



VICTIM INCLUSION IN ASSET RECOVERY

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VICTIM INCLUSION IN ASSET RECOVERY

OBLIGATIONS UNDER ANTI- CORRUPTION AND HUMAN RIGHTS LAW FOR VICTIM INCLUSION IN ASSET RECOVERY

Paper prepared by Amber Madden-Doyle, Dora Anghelache, Hanna Berndt, Mathilde Colinet, and Victoria Damore, under the supervision of Dr. Cecily Rose, Associate Professor, Leiden Law School for the University of Amsterdam LLM course Amsterdam International Law Clinic. Reviewed by Clara Czuppon, Lewis Kundai and Jackson Oldfield (CiFAR). The authors have made reasonable steps to ensure that the content is accurate.

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EXECUTIVE SUMMARY

Corruption erodes the rule of law, undermines human rights, and negatively impacts economic growth. Traditional methods for identifying victims of corruption, especially grand corruption, however often fail due to the diffuse nature of the impact, which often affects broad sectors of society and often causes indirect harm.

Corruption includes bribery, embezzlement, trading in influence, abuse of functions, and illicit enrichment. Victims of corruption can be categorized as:

- **Individual Victims:** Citizens can suffer from deteriorating public services due to corruption or due to funds being taken away from a service they would otherwise receive, for example, though proving direct harm can be challenging.
- **Collective Victims:** Societal groups may experience widespread harm as a result of corruption, however this can make legal standing complex.
- **Foreign Governments and Public Entities:** Governments can be recognised as victims when public funds are misappropriated, for example, or when the harm is to the country as a whole or as representatives of harmed groups.
- **Legal Persons:** NGOs and corporations can also suffer harm due to unfair competition or direct financial losses. NGOs can also represent individual and collective victims.

While anti-corruption treaties, including the United Nations Convention Against Corruption (UNCAC), outline corruption

offenses, they do not clearly define victims of corruption, nor do they include provisions for their inclusion in criminal, civil or administrative proceedings.

Further, bribery cases in particular often conclude with non-trial resolutions (settlements), which may further limit participation where there are no public court cases.

International human rights law, on the other hand, while not explicitly recognizing corruption as a human rights violation, does guarantee victims' right to an effective remedy. This right is enshrined in multiple treaties, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). These require states to provide victims with access to justice and redress mechanisms.

This includes:

Pre-Trial Rights

- **Right to Information:** Victims must be informed about legal proceedings, asset recovery efforts, and potential remedies.
- **Right to Investigate:** International law obliges states to conduct thorough investigations into corruption cases.
- **Statutes of Limitations:** Short limitation periods can prevent victims from seeking justice. Human rights law requires that time limits do not unfairly bar claims before victims become aware of corruption's impact.
- **Standing:** Courts have debated whether indirect victims have legal standing. Recent human rights rulings suggest a broader recognition of victim status should be considered.

Trial Proceedings

- Participation Rights: Victims should be allowed to present evidence, submit opinions, and engage in decision-making during trials.
- Settlements: Some corruption cases resolve through negotiated settlements, which often exclude victims. Consideration should be given to facilitating victims' perspectives in settlement negotiations.

Post-Trial Rights

- Reparation Mechanisms: Compensation should be directed toward affected individuals and communities rather than solely to governments.
- Monitoring of Asset Recovery: Victims and civil society organizations should be involved in overseeing how recovered funds are used to ensure transparency and accountability.

Corruption is far from a victimless crime, yet current anti-corruption frameworks fail to adequately recognize and involve victims. The broad and diffuse impact of corruption makes victim identification and participation challenging. While anti-corruption law provides some avenues for victim inclusion, these remain limited.

International human rights law can offer additional legal tools for ensuring victims can participate in corruption proceedings, seek remedies, and monitor asset recovery efforts. Greater alignment and dialogue between anti-corruption and human rights frameworks can strengthen victim participation and promote accountability in asset recovery processes.

INTRODUCTION

Given that the effects of corruption undermine the rule of law and inhibit the enjoyment of human rights, defining who the victims of corruption are and how they can participate in the process to recover damages is an important step in mitigating harm.

Research into corruption has shed light on the multitude of adverse effects of corruption on economic growth. This however can mean that the consequences of corruption are diffuse and traditional methods for identifying the victims of corruption may fall short of compensating those harmed.

While the most common approach to combatting corruption is through the criminalization of corrupt acts, with a strong focus on preventative measures, in instances where corrupt acts still occur, asset recovery exists both to return the proceeds of corruption to those from whom it was stolen and as part of efforts to deter future corruption from occurring.

This report explores legal obligations in relation to the inclusion of victims within asset recovery proceedings, given the often-challenging difficulties in applying traditional harm-identification models.

- » **Part I** begins with an overview of how anti-corruption law defines victims and harm. Looking primarily at the United Nations Convention Against Corruption (UNCAC), it also draws on some experiences from the national level and in regional treaties. It identifies here particular limitations anti-corruption law has when it comes to victim identification.

- » **Part II** then discusses the ways in which international human rights law can provide a legal basis for the right of victims to participate in anti-corruption proceedings. This section covers all stages of corruption proceedings, from pre-trial procedures to monitoring and auditing reparations, as well as utilizing civil society organizations to inform and represent victims. It draws on both international and regional human rights law, as well as the judgements of human rights courts.

DEFINITIONS

- **Grand corruption.** Grand corruption is defined in this report as corruption occurring at the highest levels of government, eroding public confidence. Corruption on this scale often serves the purpose of gaining access to and influence in high-level decision making processes in government.¹ This report focuses on instances of grand corruption affecting a wide variety of victims.
- **Victim inclusion.** The participation of victims in proceedings can take many forms and can occur at different stages of the process. Victims can directly participate in the proceedings by bringing claims themselves, for example, or could be canvassed post-conviction to evaluate the efficiency of certain measures. This report looks at victim inclusion from the time of court proceedings through to any disbursement of recovered funds.



**PART I: VICTIM
INCLUSION
UNDER ANTI-
CORRUPTION
LAW**

I.A. DEFINING CORRUPTION

While there is no legal definition of corruption as such, there is a general understanding that the term corruption refers to an abuse of entrusted power for personal gain, or the exercise of influence over an individual with certain powers.² This general definition covers both public and private sector corruption. In public sector corruption, the corrupt individuals are usually public officials entrusted with certain powers inherent to the positions they hold. Corrupt acts in the public sector may involve a private actor and a public actor. In contrast, private sector corruption definitions usually involve two private individuals or entities. This report focuses on public sector corruption.

Corruption is an umbrella term that encompasses various corrupt acts. While anti-corruption treaties do not offer a legal definition of corruption, they define various corrupt acts such as: bribery, embezzlement and misappropriation, trading in influence, abuse of functions, and illicit enrichment.³

Bribery, as defined under Article 16 of UNCAC, can be separated into active and passive bribery.⁴ Active bribery entails “the promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person”.⁵ Passive bribery refers to “the solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or

public authority of the State Party an undue advantage”.⁶ In the public sector the offence of passive bribery assumes that a public official is the perpetrator.⁷

Embezzlement and misappropriation are covered under Article 17 of the UNCAC, which mandates the adoption of legislation to criminalize “the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position”.⁸ This is distinct from bribery in that it does not involve the exchange of an undue advantage, but essentially the stealing of funds an individual has access to by virtue of the public position they hold.

There are also other forms of corrupt conduct, which some anti-corruption treaties also cover including trading in influence, abuse of functions, and illicit enrichment.⁹ Trading in influence and abuse of functions can be considered variants of bribery since they also involve the exchange of an undue advantage.¹⁰

I. B. POTENTIAL AVENUES FOR VICTIM PARTICIPATION UNDER ANTI-CORRUPTION LAW

Three main proceedings exist that have the potential for victims to recover damages: criminal proceedings, civil proceedings, and administrative proceedings.¹¹

- Within **criminal proceedings**, there are two ways for victims to participate. Some states offer the possibility for victims to participate as *partie civile*, in which case the outcome is a criminal judgement that also decides on civil remedies for the victims.¹² The rights of victims to participate

in criminal proceedings varies across jurisdictions,¹³ with some States allowing victims to make an application for compensation to the criminal court, given that damage was proven during the trial.¹⁴

- Alternatively, victims can institute separate **civil proceedings** to recover damages. In this case victims simply have to prove that they suffered prejudice as a result of the action.¹⁵
- Finally, **administrative proceedings** entail a public authority that caused the damage. Here, for example, through the omission of an administrative act they were supposed to perform but did not due to corruption, and are required to compensate injured parties.¹⁶

While all three proceedings may result in fines and other monetary penalties or asset confiscation and restitution, criminal proceedings can culminate in imprisonment and administrative proceedings may result in revocations or suspensions of licenses or permits.¹⁷

While legal standing in these proceedings varies across states, generally the type of 'victim' which can be included in court cases are both individual victims, encompassing natural and legal persons, and foreign States.¹⁸

In cases of misappropriation and embezzlement, remedies are usually sought through criminal court proceedings, which may be followed by inter-state agreements that provide for the return of funds. In cases of misappropriation and embezzlement where money is hidden overseas, Article 57 of the UNCAC provides guidance for the return of those assets in "limited circumstances".¹⁹

It is important to note though that in practice most asset recovery cases fall outside of the mandatory scope of Article 57, since the requirements pose a high threshold.²⁰ Interstate agreements become relevant in the return of assets, as they are used by states to govern the process of returning assets. In some cases these agreements contain provisions on the disposal of the assets returned, such as their use for "anti-corruption, human rights or development purposes".²¹

When it comes to foreign bribery cases, proceedings often, however, culminate in non-trial resolutions. Such non-trial resolutions are used to "resolve criminal matters without a full court proceeding", usually through an agreement between "an individual or a company and a prosecuting or another authority".²² Non-trial resolutions can bring practical advantages by being more resource efficient, as investigating and prosecuting foreign bribery cases takes up significant time and financial resources that are not always as readily available for states. As such, non-trial resolutions allow foreign bribery cases to be resolved without requiring the engagement of the full range of resources required to prosecute a case first on the merits and potentially on appeal.²³ However, non-trial resolutions also pose challenges to the rights of victims to participate in criminal proceedings and seek remedies,²⁴ alongside concerns around providing lesser penalties to corrupt persons.

Settlements in criminal proceedings make up the "vast majority" of non-trial resolutions applicable to foreign bribery cases.²⁵ The prominence of non-trial resolutions as a means of resolving foreign bribery cases is reflected in the statistics of the OECD, with 695 of the 890 foreign bribery resolutions (about 78%) being concluded through non-trial resolutions.²⁶ The outcomes of non-trial resolutions vary. In some rare instances these result in a conviction, but in most cases a sanction, either in the form of a fine or confiscation, is imposed on the offender.²⁷ The level of the sanctions imposed in practice also varies across cases and jurisdictions.²⁸ An example is the 2008 case of Siemens AG, a multinational corporation based in Germany, which paid USD 1.3 billion in bribes to foreign officials in various countries.²⁹ Siemens AG reached a settlement with US and German authorities, culminating in USD 1.6 billion in penalties.³⁰ This case remains relevant as it is one of the "most prominent multi-jurisdictional foreign bribery cases".³¹

Penalties imposed in the context of non-trial resolutions are only seldom returned to the countries whose officials were bribed. A study looking at 395 settlements that took place between 1999 and mid-2012, showed that of the USD 6 billion imposed in penalties, "only about \$197 million, or 3.3 percent" was returned to the countries whose officials had been bribed.³²

A central issue is that these settlements often lack transparency as significant amounts of information regarding the crime, the offenders, and the evidence remain private. While some jurisdictions release most settlement documents on their websites, others are far more selective with the information they release. Although there has been a call for increased transparency through measures such as notifications to "all persons that may be affected by the settlement",³³ it is questionable as to whether this is enough to guarantee satisfactory victim awareness and involvement.

I.C. HARM IN A CORRUPTION CONTEXT

In order to determine who the victims of corruption are, we must first identify the types of harm suffered. In the corruption context, domestic jurisdictions recognise two main types of harm: direct and indirect harm.³⁴ Direct harm, or actual damages, are easily quantifiable as they stem “directly from the defendant’s wrongful conduct.”³⁵ Indirect harm, or consequential damages, “are damages that materialize indirectly from the defendant’s wrongful conduct.”³⁶ They are not as easily quantifiable because they can affect the whole of society—from economic impacts to political and social impacts. Because indirect damages are not easily quantifiable, many jurisdictions do not allow victims to recover these types of damages.³⁷

The concept of “social damage” has emerged within the context of anti-corruption law as a way to “identify, quantify and repair” the impact of corruption on ordinary citizens.³⁸ Social damage impacts citizens as a collective, not as individuals, and therefore can be a way to look at corruption’s impact on society as a whole.³⁹ This concept may be useful in cases where individuals are denied legal standing because they do not pose a “direct and specific interest,” meaning that the harm done to them is considered too indirect by the court to grant standing.⁴⁰

Social damage is also a way of classifying damage as something affecting the public interest and therefore something that could be taken up by public prosecutors using state resources instead of individuals who would otherwise have to pay for their own representation.⁴¹ Currently, both Argentina and Costa Rica directly provide for protection against social damage in their constitutions.⁴²

However, as a definition of harm this term lacks adequate precision. Social damage as a concept only covers indirect harm done to the whole of society as opposed to the direct harms done to specific victims. This is important because in order to adequately address harm, there must be a clarification of the type of harm addressed in order to identify who the victims are. If the victims are the whole of society, it is difficult to determine who should be compensated for the harm. As will be discussed in later sections, reparations for the social damages of corruption may present a useful way to involve victims in the fight against corruption.

