

Consequences of Corruption: The Right of Victims to Participation and Reparation in Corruption Cases

Submission by
the UNCAC Coalition Working Groups on Victims of Corruption, on Asset Recovery,
on Grand Corruption and State Capture, and on Gender Inclusion & Corruption¹

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Corruption causes direct harm to individuals, institutions, communities, and societies as a whole. Such harm constitutes, for the most part, human rights violations. The UNCAC is explicit and unambiguous about the need to address the consequences of corruption and the rights of its victims.² The Political Declaration³ adopted at the 2021 UN General Assembly Special Session (UNGASS) against Corruption expressly acknowledges victims of corruption, reiterating commitments to protect these individuals from threats and to compensate victims appropriately and justly.⁴ Yet, few victims have successfully obtained redress, and most of them have remained unidentified, unrepresented, or absent from corruption cases.⁵

The Principle of *Restitutio ad integrum* under international law calls for redress for victims of serious human rights and humanitarian law violations.⁶ Human rights conventions stress the centrality of state obligations to ensure and protect victims' rights and provide remedies for

¹ UNCAC Coalition Working Groups seek to facilitate discussions, the exchange of information and joint advocacy among civil society experts including representatives of non-governmental organizations and academics. See: Victims of Corruption, <https://uncaccoalition.org/victims-of-corruption-working-group/>; Asset Recovery, <https://uncaccoalition.org/get-involved/working-groups/asset-recovery/>; Grand Corruption and State Capture, <https://uncaccoalition.org/grand-corruption/>; Gender, Inclusion and Corruption, <https://uncaccoalition.org/get-involved/working-groups/gender-inclusion-corruption/>.

² UNODC (2004), United Nations Convention Against Corruption. Article 34 on consequences of acts of corruption, calling on States to provide for remedial actions; Article 35 on the right to initiate legal proceedings and compensation# for damage; Article 32(5) on participation in proceedings; and Article 57(3)(c) on asset recovery, <https://www.unodc.org/unodc/en/corruption/uncac.html>.

³ UN General Assembly (May 2021), Political Declaration adopted at the Special Session against Corruption. A/S- 32/2/Add.1, <https://undocs.org/A/S-32/2/ADD.1>.

⁴ UN General Assembly (May 2021), Political Declaration adopted at the Special Session against Corruption. A/S- 32/2/Add.1, <https://undocs.org/A/S-32/2/ADD.1>.

⁵ UNCAC Coalition Working Group on Victims of Corruption (2022), International Database on Corruption Damage Reparation and Legal Standing for Victims of Corruption, <https://uncaccoalition.org/get-involved/working-groups/victims-of-corruption-working-group/database-on-legal-standing/>.

⁶ On reparation see: United Nations (2005), 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, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>. This justifies the need for rehabilitation as a form of reparation since victims have a right to reconstruct their lives, as far as possible; REDRESS (2009), Rehabilitation as a form of reparation under international law, <https://www.refworld.org/pdfid/4c46c5972.pdf>.

violations.⁷ Such obligations are not suspended when corruption occurs, and much less if such violations are an immediate consequence of corruption. International law also recognizes the rights of victims and addresses them explicitly in multiple international instruments.⁸ This includes particularly the rights of women, children, indigenous peoples and minorities to participate in decisions that affect them.⁹ Despite a clear international legal framework, UNCAC implementation reviews¹⁰ indicate that very few States provide for individual and collective reparations for victims of corruption, and many States lack provisions allowing their participation in proceedings.¹¹

Tribunals and authorities often continue to identify States, rather than persons (natural or legal), as victims of corruption, even when they do not share the same interests as their

⁷ United Nations (1948), Universal Declaration of Human Rights. Article 8, <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english> ; United Nations (1976), International Covenant on Civil and Political Rights. Article 2, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf> ; United Nations (1965), International Convention on the Elimination of All Forms of Racial Discrimination. Article 6,

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> ; United Nations (1984), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 14, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> ; United Nations (1990), Convention on the Rights of the Child. Article 39, <https://www.unicef.org/media/52626/file> ; International Criminal Court (2011), Rome Statute of the International Criminal Court. Articles 68 and 75, <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> ;

See also in general: Organization of African Unity (1981), African Charter on Human and Peoples' Rights, https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf ;

Organization of American States (1969), American Convention on Human Rights, https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf ; European Court of Human Rights (1950), the European Convention on Human Rights, https://www.echr.coe.int/documents/d/echr/convention_ENG.

