rule of law is reinforced;
5. Those who have suffered from corrupt acts (whether individually or collectively) are able to find redress and justice through legal action;
6. The livelihood of those who have suffered from corruption improves, communities and countries improve and progress towards reaching the Sustainable Development Goals is made.

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