I.D. DEFINING VICTIMS UNDER ANTI-CORRUPTION LAW

Under anti-corruption law, it can be difficult to pinpoint exactly who has been harmed by corruption and court proceedings may only accept a small fraction of the people harmed as “victims.”⁴³

This section discusses how victims and victim participation is laid out in anti-corruption treaties as well as in selected domestic legal systems. It then proceeds to a discussion of five categories of victims of corruption, namely, governments and public entities, legal persons, collective victims, individual victims, and shareholders. For each of these categories, it explains how anti-corruption law provides for their inclusion in proceedings and the limitations for each.

a) International and Regional Treaties

The most comprehensive and widely ratified international treaty on anti-corruption and bribery law, the United Nations Convention Against Corruption (UNCAC), does not define who qualifies as a victim in the corruption context. The closest the UNCAC comes to defining victims of corruption is in Article 35, which

obliges states to take measures to provide compensation to “entities or persons who have suffered damage as a result of an act of corruption.”⁴⁴

The travaux préparatoires (preparatory documents) to the UNCAC provide that the “expression ‘entities or persons’ includes States as well as legal and natural persons”.⁴⁵ The inclusion of States as victims is further affirmed by Article 53(b) of the UNCAC which requires States Parties “to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed.”⁴⁶ Therefore, “legal and natural persons” and a harmed “State Party” can be victims of corruption.⁴⁷ These terms are not clear as to who would qualify as a ‘person’ and omits states or governments who may not be parties to the UNCAC.

While many regional treaties on anti-corruption lack a definition of victims of corruption,⁴⁸ European Union (EU) Directive 2024/1260 published 24 April 2024 provides some clarity within the European context.⁴⁹ In an effort to bring together and strengthen existing rules, the EU issued a Directive on Asset Recovery and Confiscation which defines victims of corruption as: “a legal person, as defined in national law, that has suffered harm or economic loss as a direct result of any of the offences within the scope of this Directive.”⁵⁰ This definition requires states to define legal persons according to their own domestic law. The phrase “direct result” is used to describe the types of harm victims of corruption can suffer, excluding the possibility that victims who suffered indirect harm can be compensated.⁵¹

b) Types of Victims under Corruption Legislation

The United Nations Office on Drugs and Crime (UNODC)’s “Good Practices

in Identifying the Victims of Corruption” discusses three forms of legal liability used by states to punish corruption, including civil, administrative and criminal proceedings.⁵² Victims are often defined in domestic legislation as the “injured”/“harmed”/“aggrieved”/“damaged” party.⁵³ While governments can pursue criminal and administrative proceedings, individual victims are also able to pursue their claims in civil courts.⁵⁴

The use of civil proceedings can benefit victims who have been directly harmed by corruption and are seeking monetary compensation.⁵⁵ There is also a lower evidentiary threshold in civil cases than in criminal proceedings, making it easier to prove harm and obtain compensation.⁵⁶ However, civil proceedings too can be inaccessible for victims who faced indirect harm or do not have the resources to initiate proceedings on their own.⁵⁷

There are several types of victims recognised by domestic legislation in corruption cases across the globe. The victims that will be addressed by this report include foreign governments and public entities, legal persons, collective victims, individual victims, and shareholders as victims. The latter is discussed as a potential way to expand the definition of victims in anti-corruption law to encompass those who have only suffered indirect harm. For the purposes of this report, victims of public sector corruption are defined as those harmed by the abuse of public funds.⁵⁸

i) Foreign Governments and Public Entities

Many jurisdictions recognise foreign governments as victims in the context of foreign bribery.⁵⁹ Article 53(b) of the UNCAC provides for the return of assets to a State Party who has been harmed by acts of corruption,⁶⁰ with some jurisdictions only recognising States as victims in criminal

proceedings.⁶¹

The status of foreign governments as victims is particularly relevant in cases of transnational corruption, such as cases of misappropriation and embezzlement where assets are hidden overseas. Here, when assets are returned they usually go to the state of origin. In Switzerland, for example, the courts admitted Tunisia as a civil party to criminal proceedings against the former President Ben Ali, permitting the Republic of Tunisia to access the case files for the purpose of continuing the search for embezzled funds.⁶² Here, admitting the state of Tunisia as a party to the proceedings was essential for bolstering efforts to recover stolen funds and therefore increasing the chances of victim recovery of assets.

Included in the category of foreign governments is the subcategory of public entities. Public entities refer to individual government agencies whose public resources have been diverted.⁶³ Even though the effects of the diversion of public funds, or bribe-taking, may extend far beyond the government entity itself, public entities may also be considered victims. This is because money that was already allocated to certain government programmes or services can now no longer be used for its intended purpose and bribe-taking leads to preferential treatment favouring the bribe giver.

In some cases governments may enact policies encouraging corrupt acts and measures may be introduced to exclude those governments from victim status. The US for example considers governments of victim countries as "potential co-conspirators in the corruption".⁶⁴ This leads to restrictions when it comes to compensating the governments of states where the corruption took place.⁶⁵ A similar argument could be applied to

public entities, where the failure to prevent corruption by putting checks in place may undermine the victim position of that public entity.

ii) Legal persons

The category of legal persons encompasses various private actors such as civil society or non-governmental organizations (NGOs) as well as private companies.⁶⁶

NGOs can either be victims themselves or, on the condition of being granted standing, act on behalf of victims in corruption proceedings.⁶⁷ In practice, including NGOs in legal processes can be a way to manage victim participation, as they can represent multiple individual victims at once and may have access to greater resources.⁶⁸ Their role therefore may be more relevant in instances where the corruption in question has a wide-spread impact, such as when it impacts public goods and services.⁶⁹

NGOs can only act on behalf of victims on the condition that standing is granted, unless they themselves have faced direct harm. Jurisdictions have differing approaches to the granting of legal standing in these cases. In some countries they can intervene in cases "involving the interests they represent", whereas other countries employ "liberal standing requirements" known as "actio popularis".⁷⁰ This principle gives anyone standing to sue the government for not upholding the law.⁷¹

One major hurdle faced by NGOs working on behalf of victims are restrictions on their ability to access case files and evidence prior to being granted standing.⁷² Without this access, it is difficult, if not impossible, for NGOs to work on a case on behalf of a group of victims. For example, in Argentina two NGOs "defending [the] collective interests" of victims petitioned for access to the casefile in a case known as "Bribes

in the Senate".⁷³ The courts in Argentina decided that because the organisations had legal interests similar to those of the victims, they were, at a minimum, "potential victims" and therefore were granted partial access to the casefile.⁷⁴

NGOs can also be granted victim status. For example, in France the courts granted standing to NGOs in a series of criminal trials known as the "Ill-Gotten Goods" cases because they had been directly affected by significant actions of corruption as anti-corruption NGOs.⁷⁵

Participation of NGOs is not only important for aiding victim participation but may also combat any tendencies to push quick settlements due to time constraints or lack of resources, or for further corruption to take root in the form of "sweetheart deals" between judges or prosecutors and defendants, making NGO inclusion a very helpful tool in the fight against corruption.⁷⁶

The **private sector** is also impacted by corruption through acts such as nepotism, embezzlement of funds by employees, bribery and kickbacks.⁷⁷ While corporations can be the perpetrators of corrupt acts, they can also be harmed by the unfair competition as a result of other private sector corruption. Corporations that bribe to secure contracts or promote goods or services instead of engaging fairly in the free market "severely disadvantage industry competitors, potentially forcing them from the marketplace."⁷⁸ Therefore, corporations can become victims of the corrupt actions of their competitors.

Companies may be granted standing as victims of corruption if they have suffered direct harm, such as lost or withheld business opportunities due to corruption. An example can be found in the case of *Newmarket Corporation v Innospec Inc.* before a U.S. Court in 2011.⁷⁹ The Newmarket Corporation alleged it had

suffered losses as a result of bribes paid by the defendant corporation to Indonesian and Iraqi officials in order to preserve the defendant's monopoly in those markets, resulting in a negative impact on the sales of Newmarket Corporation's competing product.⁸⁰ The civil action brought by Newmarket Corporation resulted in a settlement of USD 45 million.⁸¹

iii) Collective victims

The category of "collective victims" refers to the collective rights of a group of individuals, or victims, in a society.⁸² This classification references a group of people who often suffer diffuse harm and require representation in cases where any one individual member of the group has not suffered the direct harm necessary to acquire standing as in individual.

In Costa Rica, for example, the Attorney General's Office and the state-run telecommunications company acted as victims in both civil and criminal proceedings against members of a private telecommunications company accused of bribery and the Costa Rican politicians and government officials who accepted those bribes.⁸³ Social damages for the harm of the collective victims (the people of Costa Rica) was pursued in the civil case where the government alleged that the corrupt behaviour led to a "loss of prestige suffered by the Nation of Costa Rica."⁸⁴ The funds paid out during the settlement to the Attorney General and the state-run telecommunications company were incorporated into the government's budget.⁸⁵

This classification of collective victims however has a similar problem to the question of social damages: it is imprecise and leads to proceedings where the harm to society is overly generalized. If Costa Rican consumers were indirectly harmed by the bribery with higher monthly phone

bills, for example, a settlement where the government takes the money without a specific mechanism to redistribute the funds fairly may not be the best way to compensate the average Costa Rican. It may be better if victims are recognised as a class to whom any settlement funds are directly paid out.

iv) Individual Victims

Individual victims are those who have been personally harmed by acts of petty corruption either directly or indirectly. Several states recognise the rights of individual natural persons as victims of corruption.⁸⁶ These are citizens who are directly, but more often indirectly, affected by acts of corruption, whether through deterioration of infrastructure, lack of basic healthcare services, access to education and/or the impacts of corruption on economic growth.⁸⁷

For example, this can include corruption in education, which directly harms individual students who personally face the consequences in the form of rigged admissions systems, organized cheating on examinations, the diversion of school supplies, and even the exchange of sexual favours for preferential treatment.⁸⁸ The harm to the individual student is manifold, ultimately undermining a student's education which can lead to a reduction in their chances of social mobility and financial stability.⁸⁹

The issue when it comes to the possibility of victim participation in civil or criminal proceedings is that it is typically required for those victims to have suffered direct harm, which is often not the case for individual victims.⁹⁰ This is typically easier to prove in bribery cases, but extremely difficult in cases of embezzlement, for example.

v) Shareholders

Shareholders as a classification of victims has the potential to pave the way for greater legal recognition of victims who have suffered from indirect harm as a result of corruption. Shareholders are individuals or entities who own at least one share of a company.⁹¹ The success or failure of a company directly impacts the financial interests of its shareholders. This means that shareholders are affected by any corruption that negatively impacts the company. Recent successful litigation in the United States demonstrates that victims who suffer indirect harm from corruption may have standing to sue.⁹²

In 2019, the U.S. District Court for the Eastern District of New York held that around fifty former shareholders of the Canadian mining company, Africo, were victims under the Federal Mandatory Victims Restitution Act for losses "incurred as a result of Defendant's bribery of corrupt officials in the Democratic Republic of the Congo".⁹³

The Mandatory Victims Restitution Act requires the court to grant victims restitution when certain crimes have been committed, such as an "offense against property" relevant for the purposes of prosecution under the Federal Corrupt Practices Act, in this case.⁹⁴ The court reasoned that simply the loss of "a promising opportunity [. . .] even where there was no guarantee the opportunities would have resulted in profit" was sufficient harm to warrant legal restitution.⁹⁵ A "promising opportunity" referred to the development of the Kalukundi mine and its potential value, all of which was lost to Africo after the rights to the mine were stolen through acts of corruption.⁹⁶

In 2006, an Africo employee sued the company in the Democratic Republic of the Congo (DRC) for wrongful termination and

was awarded a USD 3 million judgement.⁹⁷ The court then allowed the ex-employee to auction off Africo's interest in the Kalukundi mine and, unknown to Africo, the ex-employee schemed with an Israeli billionaire to acquire a majority stake in Africo, and thus the mining rights, by bribing members of the DRC government.⁹⁸ In this case, the shareholders did not individually own the company but instead owned fractions of Africo whose mining rights were stolen.⁹⁹ Therefore, while this case opens the door for shareholders to sue for damages when the company they own shares in is involved in corruption, it is also a promising prospect for cases where a group of victims who have suffered a common harm.

I.E. CONCLUSIONS

Corruption is far from a harmless or victimless crime. One of the core challenges, however, lies in anti-corruption law's difficulties in establishing legally identifiable categories of victims who have been affected by corrupt acts. The effects of corruption are often diffuse and immeasurable. In some cases, individuals may not even be aware of the fact that they are victims of corruption.