⁸ OHCHR (1985), 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/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse> ; OHCHR (2011), Guiding Principles on Business and Human Rights,

https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf ; UNODC (2015), Doha Declaration. Adopted at the 13th Congress on Crime Prevention and Criminal Justice, https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf.

⁹ United Nations (1981), Convention on the Elimination of All Forms of Discrimination against Women, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf> ; International Labor Organization (1989), Indigenous and Tribal Peoples Convention, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:REV,en,C169,/Document ; United Nations (1990), Convention on the Rights of the Child. <https://www.unicef.org/media/52626/file>.

¹⁰ 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.

¹¹ UNODC (2017), State of Implementation of the United Nations Convention against Corruption, https://www.unodc.org/documents/treaties/UNCAC/COSP/session7/V.17-04679_E-book.pdf, pp.160, 152 ; Stolen Asset Recovery Initiative (2022), Mapping international recoveries and returns of stolen assets under UNCAC: an insight into the practice of cross-border repatriation of proceeds of corruption over the past 10 years. Conference Version, https://www.unodc.org/documents/treaties/UNCAC/COSP/session9/CAC-COSP-2021-CRP.12_E.pdf.

population.¹² The rare non-State victims who obtain redress are not all equal in terms of access to remedy, depending on their financial means and the nature of their harm.

In practice, various significant, but not insurmountable, challenges hinder victims of corruption's redress. Most jurisdictions require a direct nexus between the offense and the damage suffered by a person as a prerequisite for granting the victim legal standing in judicial or administrative proceedings. Establishing such a direct nexus is an insurmountable obstacle in instances of collective damage that prevents victims who do not have a direct and specific interest from obtaining reparation for their harm. Quantifying and calculating the damage caused by corruption is another major obstacle to overcome. When corruption has produced diffuse and collective damage, such as social damage, non-state victims are often unable to quantify the damage they suffer because of corruption. This, however, does not make the damage less real nor less burdensome: a road not built, school meals not delivered, biased or absent justice, etc. These obstacles are compounded by the lack of information publicly available on ongoing proceedings, preventing potential victims from asserting their right to compensation.

If fighting corruption does not translate into the well-being of the citizens, it is doomed to fail. Addressing the lack of voice and representation issue is key to fostering asset recovery, fighting grand corruption and state capture and addressing corruption's impact on gender and minorities' rights.

Therefore, we encourage the States, the Conference of the States Parties and all national and international actors to enact measures and adopt practices to enforce the existing international legal framework and overcome practical obstacles to the rights of victims in corruption cases, as follows:

Prevention and Recognition of Corruption as a Human Rights Violation

1. States should enforce the obligation of addressing the consequences of corruption, issue remedies to its victims, and give assurances and/or guarantees of non-repetition in accordance with Article 4 of the draft Convention on Justice and Support for Victims of Crime and Abuse of Power.¹³

¹² On a definition of "victims", see the definition provided by: United Nations (2005), 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. Article 8: "...victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."

Article 9: "A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.", <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>.

¹³ United Nations (2010), Draft UN Convention on Justice and Support for Victims of Crime and Abuse of Power, <https://www.worldsocietyofvictimology.org/publications/Draft%20Convention.pdf>.

2. States should recognize in their legal frameworks and procedures the special gravity of grand corruption and that grand corruption results in widespread human rights violations and abuses, ranging from denial of collective rights of vital public services (health, education, infrastructure, etc.) and of individual political and civil rights. The frameworks and procedures should allow for these harms to be remedied.