The existing anti-corruption legal framework, while novel in the procedures it mandates regarding criminalization and asset recovery, is lacking when it comes identifying and involving victims in these processes. The gaps within the framework of anti-corruption law have been a reason for some victims to turn to alternative means to better achieve standing and to receive compensation in these processes. While some avenues for victims to be identified have been discussed, as well as some novel ideas drawing on decisions around shareholders — a category that may open the door for individuals who have faced indirect harms as a result of

corruption to receive standing — anti-corruption law is still likely to only offer limited avenues for victim participation and compensation if read alone.

An alternative avenue though already exists: international human rights law, which may offer greater opportunities for victim inclusion, and may already oblige governments to take a more victim centred approach to asset recovery. This will be explored in further detail in the second half of this report.



**PART II:
INTERNATIONAL
HUMAN RIGHTS
LAW AND VICTIM
PARTICIPATION**

II. A. THE INTERACTION BETWEEN INTERNATIONAL HUMAN RIGHTS LAW AND CORRUPTION

There is no explicit right in existing international and regional human rights treaties to be free from corruption. Existing human rights instruments do not mention corruption, establish a right to be free from it or include explicitly it as a breach of human rights. As these instruments do not address corruption, the right to participation for victims in anti-corruption proceedings is not to be found in the actual text of human rights treaties.

However, human rights treaties do contain several provisions that are of relevance in the anti-corruption context. The right to victim participation in all aspects of anti-corruption proceedings can find legal basis in the right to an effective remedy (Article 2 of the International Covenant on Civil and Political Rights (ICCPR)) and the related due process rights, which guarantee fair, independent and impartial judicial proceedings. These international and regional rights and sources provide excellent support for greater victim inclusion and consultation, beyond that found in anti-corruption law.

The provisions of international human right treaties are supplemented by the work of human rights treaty bodies, such as the Human Rights Committee (HRC), as well as the non-binding Recommended Principles produced by the Office of the High Commissioner for Human Rights (OHCHR), which are guidelines for the asset recovery process. Other non-binding human rights instruments in the United Nations (UN) system, such as the Sustainable Development Goals (SDGs) can further supplement the provisions of human rights treaties. This is especially the case given the recognition of the importance of anti-corruption measures in achieving Goal

16, regarding the promotion of peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Both the reduction of corruption and bribery, as well as an increase in the return and recovery of stolen assets are considered targets to achieve the Goal.¹⁰⁰

Additionally, victim participation and a human rights approach to anti-corruption has been promoted across several UN bodies. The Office of the High Commissioner for Human Rights (OHCHR) has advocated for a victim-centred approach to corruption. Under their Recommended Principles, which address the relationship between human rights and anti-corruption law, they advise a transparent, accountable and *participatory* approach to addressing corruption, which should involve society in the asset recovery process. This is to ensure that the funds are used in a manner that works towards the realization of human rights and meets the needs of victims, where possible.¹⁰¹ The Principles further suggest that members of society may play a role in identifying victims and the harm that could be remedied by the return of stolen assets and contributing to decision making on asset return and their use.¹⁰²

II.B. INTRODUCTION TO THE RIGHT TO AN EFFECTIVE REMEDY AND VICTIM PARTICIPATION

Victim participation in asset recovery is a procedural matter. Victims can only actively participate if the rules on procedure define the conditions under which they can exercise their rights. A key notion to enable victims to participate in legal proceedings is the right to an effective remedy which, together with the right to a fair trial, form the guarantees known as "due process rights".

A victim centred reading of these rights can support victims to play a more active role in the proceedings. This section focusses first on explaining the exact contents of the right to an effective remedy and second on how it manifests in each step of the proceedings in relation to asset recovery.

a) Definition of the Right to Effective Remedy

The right to an effective remedy aims to ensure victims can obtain a remedy for the damage they have suffered. It is meant "to 'wipe out', as far as possible, the injury and satisfy the victim of the violation by effectively and adequately addressing the alleged violation".¹⁰³ In this sense, it is a right that all victims have, no matter the source of the harm they suffered. It must therefore be guaranteed in cases of corruption as well.

This section will map out the international and regional legal instruments that protect this right. Then, a link will be established between what the right to an effective remedy protects, and to what extent it supports the participation of victims in the asset recovery procedure.

i) Instruments Protecting the Right to an Effective Remedy

At the UN level, the right to an effective remedy is protected under both Article 8 of the Universal Declaration on Human Rights and Article 2(3) ICCPR. The ICCPR states that parties must ensure that "any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity". The explicit mention of persons acting in an official capacity is especially relevant to corruption proceedings, as corruption involves public officials and the misuse of their office/ powers.

The UNCAC, although it is the main UN source on corruption, does not provide extensive guarantees of effective remedies for victims, as discussed earlier.

Further guidance is however found elsewhere: for example, in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This Declaration provides guidelines for cases where a victim has, 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 are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power". Bribery, embezzlement and misappropriation of funds being recognised as crimes, the Declaration can thus apply to victims of corruption.

Point 4 of the Declaration reiterates the right for victims to obtain remedies, and that they "are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered". Points 8 through 13 explain in further detail the nature of the remedies that victims can be awarded.

On the one hand, the Declaration sets out conditions for the fair restitution of victims, which "should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights". On the other hand, the Declaration provides information on compensation for that harm, with a focus on physical harm — less relevant for corruption-related cases.

The right to an effective remedy is also enshrined in regional instruments. Some provisions are straightforward. Article 23 of

the Arab Charter on Human Rights uses the same wording as the ICCPR, down to the mention of violations committed by public officials. General Principle number 5 of the ASEAN Human Rights Declaration similarly states that "every person has the right to an effective and enforceable remedy, to be determined by a court or other competent authorities, for acts violating the rights granted to that person by the constitution or by law". In the European Union, Article 47 of the EU Charter of Fundamental Rights guarantees the right to an effective remedy as follows: "everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article". Another disposition relating to the obligation for Member States to provide victims with effective remedies can be found in Article 19(1) of the Treaty on the European Union.

Other regional provisions can be less explicit. The American Convention on Human Rights, for example, requires Member States to ensure anyone can claim remedies, and see them enforced when they are granted. Though the notion of effective remedy is not explicitly mentioned, the wording implies it: one of the requirements for a remedy to be effective is necessarily that it is enforced. The African Charter on Human and Peoples' Rights (ACHPR) has no explicit mention of a right to an effective remedy. However, such a right has been inferred by the African Court on Human and Peoples' Rights (ACtHPR) in its case law, and is both grounded in the substantial provisions of the Charter (in the general provisions of Article 1 ACHPR and in the due process rights found in Article 7), and extrapolated from the role of the Court as sole institution established under the Charter to oversee its respect.¹⁰⁴ An example of the Court acknowledging victims' rights to effective remedies can be

found in the *Mtikila v. Tanzania* (Reparations) ruling, which itself refers to an official statement of the African Commission on Human and People's Rights.¹⁰⁵ Here, the court quotes the statement: States party to the ACHPR should "take measures to ensure that the victims of human rights abuses are given effective remedies".¹⁰⁶ Though the Charter does not expressly recognise this right, ACtHPR case law therefore does support its existence.

The regional framework that provides the most thorough protection of the right to effective remedies for victims of corruption is that of the Council of Europe (CoE). As a basis, the right to an effective remedy is enshrined in the European Convention on Human Rights (ECHR) under Article 13. This Article shares similar wording to that of the ICCPR. Besides, the CoE has other instruments specifically protecting the victims of corruption. The Civil Law Convention on Corruption highlights the importance of awarding victims fair compensation for the prejudice they have suffered in its Preamble and enshrines their right to an effective remedy in Article 1. Article 8 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime similarly acknowledges victims' right to an effective remedy. The Criminal Law Convention on Corruption does not explicitly mention this right but does mention the need for an "effective follow-up mechanism" to proceedings on corruption in its Preamble.

Each major regional body thus protects, to some extent, the right to effective remedy. Importantly, each of these frameworks gives their parties some leeway in how they apply these dispositions in their domestic systems. The substance of these dispositions must however stay intact. Procedural differences may exist so long as they do not deprive the right to an effective

remedy of its substance.

ii) Implications of the right to an effective remedy in asset recovery cases

The right to an effective remedy naturally requires that remedies must be effective. This aspect is complex and is linked to other victims' rights. The CoE guide on Article 13 ECHR highlights the ways in which Article 13 (the right to an effective remedy) links back to other rights protected under the Convention. The right to access information as protected under Article 2, for example, is presented as an "aspect of effective remedies aimed at establishing the knowledge necessary to elucidate the facts", and thus, a corollary to the right to an effective remedy. The right to an effective remedy can then be perceived as giving an overall structure to the procedure. It is akin to a goal to achieve and provide to the victims. In the example of access to information, it allows victims to be better prepared, which in turn enables them to present their situation more accurately to the judge, and in turn should help them to obtain (1) reparation for the harm they have suffered and (2) a remedy that better fits their situation, i.e. one that is effective.

Moreover, the ECHR Guide highlights the need for a remedy to be "effective in practice as well as in law", thus highlighting, for instance, the importance of the proper enforcement of a remedy as granted by a court. This is important, as the lack of it has sometimes been highlighted as a more pressing issue for the judiciary than corruption even was.¹⁰⁷ To the extent that initiatives involving victims in the asset recovery procedure have shown success in helping properly compensate victims, they can be seen as an extension to the right to effective remedy.

These parallels make it possible to establish a human rights basis for victims' participation in proceedings. Victim

participation in proceedings is a component of the right to an effective remedy, which in turn requires the exercise of other rights.

b) Procedural rights for victims of corruption under human rights law

Given the existence of the right to an effective remedy and related due process rights, it is clear then that these also have to be applied to the context of corruption proceedings. There are three stages to these proceedings: the pre-proceedings stage, the proceedings themselves, and the post-proceedings stage.

The pre-proceeding stage involves rights for victim inclusion before legal proceedings for asset recovery have begun. In order for victims to later recover damages, for example, certain guarantees must be offered ahead of the proceedings. The right for victims to access information has been correlated to the right to an effective remedy, but it also includes rights that would facilitate their access to courts or otherwise prevent impediments to their access to courts. In the case of criminal proceedings where victims must be *parties civiles* to claim remedies, for example, the right to an effective remedy could be interpreted as requiring them to be made aware of the proceedings and choose for themselves whether they want to participate or not.

During proceedings, victims' rights may require States to facilitate their participation in the actual proceedings for asset recovery, be it a full trial or a settlement. Bribery, misappropriation and embezzlement, as presented earlier in this report, can lead to three types of proceedings: administrative, criminal, and civil. Foreign bribery cases, however, most often lead to settlements. This part of the corruption proceedings is singularly opaque and currently does not offer many rights to victims. In a 2017 review on the implementation of the

UNCAC by State Parties, the UNODC listed the issue of victim participation in proceedings under Article 32 — which provides for the protection of witnesses, experts and victims during the proceedings. In its detailed review, the UNODC noted that some state parties did not provide sufficient information to properly assess the extent of the guarantees provided, and some even had no such guarantees at all.¹⁰⁸ This echoes criticisms expressed by the UNCAC Coalition in 2013, that proceedings were not devised in a way that allowed victims to actively participate in the proceedings¹⁰⁹ — criticisms that were then made again in 2023, when the Coalition commented that many States still lacked provisions allowing victim participation during the proceedings.¹¹⁰ Examples of how victim participation could manifest at this stage are provided by the UNODC: submitting evidence to include in the case file for examination in court, presenting an opinion concerning the charges and the punishment, being offered a free copy of the official record stating the infringement, written witness statements and expert reports. These examples are all taken from state practice and illustrate which forms the notion of “victim participation” during the proceedings can take according to the UNODC.

The post-proceeding stage involves victims’ right to participate in proceedings governing the return of the assets after formal proceedings have ended, such as monitoring or auditing of the recovered funds. The right of victims to participate post-proceeding can be inferred from the protections that the right to an effective remedy implies. The nature of the awarded remedy depends on the nature of the harm suffered, and how the court suggests it can be repaired. For example: restitution may be a suitable remedy to the harm caused by the misappropriation of public funds. Bribery, however, causes harm

that cannot be repaired by restitution, but rather by compensating the victims for the prejudice they have suffered. Similarly, the extent to which victim participation in post-proceedings is necessary to ensure the awarded remedy is effective depends on the case. Other rights may also be called upon depending on the harm itself, that may be more specific to the facts of the case. That impacts the role victims are allowed to play at this stage. Further analysis of Courts’ stances on the interpretation of effective remedy will be provided later in the report.

As a baseline, the right to effective remedy, from which other victims’ rights are derived, supports victim participation at all stages of the proceedings. The following section will give further details on the exact rights that these guarantees are intended to provide victims.

II. C. VICTIM INCLUSION IN HUMAN RIGHTS LAW

International and regional human rights bodies have noted several specific victim participation rights that stem from the right to an effective remedy and due process rights. These rights require victim participation in the pre-proceeding stage, during proceedings and post-proceedings. The pre-proceeding stage involves rights for victim inclusion before legal proceedings for asset recovery have actually begun. The rights for victims during proceedings involves rights for victims to participate in the actual proceedings of asset recovery, whether a trial or settlement. The post-proceeding stage involves victims’ right to participate in proceedings governing the return of the assets after formal proceedings have ended, such as monitoring or auditing the recovered funds.

The inclusion of victims in the asset recovery processes varies significantly across different domestic legal systems,

international courts, and regional mechanisms. Whereas overarching principles and international human rights law provide a legal basis for victim inclusion at every stage of legal proceedings, practical interpretation often diverges.

By examining multiple jurisdictions, this section aims to i) outline concrete examples where victim participation was enforced in different systems and regions in accordance with human rights law, ii) analyse how and to what degree victim participation is implemented, and iii) evaluate the varying degrees of success concerning these approaches.

This part is organized into three main sections:

- **Pre-Trial Rights**
This section addresses the rights of victims prior to judicial proceedings being initiated, including the right to information, the right to effective investigations, statutes of limitations and the legal standing of victims.
- **Trial Proceeding Rights**
This section evaluates rights for victims to meaningfully participate in trial proceedings, including presenting evidence and submitting observations.
- **Post-Trial Proceedings Rights**
This section focusses on the roles of victims following the conclusion of a trial by discussing victim participation in reparation decisions, as well as monitoring and auditing the use of returned assets.

a) Pre-trial Rights

International and regional human rights bodies have consistently interpreted

the right to an effective remedy and due process to include certain rights for victims before proceedings have formally begun. This is vital in ensuring that victims can achieve justice and that they have access to the necessary means to do so. Pre-trial rights for victims of corruption allow them to be provided with the necessary information or even given access to the courts. Without these rights, victim participation would not be able to meaningfully occur as they would be excluded from the proceedings before they have even begun.

This section will examine the various pre-trial rights that allow for victim participation in human rights law and how this can be used to provide a legal basis for victim participation in anti-corruption proceedings. It will begin with a discussion of the right to information and the right to investigate. This will be followed by an explanation of the jurisprudence on statutes of limitation and standing. This follows the order in which these issues arise in the pre-trial period.

i) Right to information

The right of access to information is a fundamental human right recognised comprehensively under international law. It plays a meaningful role in ensuring victims can engage in any cases concerning them, seek justice, and claim their rights by having access to crucial information regarding the case and procedures, which contributes to accountability and transparency.¹¹¹ Such a right underpins democratic values and ensures that information held by public authorities can be acquired for the benefit of the public as a whole.¹¹² Given that corruption cases can involve the theft or misappropriation of public funds, often aimed at providing resources for the benefit of society, ensuring victims at large have information pertaining to the situation and their case is part of this right. Beyond its general role in guaranteeing transparent

governance, access to information prior to legal proceedings empowers victims to make informed decisions before exercising their rights. In cases of corruption, where public funds often intended for societal benefit are stolen or misappropriated, victims need information about investigations, legal avenues, and negotiation processes, in order to ensure they grasp the situation. The right to access to information is recognised under various international law instruments and jurisprudence, and is often tied to broader human rights principles, such as freedom of expression, the right to participate in public affairs, and rights pertaining to access to justice.

Article 19(2) ICCPR states that the right to freedom of expression includes the 'freedom to seek, receive and impart information and ideas of all kinds'.¹¹³ This is reflected in the Human Rights Committee's General Comment No. 34 on Article 19 ICCPR, which highlights the importance of the right of individuals to access information held by public bodies.¹¹⁴ Moreover, the General Comment indicates that 'State parties should proactively put in the public domain Government information of public interest'.¹¹⁵ The right to have access to information is also reflected in regional human right treaties, such as the ECHR.¹¹⁶ Article 10 of the ECHR highlights the importance of freedom of expression, including the right to receive and impart information without interference by public authority. This provision has been broadly interpreted by the European Court in light of recent developments to account for the right to receive information.¹¹⁷ Article 13 of the ECHR, referring to the right to an effective remedy, has also come to be interpreted to incorporate the right to access to information and the establishment of truth for victims of alleged terrorist violations.¹¹⁸ Furthermore, Article 9 of the African Charter on Human

and Peoples' Rights states in paragraph 1 that 'every individual shall have the right to receive information', thus placing emphasis on the right of access to information directly.¹¹⁹

Under the UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law adopted by the General Assembly in 2005, under Section VII, specifically encourage states to develop procedures in order to facilitate groups of victims' rights to receive reparation and have equal access to justice.¹²⁰ There is a need to provide, as stated: 'access to relevant information concerning violations and reparation mechanisms'.¹²¹ This principle emphasises the importance of access to justice and access to remedies, which supports a framework of readily available information.

Access to information is recognised as a prerequisite for the effective exercise of other rights, which can include participation in public life and access to justice. The 2018 report of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression emphasises the importance of access to information as a fundamental human right, by stressing states' duties to proactively disclose information of public interest, such as budget allocations and audit reports, as well as ensure any restrictions on access to informational align with international human rights standards.¹²² The proactive disclosure of information of public interest can be critical in anti-corruption cases, where transparency becomes indispensable in ensuring accountability. In practice, this might involve actions such as regularly publishing detailed government spending records or making public contracting documents freely accessible.

Regional commitments to the right of access to justice, such as the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019), place emphasis on the right to access information and the obligations of states to provide information held by public authorities, particularly in cases where it is deemed essential in order for victims to seek justice.¹²³ This is regarded as crucial for victims to adequately engage in the legal and administrative process.

In the case of *Toktakunov v. Kyrgyzstan* (2011) before the Human Rights Committee, the claimant, a human rights lawyer working for an NGO, argued that his right to seek and receive information under Article 19 ICCPR had been violated.¹²⁴ This was the result of national authorities refusing to divulge information pertaining to the prison population and the individuals sentenced to death. This information was sought by the human rights lawyer with the purpose of reporting on the use of capital punishment and prison conditions from a human rights lens. The HRC found that the refusal of the state was in violation of Article 19 ICCPR, as the 'general public has a legitimate interest in having access to information on the use of the death penalty', thus stressing the importance of information of public interest unless compelling reasons exist to withhold it.¹²⁵

Though this case dealt with information regarding the death penalty in Kyrgyzstan, the principles and protected rights underpinning it can extend to the realm of corruption, where victims and affected communities face substantial informational barriers. This is particularly relevant in cases involving public officials or public resources, where the state holds critical information. In cases of bribery, usually concluded through non-trial resolutions, victims can often comprise of communities and society at large, deprived of essential

services, and are usually excluded from settlement decisions. A lack of information can hinder understandings of the scope of the problem, as well as steps for remedial action, and lacks justification under Article 19 ICCPR, as outlined in the Toktakunov case. This is particularly strengthened for collective victims of corruption, as information pertaining to the facts of the case, such as regarding state budget allocations, can be regarded as being of public interest in the case of misappropriated or stolen assets intended for societal benefit. Moreover, in cases of corruption resulting in formal proceedings, such as in cases brought for embezzlement and misappropriation, victims, ranging from foreign governments to individual persons, ought to be informed in advance in order to be part of the legal process and assess whether the extent of their harm was addressed. This is also relevant in cases of assets being hidden abroad, where inter-state agreements come into play, as information about the different jurisdictions involved can be crucial in understanding the interplays of the case and the implications for victims.

In the case of *Tagayeva and Others v. Russia* (2017) before the ECtHR, the Court, despite finding no violation of Article 13 ECHR, highlighted the importance of accessing information and establishing the truth for victims, as enshrined under Article 13.¹²⁶ This case is of particular relevance as it underscores the rights of victims to access information, prescribed under the right to an effective remedy under the ECHR, which can be applied for victims in a wide array of cases. The principle in Tagayeva can analogously support arguments in corruption cases. Despite the lack of physical harm to most victims of corruption, the ECtHR emphasized the importance of accountability for harm affecting society, as is often the case for victims of corruption suffering widespread and diffuse harm.

Thus, the 'right to truth'- understood as the right to have access to pertinent information in cases of human rights abuses, can become a normative benchmark requiring transparency from states.

Finally, in *Beneficiaries of the Late Norbert Zongo et al. Burkina Faso* (2011), the African Court of Human and Peoples' Rights found Burkina Faso in violation of Article 9, on freedom of expression and the right to seek and receive information. The violation stemmed from the state's failure to investigate thoroughly the death of an investigative journalist. By failing to uncover the circumstances surrounding his death or disclose information pertaining to who might be responsible, authorities failed to inform the victim's family, and the public at large, or crucial facts that would have provided clarity on potential government misconduct.¹²⁷ The court emphasized the fact that states have both a negative obligation to refrain from obstructing access to information, but also a positive one to uncover and disclose relevant information to a case. This illustrates principles applicable to the anti-corruption framework, namely that states cannot remain passive when information of public interest is at stake, with victims having a legitimate interest in the outcome.

iii) Right to investigate

The right to have a case pertaining to violations of human rights effectively investigated is another cornerstone of international human rights law.¹²⁸ As a pre-trial issue, it underpins whether a case can- and should- proceed to judicial proceedings. In this sense, the right creates a positive obligation on states to investigate human rights violations before formal charges are brought.¹²⁹ Robust and thorough investigations establish the factual basis for a potential trial; failure to investigate can undermine both the

fairness and legitimacy of the judicial process. Accordingly, this right plays a crucial role in ensuring accountability by identifying wrongdoing and systemic failures and, thus, upholding the rule of law. Moreover, the right also places an emphasis on the importance of victim participation throughout the entire process, as they can provide valuable insight into the circumstances of the case. Whereas a standalone 'right to have a case investigated' is not a separate human right in international treaties, the obligation for states to carry out thorough and impartial investigations into certain violations is part of other human rights and established in international jurisprudence.¹³⁰ Particularly in the anti-corruption context, where victims are affected by widespread and diffuse harm, it is important to ensure their involvement in the investigative process, to achieve transparency and effective restoration of rights and public trust.

The right to investigate emerges as a state duty that supports the realization of other rights.¹³¹ The prohibition of torture, for instance, found in Article 7 of the ICCPR¹³² and the Convention against Torture,¹³³ as well as regional instruments such as Article 3 of the ECHR¹³⁴ or Article 5 of the ACHPR,¹³⁵ has been widely interpreted to presuppose a positive obligation of states to have competent authorities thoroughly investigate a case. HRC General Comment No. 20 on Article 7 ICCPR reaffirms that states must ensure allegations of torture are promptly and impartially investigated by competent authorities.¹³⁶

This is also the case for the right to life, enshrined in Article 6 ICCPR, as well as regional human right treaties such as Article 2 ECHR and Article 4 ACHR. The right to life has been interpreted to give rise to procedural requirements for states to adequately investigate arbitrary killings. More particularly, enforced

disappearances have been interpreted in light of fundamental human rights, such as the right to life and prohibition against torture, and have been extensively linked with the positive obligation of states to duly investigate.¹³⁷ Article 12(1) of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) states: 'Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation.'¹³⁸ Moreover, in accordance with Article 24(1) of the Convention, victims of forced disappearances extend to 'disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance'.

Furthermore, UNHRC General Comment No. 31 on the General Legal Obligations on State Parties also underscores the obligations of states parties to investigate violations of the Covenant, as states: 'a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities'.¹³⁹ This, interpreted in light with the need for victims to have access to the judicial and administrative mechanisms to address claims of right violations (paragraph 15), creates a framework which can be used for victims of corruption and advocate for their inclusion in investigation stages. Judicial and administrative channels through which victims can address the alleged violation of their rights can vary depending on the state's legal system and the type of offence involved. The obligations in

General Comment No. 31 can serve as a basis for victims of corruption to demand meaningful participation in investigations, by contributing to crucial evidence and ensuring transparency, as well as to the restoration of public trust.

The landmark case of *Velasquez Rodriguez v. Honduras* by the Inter-American Court of Human Rights 1988 (IACtHR),¹⁴⁰ involved a Honduran university student and social activist who was abducted as part of a broader pattern of state enforced disappearances. As the family was unable to effectively receive remedies under domestic law, due to local authorities failing to investigate the case thoroughly or hold those responsible to account before a domestic court., the IACtHR emphasized the importance of state organs, particularly the judicial and law enforcement agencies, to conduct effective and genuine investigative efforts and remedies for the victims, as well as their families. Specifically, the case states: 'the duty to investigate, the duty to prevent, is an obligation of means or behaviour, not of result'.¹⁴¹ This signifies an obligation of states to make sincere and effective efforts at investigating violations, despite the lack of guarantees for a particular outcome, such as identifying the perpetrators. The Court applied Article 4 ACHR (right to life), as well as Article 5 ACHR (prohibition of torture and inhumane treatment) to support its assessment. Moreover, the case reflected subsequent principles later developed in the International Convention for the Protection of All Persons from Enforced Disappearance referring to the recognition of victims' families as affected members, as well as the broader social impact that enforced disappearances can have on communities.