Information, Capacity and Cooperation

3. States Parties are encouraged to monitor, report on and communicate instances of reparation.
4. States should make it mandatory for law enforcement authorities to identify, at an early stage, potential victims in cases of corruption and other related offences at home and abroad, especially those affected by collective harm. Appropriate means of representation and reparation should be ensured in both cases. Countries are encouraged to develop operational guidelines and criteria for victims' identification based on international norms.
5. Victim engagement is important throughout the process. States Parties should notify victims about proceedings and investigations on corruption at home and abroad in a reasonable yet timely and accessible manner to enable victims to play a role, whether this involves being legally represented and seeking reparation, contributing information or being able to conduct advocacy and awareness-raising campaigns. Victims' notifications could be published via online platforms, considering the literacy, gender gap and digital gender divide.
6. Countries should provide training and capacity-building programs for law enforcement and oversight agencies, judiciary, and other relevant stakeholders on the rights and related exigencies of victims of corruption, as well as on effective methods for providing redress and support, using a rights-based, gender-sensitive and trauma-informed approach.

Standing, Voice and Representation

7. Countries should, where they do not already exist, create mechanisms in accordance with their national laws for victims to participate in criminal, civil, constitutional and administrative proceedings to represent their interests, allowing individuals, collectivities and associations representing the public interest or diffuse interests to make claims for individual, collective and social reparation. Such legal standing should, where appropriate, provide victims with the right of appeal against decisions of the prosecutorial authority not to prosecute, particularly when that is a condition for reparation.
8. A more balanced representation of perpetrators and victims in settlements is needed. Rules and criteria for settlements and out-of-court agreements should ensure victims' direct representation and ensure reparation of harm.
9. States should enact laws to limit litigation costs for victims and should provide support services, including but not limited to financial and legal aid, psycho-social support, and information on victims' rights and available avenues for redress. Civil, administrative

or other proceedings should not impose a financial burden upon victims that would prevent or discourage them from seeking redress.¹⁴

10. The participation of victims in decisions about the actual use, destination and oversight of reparation funds, whether governmental or private, for specific purposes should be enabled through appropriate mechanisms that allow for individual and collective representation in order to ensure that their interests are considered.
11. Given the range of obstacles to claims of victims, including for collective and social harm, also in grand corruption cases, States should appoint a victims' coordinator to identify, notify, represent and coordinate victims of corruption.
12. Instruments for victim representation should recognize that citizens are not all affected the same way due to societal gender roles. Therefore, explicit direct representation of women, minorities and other discriminated or excluded groups is required.

Forms of Reparation

13. The obligation of States to protect human rights and offer redress is not suspended in cases of corruption and is not subordinated to establishing the legal responsibility of perpetrators. State reparation of such damages should be promoted, for example, through funds provided for that purpose, which should cover material and immaterial harms through monetary or other types of reparation (e.g., psycho-social and medical remedies for victims of sexual corruption or restitution).
14. Reparation awards should be mandatory, not discretionary, and consistent with the gravity and type of offence. Reparation of collective harm in cases of corruption cannot be conditioned to establishing direct causality, nor individual liability.
15. States Parties should implement interim or preliminary measures to address imminent harms and provide relief to victims while the case is being investigated or prosecuted. Imposing interim or preliminary measures can prevent further harm and protect the interests of victims during the legal process. These measures can include seizing assets, imposing travel restrictions, or issuing injunctions to prevent the dissipation of proceeds of corruption or obstruction of justice.
16. States should recognize that the collective rights harmed by grand corruption include the right to self-determination, right to the disposition of natural wealth and resources, right to the progressive realization of economic, social and cultural rights and to a clean, healthy and sustainable environment. These harms can be captured through concepts like social damages and moral damages.
17. Reparation can be material, immaterial or symbolic. Rehabilitation (i.e., legal, medical, psychological, financial, practical/material, and other assistance) should be provided, without discrimination of any kind and support best suited to victims who are particularly vulnerable because of a characteristic, such as gender, age, or ethnicity.

¹⁴ United Nations (2012), United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. General Comment No. 3 of the Committee against Torture, para 29, p 26, https://www2.ohchr.org/english/bodies/cat/docs/gc/cat-c-gc-3_en.pdf.