The principles established in *Velasquez Rodriguez v. Honduras*, in particular the duty of states to conduct genuine

investigations and the recognition of extended harm beyond direct victims is relevant in the corruption context. The case emphasized that states have an obligation of means, requiring them to make sincere and effective efforts to investigate violations, even when specific outcomes, such as identifying perpetrators or recovering stolen assets, cannot be guaranteed. States must deploy competent judicial authorities to ensure comprehensive and impartial investigations into cases of corruption. This obligation is also reinforced by UNHRC General Comment No. 31,¹⁴² which underscores the importance of ensuring access to judicial and administrative channels to uphold accountability and transparency during settlements and non-trial resolutions. This is especially critical in bribery cases, which are often resolved through settlements or non-trial mechanisms that exclude public and victim participation. Moreover, Velasquez Rodriguez, along principles later developed in the ICPPED, acknowledged the widespread and diffuse harm enforced disappearances can have. This broad concept of victimhood can shed an important insight into understanding corruption scenarios, where the harm is often diffuse, and tends to affect individuals, their families, legal persons, collective societies, as well as foreign governments. Despite the indirect effect, there is differentiated negative harm that corruption inflicts upon various actors, which can range from the loss of essential public services, loss of jobs, infrastructure decay, unfair competition, as well as lack of trust in the government and so on. Similarly, enforced disappearances unveil a wide network of consequences, from the direct victims to their families and communities, as well as minimized trust in the government for its failure to prevent and adequately investigate.

The UNHRC undertook a legal assessment

in the case of *Bautista de Arellana v. Colombia* (1995),¹⁴³ where the Committee applied human rights such as Article 7 ICCPR (prohibition against torture and inhumane treatment) as basis for their argumentation. The case involved Ms. Bautista, who alleged that her husband was the victim of forced disappearance at the hands of state agents. The Committee concluded that Colombia had failed to meet its obligations under the ICCPR by failing to adequately investigate the disappearance and hold those responsible accountable. This can mirror cases of corruption at the hands of public agents that are part of the government, and highlight the delicate situation of a state being obliged to take action against its own agents. Nevertheless, in the Bautista case, the Committee emphasized the right to a fair trial for victims and the need for states to investigate such cases, as follows: 'The Committee considers that the State party is under an obligation to investigate promptly, thoroughly and effectively through independent and impartial bodies the disappearance of Mr. Bautista, to inform his wife and family of the results of its investigation, and to prosecute, try and punish those held responsible for his disappearance'.¹⁴⁴

Finally, in *McKerr v. the UK* (2001), involving the death of a man shot by police officers, the ECtHR focused on the importance of transparency and victim participation in the judicial process, by stating that the victims' families need to have a high degree of involvement to safeguard their interests, including the right to justice and reparation, and that they ought to be provided with information, which links back to the right to access information.¹⁴⁵ The Court took note of the deficiencies in the applicant's ability to participate in the investigations, noting 'that the applicant was not able to participate effectively in the investigation proceedings. He did not have access

to the investigative materials and was not informed about the progress of the investigations. This lack of involvement of the applicant in the proceedings fails to comply with the requirements of Article 2 of the Convention' and subsequently finds the violation of Article 2 of the ECHR for 'lack of effective investigation into the circumstances'.¹⁴⁶ This outlines the importance of victim participation in the investigation proceedings, which can be applied for victims of corruption, and underscored the importance of their insight and recognition in gathering evidence for the case.

iii) Statutes of Limitations

The ECtHR, which rules on applications alleging violations of the rights in the European Convention on Human Rights (ECHR), has taken the view that the right to a fair trial (Article 6, ECHR) provides significant space for victim consideration and participation pre-trial. This is particularly relevant in relation to statutes of limitations.

The majority of offences in domestic law will include a provision that limits the amount of time after an event which legal proceedings can be initiated. These provisions are called a statute of limitations and legal proceedings cannot be brought after that specified period occurs. Therefore, before even considering the right to victim participation in proceedings, it is necessary to examine what human rights law has said in relation to victims' rights and statutes of limitations.

A statute of limitation can limit a victim's right to an effective remedy, which is guaranteed under Article 17 of the ICCPR and Article 13 of the ECHR, as well as the right to a fair trial, by preventing access to the courts.¹⁴⁷ As noted by the ECtHR in *Jann-Zwicker and Jann v Switzerland*, such limitation periods can prevent access to

the courts and breach the right to a fair trial. This case concerned an individual who had been exposed to asbestos in his home from a nearby factory.¹⁴⁸ The individual subsequently died from asbestos-caused cancer and his family initiated proceedings for damages.¹⁴⁹ However, domestic law had a limitation period for such proceedings that began from the end of the harmful act in question. This meant that the limitation period began from the time that the victim was exposed to asbestos, not from the time that they gained awareness to the harm caused, such as a cancer diagnosis.¹⁵⁰ By starting the limitation period when the victim was unaware of the breach of their rights, the statute of limitation violated the right to a fair trial under the ECHR as access to the courts was prevented.¹⁵¹

This has important implications for anti-corruption laws and victim participation. Anti-corruption law would normally contain a statute of limitations and there has been some work therefore in existing anti-corruption treaties to limit the harmful impact of limitation periods. Under Article 29 of the UNCAC, it is noted that where appropriate the statute of limitations established for UNCAC offences must be long. Where the individual accused of a corruption offence has evaded justice, the state of limitations must be suspended or longer.¹⁵² The EU's Directive 2024/1260 also allows confiscation of assets where the relevant corruption offence in domestic law has a limitation period of below 15 years and has expired after the initiation of proceedings.¹⁵³ This recognises that, given the nature of corruption and the long period of time that may elapse between proceedings being brought and the corrupt act occurring, statutes of limitations cannot be overly short, preventing a remedy from being brought or from assets being returned.

The ECtHR's ruling aids in this. Human

rights law has affirmed that limitation periods cannot operate to prevent access to the courts where the victim is unaware of the harm caused to them.¹⁵⁴ These limitation periods cannot prevent victims of corruption from accessing procedures if the period begins before they were aware of the corrupt acts. This is vital for ensuring victims can access courts, given that most do not know they are victims of corruption until after the corrupt acts have occurred and come to light. Human rights law strengthens access to the anti-corruption proceedings for victims, beyond that of existing anti-corruption law.

iv) Standing

Standing is often a condition that needs to be satisfied before civil and criminal legal proceedings are brought. It requires that the individual bringing the claim can demonstrate a sufficient connection to the alleged harmful act. Determining if the individual bringing the claim has standing to do so occurs before legal proceedings occur, making standing a pre-trial issue. Given the importance of both individuals and CSOs in anti-corruption proceedings, it is necessary to address the possibility of standing for both

Individual standing

Human rights law has provided guidance on some of the challenges facing individual victim inclusion in anti-corruption proceedings, especially when considering issues of standing. Given the wide-reaching impact of corruption on society and large groups of individuals who may be involved, anti-corruption proceedings may face challenges in ensuring that the victims and the impact are sufficiently connected. Corruption can cause diffuse harm, where the impact of corruption may not be on specific individuals or groups but on society as a whole.¹⁵⁵ For example, if a government official embezzles funds that were intended

for the healthcare system, diffuse harm is seen in the widespread yet indirect impact on the society through reduced funds for the healthcare and impacting the general population's right to health, as well as the integrity of government institutions.¹⁵⁶

Issues of standing have arisen recently in environmental and climate related cases. Similar to corruption, climate change and environmental damage can impact society at large and lead to diffuse harm.

The standard position of courts, including the ECtHR, requires a direct impact of the alleged act or omission or a real risk of a direct impact of the alleged act or omission on the individual bringing the claim.¹⁵⁷ However, in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, the ECtHR recognised that with climate change the number of people affected can be indefinite.¹⁵⁸ The case was brought by an organisation in Switzerland of over 2,000 older women established to promote and implement effective climate protection on their behalf.¹⁵⁹ The organisation, alongside four older women, alleged that their right to life and the right to respect for private and family life under the ECHR was being impacted by Switzerland's failure in relation to their climate change obligations.¹⁶⁰

The ECtHR held that in order to ensure that individuals initiating climate change related litigation have sufficient standing to take a claim there needs to be:

1. An applicant who is subject to a high intensity of exposure to climate change; and
2. A pressing need to ensure the applicant's individual protection as a result of an absence or inadequacy of reasonable measures taken to reduce the harm which they were exposed.¹⁶¹

Essentially, the harm caused cannot be the same as the ordinary threat or harm posed by climate change to every person. For example, in the climate change context, this may be satisfied by the individual showing that there is a serious risk of a significant decline in their life expectancy as a result of climate change.¹⁶² This may be a critical medical condition which could be aggravated by climate change-related heatwaves and has the possibility of being alleviated by the adoption of climate change measures by the state.¹⁶³

While it is unlikely that an anti-corruption case will come before the ECtHR in the foreseeable future, the *Verein KlimaSeniorinnen Schweiz* case still provides guidance for the status of victims in anti-corruption proceedings. Particularly, in anti-corruption proceedings in domestic courts, the decision can offer clear conditions which victims of corruption must meet in order to participate in proceedings. This is as a result of the strong parallels that can be drawn between the diffused harm that climate change and corruption cause. As noted, both issues can impact society as whole, making individual victim-identification difficult. The decision in *Verein KlimaSeniorinnen Schweiz* aids in alleviating this challenge by providing clear standards that have to be met by individuals in order to be classified as victims.

Therefore, in the corruption context this requires that, in order to establish victim-status, the individual must show that they have suffered as a result of the corrupt act to a degree that is greater than society as a whole or greater than those in the same societal group as them. For example, this may occur when funding for education is misappropriated by a state's government. As a result of this misappropriation, despite plans to, a school is not built and a particular group of children who would have benefited and attended the new school do

not have access to the resources that they would have had otherwise. Society as a whole is impacted by diminished funding to education, however the group of children who would have attended the school specifically suffer. They are subject to a high exposure of the impact of corruption and there is a pressing need to protect their access to education. Therefore, applying *Verein KlimaSeniorinnen Schweiz*, as a result of this greater degree of suffering, the group of children could be considered to be victims and given standing to participate in anti-proceedings taken, for example.

Collective standing: CSOs and associations

CSOs can represent the interests of victims and oftentimes offer proceedings much needed expertise, yet there is currently no widespread acceptance of CSO involvement in proceedings. The ECtHR has, however, noted the importance of associations in climate change litigation, given the issue's global and complex nature.¹⁶⁴ On this basis it considered that associations should be granted standing or victim status in litigation where three circumstances are met. Firstly, the association must be lawfully established in the jurisdiction concerned or has standing in court there. Secondly, the association must be able to show that it pursues a dedicated purpose in line with its statutory objectives in defence of the human rights of its members or other affected individuals within the concerned jurisdiction. This can be limited to or include collective action for the protection of human rights against climate change. Thirdly, the association must be able to show that it is genuinely qualified and representative of its members or other affected individuals in the concerned jurisdiction who are subject to the specific threats or effects of climate change to the rights protected under the convention.¹⁶⁵

In an anti-corruption proceedings context, this provides a basis for CSOs that represent victims of corruption to be given standing in civil and criminal proceedings. While *KlimaSeniorinnen Schweiz* concerns climate and human rights organizations, these organisations are comparable to those concerning anti-corruption. Both types of organisations represent groups impacted by complex, international issues which may cause diffuse harm. Similarly, the victims they represent, in both climate and human rights organisations and anti-corruption organisations, may not have access to justice or representation without the involvement of CSOs. Both types of organisations are seeking to protect individuals and advocate in the public interest, making their right to participate in proceedings similar. The ECtHR particularly noted the importance of climate change organisations in proceedings given the issue's complex and global nature, a challenge that fighting corruption shares.¹⁶⁶

Therefore, where an anti-corruption organization can show that it was lawfully established, pursues a dedicated anti-corruption purpose and that it is genuinely qualified and representative of victims of corruption, it seems that they should be granted standing, according to the *Verein KlimaSeniorinnen Schweiz* decision. Human rights case law therefore can be used to encourage states to allow CSOs to have standing where they represent the anti-corruption agenda and the victims of corruption.

At a national scale, an important case relating to CSO involvement in civil proceedings is the case brought against current President of Equatorial Guinea Teodoro Nguema Obiang before French courts, for charges of embezzlement and misappropriation of public funds. The request for the prosecutor to examine the case was brought on with the help

of two CSOs: the Sherpa association and Transparency International France.¹⁶⁷ An early decision, made by the Criminal Court of Appeals, however refused to hear their request, on account of a lack of standing.¹⁶⁸

As a rule, when the public prosecutor examines an application in France, a victim notification (*avis à victime*) is issued by the court. Victims who have been prejudiced and wish to obtain compensation can answer this notice and *se constituer partie civile* (literal translation: become a civil party to the proceedings). It is important to note the nuance of the term: the notion of "partie civile" is used in a criminal context, to identify victims who have made themselves known to the investigating judge to obtain compensation. This is an important step, as it is the one that allows victims to become parties to the proceedings. This then grants them certain rights further along in the proceedings, such as the right to present evidence to the prosecutor, to call witnesses and to be kept informed of the progress of the case. Victims otherwise do not enjoy such rights.

The debate that led the Court of Appeal to refuse the CSOs' intervention was in relation to their status. Indeed, the procedure described above is designed to compensate mostly natural persons for the damage they have suffered. However, these CSOs are legal entities acting, on the one hand, on behalf of the victims and, on the other, to lead the fight against corruption. The French system does though provide few avenues for organizations such as the Sherpa association and Transparency International France to intervene in criminal proceedings. They are enumerated as follows, and to some extent echo the requirements set out in *KlimaSeniorinnen v. Schweiz*:

1. The association wishing to intervene has a special status under French law. That is the case when an association is granted an “agrément” by the competent administrative authority, which varies depending on the nature of the request.¹⁶⁹ This grants the association the right to initiate proceedings. Such agreements have been granted to associations tasked with customer or environmental protection, for example.
2. Or the association itself has suffered a personal prejudice (i.e. it does not act to protect the general interest nor the specific interests of one of its members).
3. Or the association is acting in accordance with its stated purpose (referred to as its “goal”, its “action”, its “object”¹⁷⁰ or its “mission”, which must be defined in the association’s statute).

In the case of Sherpa association and Transparency International France, they were acting on the basis of their statutes. In their official statutes, they state that they intend to fight corruption in all its forms. The Court of Appeal considered this to be far too broad, to the point that it competed with the office of the public prosecutor and rendered it useless. The Court of Appeal therefore refused to consider the request and overturned the earlier decision, stating that the refusal did not violate any provisions of the UNCAC as another, already established legal body (the public prosecutor) was already tasked with fighting corruption.

The case was then brought before the Supreme Criminal Court of the French order (*Cour de cassation, chambre criminelle*), which overturned the decision.

It decided that a violation of the interests that an organization protects is sufficient to support standing — and that the fight against corruption, as set out by the UNCAC, not only concerns states, but also “requires the support and participation of non-governmental organizations, which, in domestic law, must translate to the possibility for legally constituted associations [...] to institute [an] action in regard to the offences enumerated within this Convention [UNCAC]”.¹⁷¹ With the issue of standing at last set aside, the case was then brought, once more, by the associations, and reached the Supreme Criminal Court again — this time, for a judgment on its merits. The *Cour de cassation*, in its 2021 judgment, upheld the Court of Appeals’ sentence of 30,000,000 euros in fines, a three-year suspended prison sentence and confiscation of the assets,¹⁷² with the final goal in mind to return them to the people of Equatorial Guinea.¹⁷³

This decision is important because it establishes for the first time the possibility, for an association fighting corruption, to participate in trials as a *partie civile* in France. Under the “*partie civile*” system, a victim who has not signalled their intention to obtain compensation for the harm they have suffered will not obtain compensation for the crime committed at their expense. Moreover, in terms of criminal procedure, becoming a civil party to the proceedings is the only way for a victim to play a significant role during said proceedings. Under French law, remedies for the harm caused by corruption are granted to victims through criminal proceedings only - the civil liability of the perpetrators is not invoked. Victims becoming civil parties to a criminal trial is therefore key to ensure that a role is allocated to them in this part of the asset recovery procedure. However, as has already been established, delimiting the impact that corruption can have is complex. It is therefore important to secure the

possibility for associations to become civil parties on behalf of victims of corruption when they are not identified individually. It is through them and, as French law stands, only through them, that said victims have an opportunity to exercise their rights in the trial part of the proceedings.

This jurisprudence has since been further clarified. For example in 2021, the Cour de cassation explained that an association meeting the criteria of one of the three previously established scenarios could be a party to the trial, without necessarily assisting a victim.¹⁷⁴ This further cemented that CSOs can have standing by themselves, so long as their goal is clear. The *agrément* procedure, however, can cause some issues. Once the *agrément* has been obtained, the approval has to be renewed by the competent administration every 3 years, which can be problematic. The Anticor association, for example, whose focus is anticorruption, found itself stripped of its accreditation following an implicit and unmotivated refusal by the administration.¹⁷⁵ A court decision urged the government to re-examine the association's application and, after over a year, a ministerial decree allowed it to resume its action.¹⁷⁶ The revocation of the association's *agrément* meant courts were allowed to and, from a legal perspective, should have, refused to hear the cases it had brought before them on account of a lack of standing. While no cases were dropped on this basis, the situation highlights how dependent on the government associations are.¹⁷⁷ This was especially significant as one of France's biggest corruption affairs, involving former President Nicolas Sarkozy on charges of corruption and influence peddling, was unfolding at the time of Anticor's suspension. Having now recovered its standing rights, Anticor has joined both Transparency International and the Sherpa association in the ongoing Sarkozy-Gaddafi case.¹⁷⁸

As shown in the French example, CSOs having standing can play a major role in allowing victims to participate in the proceedings. Allowing CSOs to be involved in proceedings on behalf of victims enables them to exercise their rights. Certain procedural hurdles intended to regulate the standing of CSOs in trial proceedings, such as restrictions on the cases in which they can intervene, the requirement to obtain specific administrative permission, can prove to be obstacles to obtaining reparations for victims of corruption and, in general, to the exercise of their rights

b) Rights to participate in trial proceedings

The right of victims to participate in legal proceedings, in particular criminal trials, has gained recognition as an important dimension of justice. Whereas legal systems initially focused on the rights of the accused, growing acknowledgement of victims appears to point to a legitimate interest of victims during trial proceedings, including the right to participate, present evidence, and give testimony.¹⁷⁹ Active engagement of victims can ensure better accountability and address the full scope of harm, which in corruption cases can extend to entire communities.

Corruption related offences, such as embezzlement, misappropriation, and bribery, are often prosecuted during criminal proceedings to hold perpetrators accountable and recover the assets. In that sense, they can often presuppose a public trial before an independent court. Criminal proceedings give rise to various rights and obligations, including the right to a fair trial. For systems allowing victims to become part of the legal proceedings, overarching principles referring to a fair process, impartiality and accountability can be applicable, as well as an opportunity for them to be heard and present evidence. Thus, by incorporating victims

as recognised participants and applying core fair trial principles to their involvement, corruption trials can serve both the ends of criminal accountability and the protection of victims' interests.

The right to a fair trial is a cornerstone of international human rights law, enshrined in a multitude of international instruments such as Article 14 ICCPR,¹⁸⁰ as well as regional human rights conventions, such as Article 8 ACHR, Article 7 ACHPR, and Article 6 ECHR.¹⁸¹ This ensures the opportunity for parties to participate effectively in the legal process and have their submissions duly considered by a competent and impartial tribunal. It can be seen as a right encompassing previously discussed rights, as a fair trial involves the right to have access to information, have the case investigated, as well as have the right to defence. The right to a fair trial is typically understood to encompass and safeguard the rights of the accused to be protected from an arbitrary arrest or an unfair trial, as outlined in Article 14 ICCPR: 'In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'. Nevertheless, as stated, the right to a fair trial gives rise to overarching principles, such as an independent and impartial tribunal, equality before the court, as well as transparency, that can also be extended to victims if formally recognised within the proceedings. The UN Human Rights Committee's General Comment No. 32 on Article 14 emphasizes that the right to a fair trial is a fundamental right essential for ensuring justice and the rule of law.¹⁸²

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power serves as an influential soft-law instrument which can guide states towards

more victim-centric procedures during trials.¹⁸³ According to paragraph 6(b): 'the views and concerns of victims (ought to) be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system'.¹⁸⁴ This underscores the need for victims to have the opportunity to be heard by providing testimonies or presenting evidence whenever their rights or interests might be impacted by the legal or administrative process in question.

The ECtHR case of *Perez v. France* (2004) involved a complaint against French authorities alleging that they had failed to effectively investigate the applicant's claim pertaining to improper conduct of public officials.¹⁸⁵ The ECtHR decided in its interpretation of Article 6 ECHR that parties have the right to participate in the proceedings, as well as to submit relevant observations with respect to crucial evidence arising during the trial and should have access to the case file.¹⁸⁶

Moreover, the case of *Hugh Jordan v. the UK* at the ECtHR in 2001 concerned the fatal shooting of the applicant's son by security forces in Northern Ireland.¹⁸⁷ Whereas the case was mostly focused on whether authorities had conducted effective investigations in line with Article 2 ECHR (right to life), the applicant- Mr. Jordan, argued that he, as the victim's family, was excluded from participating meaningfully in the subsequent legal process resulting from the situation.¹⁸⁸ The European Court underscored the importance of victims or their families having their legitimate interests in the case safeguarded, by linking the right to safeguards under the right to a fair trial (Article 6 ECHR).¹⁸⁹ As such, participation by the individuals affected, such as the opportunity to take part in legal proceedings, as well as to provide

statements on the facts and evidence, can contribute to public confidence. Given that large-scale cases of corruption can also give rise to breach of public trust in institutions, which can lead to the undermining of essential services, this may be applicable here.

c) Post-Trial Rights

The right to participate for victims of corruption should continue into post-trial proceedings. This may include the involvement in victims in reparation decisions, and in the monitoring and auditing of the disposal of assets.

i) Victim participation in reparation decisions

International human rights law provides a basis for victim participation in reparation decisions. The right to reparations, and the connected right for victim participation in such reparation decision, stems from the right to an effective remedy (Article 2 of the ICCPR, Article 13 of the ECHR). Reparation decisions are to be interpreted in light of the UNHRC General Comment No. 31, which notes that the right to an effective remedy and States' obligations to ensure justice through legal systems includes victims' rights of access to judicial and administrative processes, as well as reparation decisions.¹⁹⁰ It is important to note here that engagement with reparation proceedings by international and regional human rights bodies varies. The ECtHR particularly does not often extend their decisions to deal with national proceedings regarding reparation processes. Conversely, the Inter-American Commission has adopted a practice of recommending reparations as part of its findings on the merits.¹⁹¹ However, the combined effect of the jurisprudence of these bodies has given a strong basis for participation in reparation decisions by victims of human rights violations. Drawing parallels between reparation decisions and anti-corruption

proceedings concerning the disposal, monitoring and auditing of recovered assets, it is on this basis that these cases can be used to provide a grounding for victim participation in the corruption context

Firstly, the ECtHR has established that an effective remedy for breaches of human rights must be adequate and accessible, with specific attention to the speediness of the remedial action on the basis of Article 6 of the ECHR.¹⁹² Therefore, any remedy must be accessible to the victims it is aimed at, brought about as soon as feasibly possible and actually remedy the harm caused to the greatest extent possible. Similarly, the African Court on Human and People's Rights (ACtHPR) has noted that victims are owed reparations, through the principle of *restitutio in integrum* as a result of Article 27(1) of the Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. According to the ACtHPR, reparations must try to erase the consequences of the wrongful act and restore the victim to the state which would have presumably existed¹⁹³ if the violation had not occurred. In line with this, the Inter-American Convention also requires reparations: Article 63(1) of the Inter-American Convention on Human Rights (IACHR) notes that if appropriate, where a breach of the rights guaranteed in the convention occurs, it must be remedied and fair compensation paid.¹⁹⁴

Victim involvement in reparations processes has been vital in the view of human rights bodies in legitimising such reparations by states and ensuring that they are compliant with the law. In *Massacres of El Mozote and Nearby Places v El Salvador*, the Inter-American Court of Human Rights (IACtHR), considered the reparations by El Salvador for the human rights violations by the Salvadorian Armed Forces in the massacres of committed in several villages

and a cave in the Morazán municipality.¹⁹⁵ The Court concluded that El Salvador had violated several rights, including the rights to life, humane treatment, and property.¹⁹⁶ Considering the reparations measures to be taken to remedy these breaches, the IACtHR noted that the victims' involvement in the planning of the public acknowledgement of responsibility by El Salvador aided in its finding that it was an appropriate and proportionate ceremony for the reparation sought.¹⁹⁷ It also held that victims who were displaced as a result of the massacres must fully participate in the planning and implementation of their return and reintegration.¹⁹⁸ Victim participation was seen as vital in all reparation proceedings and necessary to have such proceedings be compliant with human rights law.

To further support this, in a concurring opinion, Garcia Sayán J noted that an effective and legitimate reparations programme requires the design and implementation of effective mechanisms for victim participation of those who the programme is directed at.¹⁹⁹ This requires those affected by the violations and who are therefore entitled to benefit from a reparations programme to be involved in its creation and in how it is carried out. Victim participation is called for at all stages of the reparations programme. Without such victim participation mechanisms, reparations programmes cannot be considered truly legitimate or effective under human rights law. According to Garcia Sayán J, victim participation was vital for the lawfulness of a reparations programme.

In *The Punta Piedra Garifuna Community and its members v Honduras* case, the IACtHR considered Honduras' breach of the right to collective property as the state prevented the full enjoyment of property by indigenous people. The case arose as a result of Honduras's failure to allocate and recognise ownership of the indigenous

Punta Piedra Garifuna community's ancestral land. The IACtHR found a breach of the right to collective property, and consequently considered the necessary reparations owed to the community. In considering the necessary reparations as required under Article 63(1) of the IACHR to remedy the breach, the court advised for the establishment of a community development fund as compensation for the damages suffered by the indigenous victim community. The IACtHR required this fund to have representatives elected by the community, who would engage in discussion with Honduras to ensure that the fund was implemented with the community's wishes.²⁰⁰ This was necessary in order to ensure compliance with the right to have the violation remedied under Article 63(1). Again, the IACtHR emphasized that when remedying a breach of human rights, victims should be involved in reparations processes and related decisions. An effective remedy of a violation was not seen to exist without victim participation.

ii) Victim participation in monitoring and auditing of the initiatives

Another way to include victims past the proceedings is through their involvement in the monitoring and auditing of the asset recovery process. In this part of the process, victims can share their first-hand experience in dealing with corruption and knowledge of its impact on their communities with courts, which in turn can help to devise more effective remedies.

Specifically, the role of victims as quasi-advisers in post-trial proceedings has been brought up in ACTHPR case law, and relevant examples of victim involvement at this stage are mainly found on the African continent. The ECtHR, CJEU and IACtHR have all been silent on the topic; leaving the ACTHPR as a pioneer on the issue.

An example of the ACtHPR's stance can be found in the *African Commission on Human and People's Rights v. Republic of Kenya* (ACtHPR, 2022) judgment. The case concerns reparations to the Ogiek population: an indigenous group of the Mau Forest in Kenya having fallen victim to numerous human rights violations at the hand of the Kenyan Government, including – but not limited to – arbitrary evictions of the land they inhabited. In its decision, the Court not only ordered compensation for the moral and material damages the Ogiek population had suffered, but also the restitution of their ancestral lands, their recognition as an indigenous people, and, of specific interest here, their right to effective consultation and dialogue.²⁰¹

While the Court's argumentation was heavily centred around the status of the victims as indigenous first and foremost, and derives much of the protections they should enjoy from that very status, it can prove to be a useful example in cases of corruption. Regardless of their status as indigenous, the harm the Ogiek people suffered at the hands of the government was diffuse (the entire community was impacted) but also multifaceted (no single right was violated, but rather multiple). This situation is reminiscent of that of victims of corruption, where the exact victims and the extent of the damages are both difficult to determine.

Moreover, the remedies devised by the court also parallel those awarded in corruption cases: on the one hand: compensation, as can often be found in bribery cases; on the other, restitution, as can be awarded in misappropriation/ embezzlement cases. The novelty lies in the extent of victim participation the court provides for. It seeks to set up an extensive "framework of continuing communication between the parties"²⁰² that requires:

1. Involving the Ogiek population at every stage of the development plans, "and not only when it is necessary to obtain [their] approval";²⁰³
2. Creating "space for engagement with all actors that represent the interests of the Ogiek",²⁰⁴ including the NGOs and other civil society organisations speaking on their behalf;
3. The procedures and processes must be "culturally appropriate",²⁰⁵ allowing victims to partake on their own terms;
4. The creation of a development fund to pay compensation to the Ogiek for the violations of their fundamental rights is to be coordinated by a committee, which "must have adequate representation from the Ogiek with such representatives being chosen by the Ogiek themselves".²⁰⁶

This was presented by the court as a "basic requirement of international human rights law".²⁰⁷ It also though highlighted this specifically in relation to indigenous peoples and their right to "be consulted in all decisions and actions that affect their lives",²⁰⁸ so, relating to their specific protection in international law. The wording is, however, quite broad. It could be said that, on a surface level, much like indigenous people are entitled to be consulted for actions affecting their lives, victims of corruption should be, too.

One of the rationales of the protection of indigenous peoples in international law is that states should ensure they do not impede on their right to development. In the Ogiek case, the court explicitly linked the right for indigenous people to freely pursue their development on their own terms with

the requirement that they be consulted on any projects on their ancestral lands.²⁰⁹ If a link can be made between a people's right to development and their subsequent consultation on matters that affect them, the reasoning could then also be used as grounds to further involve victims of corruption during the proceedings (here, in the monitoring/auditing phase), too.

Another final point of comparison between the case of the Ogiek and the situation of victims of corruption is the damage they suffered. As mentioned earlier, the nature of the harm is, in both cases, quite similar. The harm suffered by the Ogiek was diffuse, both in terms of time and population, so the remedy was sought on behalf of a community. As a result, the court extended reparations to "as many members of the Ogiek Community as possible".²¹⁰ The harm was also multifaceted and violated multiple rights: their right to property, to live freely in their own territory, and their right to development, amongst others. This is reminiscent of findings in corruption cases, which often involve violations of an array of rights (right to development, freedom of expression, right to a fair trial... especially for minority groups). For such harm, the ACtHPR found that effective consultation of the victims, post-proceedings, is a necessary remedy in the same way as compensation. There is thus ground to infer that such measures could be extended to corruption cases, since the harm it causes presents similar characteristics.

Ultimately, victim participation in post-trial proceedings should be seen as a way to provide proper remedies for the damage victims have suffered. The varied nature of their prejudice, stemming from the multifaceted impact of large-scale corruption, requires complex solutions, which can be difficult to identify without the input of the victims themselves. Furthermore, it can be inferred that victim participation at

this stage of the proceedings is simply a manifestation of their own rights, more than a matter of effectivity.

II. D. CONCLUSIONS

Corruption is an umbrella term for a variety of corrupt acts. The UNCAC specifically covers bribery, under Article 16, and embezzlement and misappropriation under Article 17. While civil, criminal and administrative proceedings provide avenues for victim recovery of stolen assets, anti-corruption law does not provide an adequate basis for the inclusion of victims within proceedings to recover stolen assets. This issue stems primarily from the lack of an adequate conceptualization of the types of harms suffered and the types of victims who are impacted by those harms—including those who face both direct and indirect harms.

The far-reaching impacts of corruption, often on natural individuals whose quality of life is made worse as an indirect result of public sector bribery and corruption, makes increased victim participation imperative. It is important to include these victims in anti-corruption proceedings in order to ensure that their voices are heard and that any assets recovered can go to benefiting those negatively impacted by its corrupt usage or taking

International human rights law however does require greater victim inclusion and participation and applies also in anti-corruption proceedings. Stemming from the right to a fair trial and related due process rights, international human rights law requires victims to be afforded the right to participate in proceedings at different stages of the recovery process.

These rights exist before formal proceedings have begun, during proceedings, and during post-proceeding affairs. This includes pre-trial rights to

information about cases, to effective investigations into corruption, and consideration being given to statutes of limitations and the legal standing of victims. At the trial stage, this includes the right for victims to meaningfully participate in trial proceedings, including presenting evidence and submitting observations. Post-trial, this includes the right to victim participation in reparation decisions, as well as monitoring and auditing the use of returned assets.

While much of the interpretation of these rights refers to victim participation in specific human rights-related proceedings, parallels can be drawn between these proceedings and anti-corruption ones. Through human rights, victims of corruption have a clear right to be included in proceedings of corruption and states have a duty to facilitate those rights.



REFERENCES

REFERENCES

- 1 Civil Forum For Asset Recovery, "Civil Society Organisations & Asset Recovery: A Manual for Action," 2022, <https://cifareu/wp-content/uploads/2022/07/CSOs-and-asset-recovery-a-manual-for-action.pdf>.
- 2 Pranab Bardhan, "Corruption and Development: A Review of Issues," *Journal of Economic Literature* 35, no. 3 (1997): 1320-46. <https://www.jstor.org/stable/2729979?seq=1>; Rose, C. E. (2023). Definitions and concept. In M. Pieth & T. Søreide (Eds.), *Elgar Concise Encyclopedias in Law* (pp. 178-180). Northampton, Massachusetts, USA: Edward Elgar Publishing. doi:10.4337/9781802206494.00048
- 3 UNCAC (2004); Interamerican Convention Against Corruption (1996); Arab Convention Against Anti-Corruption (2010); African Union Convention on Preventing and Combatting Corruption and Related Offences (2006); United Nations Convention Against Transnational Organized Crime (2000); OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
- 4 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): Article 16
- 5 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): Article 18
- 6 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): Article 18
- 7 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): 13
- 8 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): Article 17
- 9 United Nations. 2003. "United Nations Convention Against Corruption." Treaty Series 2349 (October): Articles 18-20
- 10 Rose, C. E. (2023). Definitions and concept. In M. Pieth & T. Søreide (Eds.), *Elgar Concise Encyclopedias in Law* (pp. 178-180). Northampton, Massachusetts, USA: Edward Elgar Publishing. doi:10.4337/9781802206494.00048
- 11 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.8
- 12 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.8
- 13 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.8
- 14 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.8-9
- 15 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.10
- 16 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.10
- 17 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Use of civil and administrative proceedings against corruption, including international cooperation. Vienna, 4 September 2015, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2015-September-3-4/V1506218e.pdf>, p.2
- 18 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>, p.7
- 19 Cecily Rose, "The Progressive Development of International Law on the Return of Stolen Assets: Mapping the Paths Forward," *European Journal of International Law* XX, no. XX (September 9, 2024): 5, <https://doi.org/10.1093/ejil/cha042>.
- 20 Cecily Rose, "The Progressive Development of International Law on the Return of Stolen Assets: Mapping the Paths Forward," *European Journal of International Law* XX, no. XX (September 9, 2024): 5, <https://doi.org/10.1093/ejil/cha042>
- 21 Cecily Rose, "The Progressive Development of International Law on the Return of Stolen Assets: Mapping the Paths Forward," *European Journal of International Law* XX, no. XX (September 9, 2024): 9, <https://doi.org/10.1093/ejil/cha042>.
- 22 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.3
- 23 Resolving Foreign Bribery Cases with Non-Trial Resolutions Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention OECD p.21-22
- 24 CSO Letter to OECD on Principles for the Use of Non-Trial Resolutions in Foreign Bribery Cases | UNCAC Coalition," <https://uncaccoalition.org/cso-letter-to-oecd-on-principles-for-the-use-of-non-trial-resolutions-in-foreign-bribery-cases/>
- 25 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.17
- 26 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.16 & 19
- 27 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.14

- 28 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.14
- 29 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.208-211
- 30 "#08-1105: Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (2008-12-15)," www.justice.gov (U.S. Department of Justice , December 15, 2008), <https://www.justice.gov/archive/opa/pr/2008/December/08-crm-1105.html>.
- 31 OECD. Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non Trial Agreements by Parties to the Anti-Bribery Convention. OECD ILibrary. Reprint, Paris: Organisation for Economic Co-operation and Development, 2019, <https://doi.org/10.1787/e647b9d1-en>. p.208
- 32 Jacinta Anyango Oduor et al., "Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery | Stolen Asset Recovery Initiative (StAR)," Worldbank.org (Stolen Asset Recovery Initiative, November 27, 2013), <https://star.worldbank.org/publications/left-out-bargain-settlements-foreign-bribery-cases-and-implications-asset-recovery>. Pg. 9
- 33 "CSO Letter to OECD on Principles for the Use of Non-Trial Resolutions in Foreign Bribery Cases | UNCAC Coalition," Uncaccoalition.org (UNCAC Coalition, 2021), <https://uncaccoalition.org/cso-letter-to-oecd-on-principles-for-the-use-of-non-trial-resolutions-in-foreign-bribery-cases/>
- 34 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. Pg. 44
- 35 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. Pg. 44
- 36 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. Pg. 44
- 37 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. Pg. 44
- 38 Andy McDevitt, "COUNTRY EXPERIENCES with REPARATION for SOCIAL DAMAGES QUERY," Transparency.org (Transparency International, June 6, 2016), https://knowledgehub.transparency.org/assets/uploads/helpdesk/Reparations_for_social_damages_2016.pdf. - pgs. 1-2
- 39 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf - pg. 45
- 40 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> - Paragraph 12
- 41 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> - Paragraph 12
- 42 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf - pg. 25
- 43 Joanna Harrington, Providing for Victim Redress within the Legislative Scheme for Tackling Foreign Corruption, 43 *DALHOUSIE L.J.* 245, 251 (2020).
- 44 UNCAC Article 35
- 45 "TRAVAUX PRÉPARATOIRES of the Negotiations for the Elaboration of the United Nations Convention against Corruption." United Nations, 2010. https://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf. - pg. 299
- 46 "TRAVAUX PRÉPARATOIRES of the Negotiations for the Elaboration of the United Nations Convention against Corruption." United Nations, 2010. https://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf.
- 47 "TRAVAUX PRÉPARATOIRES of the Negotiations for the Elaboration of the United Nations Convention against Corruption." United Nations, 2010. https://www.unodc.org/documents/treaties/UNCAC/Publications/Travaux/Travaux_Preparatoires_-_UNCAC_E.pdf.
- 48 See UNCAC (2004); Interamerican Convention Against Corruption (1996); Arab Convention Against Anti-Corruption (2010); African Union Convention on Preventing and Combatting Corruption and Related Offences (2006); United Nations Convention Against Transnational Organized Crime (2000); OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)
- 49 European Commission. "Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation." Article III(8). Accessed December 10, 2024. <https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng>
- 50 European Commission. "Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation." Article III(8). Accessed December 10, 2024. <https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng>
- 51 European Commission. "Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation." Article III(8). Accessed December 10, 2024. <https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng>
- 52 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>

53 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> - Paragraph 9

54 Civil Claims and Corruption, Action 4 Justice, https://action4justice.org/legal_areas/corruption/civil-claims-and-corruption/#:~:text=If%20you%20have%20been%20financially,civil%20claims%20without%20financial%20support. [Accessed 9 January 2025].

55 Civil Claims and Corruption, Action 4 Justice, https://action4justice.org/legal_areas/corruption/civil-claims-and-corruption/#:~:text=If%20you%20have%20been%20financially,civil%20claims%20without%20financial%20support. [Accessed 9 January 2025].

56 United Nations, Open-ended Intergovernmental Working Group on Asset Recovery. Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016, <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> - Paragraphs 27-28

57 Civil Claims and Corruption, Action 4 Justice, https://action4justice.org/legal_areas/corruption/civil-claims-and-corruption/#:~:text=If%20you%20have%20been%20financially,civil%20claims%20without%20financial%20support. [Accessed 9 January 2025].

58 UNODC, GRACE, Knowledge tools for academics and professionals, Module Series on Anti-Corruption, Module 5 Private Sector Corruption, https://grace.unodc.org/grace/uploads/documents/academics/Anti-Corruption_Module_5_Private_Sector_Corruption.pdf - Page 8

59 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. - pg. 34-35

60 Article 53 UNCAC

61 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. - p.33

62 Public Wrongs, Private Actions StAR report p.18; case: https://entscheide.weblaw.ch/cache.php?link=20.03.2012_bb.2011.130&selLang=en [Translated English version]

63 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. - p.34-35

64 Walker, Isabelle. "Compensation for Overseas Victims of Corruption." International Bar Association, July 23, 2024. <https://www.ibanet.org/Compensation-for-overseas-victims-of-corruption>.

65 Walker, Isabelle. "Compensation for Overseas Victims of Corruption." International Bar Association, July 23, 2024. <https://www.ibanet.org/Compensation-for-overseas-victims-of-corruption>

66 https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf - pg. 35-36

67 Several states including Argentina, England & Wales, France, Gambia, Guatemala, India, Luxemburg, Mexico, Nigeria, Peru, Singapore, Spain, and Sri Lanka all clearly recognise NGOs as victims of corruption. <https://uncaccoalition.org/get-involved/working-groups/victims-of-corruption-working-group/database-on-legal-standing/>

68 Roht-Arriaza, Naomi. "Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 41

69 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. - pg. 36

70 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 41-42.

71 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 41-42.

72 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 43.

73 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 43.

74 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 43.

75 Roht-Arriaza, Naomi. "Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 42-43.

76 Roht-Arriaza, Naomi. "UC Law SF UC Law SF UC Law SF Scholarship Repository UC Law SF Scholarship Repository Empowering Victims of Grand Corruption: An Emerging Trend Empowering Victims of Grand Corruption: An Emerging Trend." Connecticut Journal of International Law 37, no. 25 (2023): 44

77 <https://www.unodc.org/e4j/en/anti-corruption/module-5/key-issues/forms-and-manifestations-of-private-sector-corruption.html>

78 Boles, Jeffrey. "The Two Faces of Bribery: International Corruption Pathways the Two Faces of Bribery: International Corruption Pathways Meet Conflicting Legislative Regimes Meet Conflicting Legislative Regimes." Michigan Journal of International Law 35, no. 4 (2014): 683 <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1067&context=mjil>.

79 Newmarket Corp. v. Innospec Inc., Civil Action No. 3:10cv503, _____. (E.D. Va. Apr. 1, 2011), <https://casetext.com/case/newmarket-corp-v-innospec-inc>

80 Newmarket Corp. v. Innospec Inc., Civil Action No. 3:10cv503, _____. (E.D. Va. Apr. 1, 2011), <https://casetext.com/case/newmarket-corp-v-innospec-inc>



81 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf. - pg. 37

82 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf - pg. 38

83 Olaya, Dr. Juanita, Kodjo Attisso, and Anja Roth. "Repairing Social Damage out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica," December 6, 2010. <https://www.transparency.org.kw.au-ti.org/upload/books/119.pdf>.
- pg. 10

84 Olaya, Dr. Juanita, Kodjo Attisso, and Anja Roth. "Repairing Social Damage out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica," December 6, 2010. <https://www.transparency.org.kw.au-ti.org/upload/books/119.pdf>.
- pg. 10

85 Olaya, Dr. Juanita, Kodjo Attisso, and Anja Roth. "Repairing Social Damage out of Corruption Cases: Opportunities and Challenges as Illustrated in the Alcatel Case in Costa Rica," December 6, 2010. <https://www.transparency.org.kw.au-ti.org/upload/books/119.pdf>.
- pg. 10

86 These states include: Argentina, Australia, England and Wales, France, Guatemala, India, Luxemburg, Mexico, Nigeria, Peru, Singapore, Spain, Sri Lanka, and the United Arab Emirates.

87 https://knowledgehub.transparency.org/assets/uploads/helpdesk/Impact_of_corruption_on_growth_and_inequality_2014.pdf - pg. 2

88 Bergin, Jamie. "The Impacts of Corruption on Young People and Their Role in Preventing Corruption." U4 Anti-Corruption Resource Centre. Transparency International, September 2, 2024. <https://beta.u4.no/publications/the-impacts-of-corruption-on-young-people-and-their-role-in-preventing-corruption.pdf>. - pg. 8

89 Bergin, Jamie. "The Impacts of Corruption on Young People and Their Role in Preventing Corruption." U4 Anti-Corruption Resource Centre. Transparency International, September 2, 2024. <https://beta.u4.no/publications/the-impacts-of-corruption-on-young-people-and-their-role-in-preventing-corruption.pdf>. - pg. 8

90 Felipe Falconi et al., "Victims of Corruption Back for Payback," Star.worldbank.org (Washington, DC: Stolen Asset Recovery Initiative, November 2023), https://star.worldbank.org/sites/default/files/2023-11/Victims-report-05_0.pdf - pg. 38

91 Lexis Nexis. "Shareholder Definition | Legal Glossary | LexisNexis." Accessed December 10, 2024. <https://www.lexisnexis.co.uk/legal/glossary/shareholder>.

92 See Messick, Richard. "A Breaththrough in Recognizing Who Is a Corruption Victim." GAB | The Global Anticorruption Blog, December 17, 2020. <https://globalanticorruptionblog.com/2020/12/17/a-breaththrough-in-recognizing-who-is-a-corruption-victim/>; and United Nations, Open-ended Intergovernmental Working Group on Asset Recovery, Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation. Vienna, 4 August 2016 <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf> – pages 6-7 .Box 1

93 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pg. 1; also see 18 U.S. Code § 3663A - Mandatory restitution to victims of certain crimes, Cornell Legal Information institute, <https://www.law.cornell.edu/uscode/text/18/3663A#:~:text=Notwithstanding%20any%20other%20provision%20of,to%20the%20victim%20of%20the>

94 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pg. 8-9; also see 18 U.S. Code § 3663A(a)(1), (c)(1)(A)(ii) - Mandatory restitution to victims of certain crimes, Cornell Legal Information institute, <https://www.law.cornell.edu/uscode/text/18/3663A#:~:text=Notwithstanding%20any%20other%20provision%20of,to%20the%20victim%20of%20the>

95 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pg. 7

96 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pgs. 2-5, 13

97 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pgs. 2-4

98 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pgs. 2-4

99 United States v. OZ Africa Mgmt. GP, 16-CR-515 (NGG) (E.D.N.Y. Aug. 28, 2019), pg. 6

100 United Nations. 2022. "Goal 16: Peace, Justice and Strong Institutions." The Global Goals. United Nations. 2022. <https://www.globalgoals.org/goals/16-peace-justice-and-strong-institutions/>.

101 Office of the High Commissioner for Human Rights, Recommended Principles on Human Rights and Asset Recovery (2022), 32.

102 *ibid*, 33.

103 Godfrey M. Musila, "The Right to an Effective Remedy under the African Charter on Human and Peoples' Rights" (2006) 2 AHRLJ 441-464.

104 *Ibid*.

105 *Mtikila v. Tanzania*, Application 011/2011, Judgment (Reparations), 13 June 2014, para. 29

106 Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v Sudan (Communication 279 of 2003; Communication 296 of 2005) [2009] ACHPR 100 (27 May 2009), para. 229, <https://achpr.au.int/en/decisions-communications/sudan-human-rights-organisation-centre-housing-rights-and-evictions-27903>.

107 Yulia Shapovalova and Veronica Bradautanu, "Enforcement of Court Decisions and the Way Forward to Digital Enforcement," Law in Transition Journal 2022 (European Bank for Reconstruction and Development (EBRD)), accessed November 11, 2024. <https://www.ebrd.com/news/publications/newsletters/law-in-transition-2022.html>

108 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, p. 152.



- 109 StAR Initiative, "Left out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery" (International Bank for Reconstruction and Development / The World Bank, 2014), 49.
- 110 UNCAC Coalition, "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 & Corruption, October 17, 2023, accessed January 13, 2025, <https://uncaccoalition.org/wp-content/uploads/UNCAC-Coalition-%E2%80%93Victims-Remedies-Joint-Working-Group-Submission-CoSP10.pdf>
- 111 Jonathan Klaaren, "The Human Right to Information and Transparency," in *Transparency in International Law*, ed. Andrea Bianchi and Anne Peters (Cambridge: Cambridge University Press, 2013), 223–38.
- 112 Alliance for Life, Freedom of Information (FOI) as an International Right. Alliance for Life, September 2013, <https://allianceforlife.org/wp-content/uploads/2013/09/Freedom-of-Information-foi-as-an-international-right.pdf>.
- 113 United Nations, International Covenant on Civil and Political Rights, adopted December 16, 1966, General Assembly Resolution 2200A (XXI), art. 19.
- 114 United Nations Human Rights Committee, General Comment No. 34: Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34, July 12, 2011.
- 115 *ibid.*
- 116 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as amended, art. 10, November 4, 1950, ETS No. 5.
- 117 Alliance for Life, Freedom of Information (FOI) as an International Right. Alliance for Life, September 2013, <https://allianceforlife.org/wp-content/uploads/2013/09/Freedom-of-Information-foi-as-an-international-right.pdf>
- 118 European Court of Human Rights, Guide on Article 13 of the European Convention on Human Rights: Right to an Effective Remedy, updated August 31, 2024.
- 119 Organisation of African Unity, African Charter on Human and Peoples' Rights, adopted June 27, 1981, entered into force October 21, 1986, art. 9.
- 120 United Nations, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law, adopted by the General Assembly, 2005.
- 121 United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law, adopted December 16, 2005, A/RES/60/147
- 122 United Nations Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, A/HRC/38/35, April 6, 2018.
- 123 African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, adopted November 2019.
- 124 Human Rights Committee, Toktakunov v. Kyrgyzstan, Communication No. 1470/2006, CCPR/C/101/D/1470/2006, Views adopted on July 28, 2011.
- 125 *ibid.*
- 126 European Court of Human Rights, Tagayeva and Others v. Russia, nos. 26562/07, 26564/07, 27965/07, 27968/07, and 27970/07, Judgment of April 13, 2017.
- 127 African Court on Human and Peoples' Rights, Beneficiaries of the Late Norbert Zongo et al. v. Burkina Faso, Application No. 013/2011, Judgment of December 5, 2014.
- 128 Kerem Altıparmak, The Application of the Concept of Continuing Violation to the Duty to Investigate, Prosecute and Punish Under International Human Rights Law, January 1, 2003, accessed November 29, 2024, <https://ssrn.com/abstract=926281> or <http://dx.doi.org/10.2139/ssrn.926281>.
- 129 Naomi Roht-Arriaza, "State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law," *California Law Review* 78, no. 2 (1990): 449–453, <https://doi.org/10.2307/3480726>.
- 130 Micus, Annelen. "The Duty of States to Investigate and Prosecute under International Law". In *The Inter-American Human Rights System as a Safeguard for Justice in National Transitions*, (Leiden, The Netherlands: Brill | Nijhoff, 2015) doi: https://doi-org.proxy.uba.uva.nl/10.1163/9789004289734_003.
- 131 *ibid.*
- 132 United Nations, International Covenant on Civil and Political Rights, adopted December 16, 1966, General Assembly Resolution 2200A (XXI), art. 7.
- 133 United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, General Assembly Resolution 39/46, entered into force June 26, 1987.
- 134 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as amended, art. 3, November 4, 1950, ETS No. 5.
- 135 Organisation of African Unity, African Charter on Human and Peoples' Rights, adopted June 27, 1981, entered into force October 21, 1986, art. 5.
- 136 United Nations Human Rights Committee, General Comment No. 20: Article 7: Prohibition of Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted March 10, 1992.
- 137 Micus, Annelen. "The Duty of States to Investigate and Prosecute under International Law". In *The Inter-American Human Rights System as a Safeguard for Justice in National Transitions*, (Leiden, The Netherlands: Brill | Nijhoff, 2015) doi: https://doi-org.proxy.uba.uva.nl/10.1163/9789004289734_003.
- 138 United Nations, International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, entered into force December 23, 2010, art. 12.
- 139 United Nations Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article 2), UN Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004.
- 140 Inter-American Court of Human Rights, Velásquez Rodríguez v. Honduras, Judgment of July 29, 1988, Series C, No. 4.
- 141 *ibid.*
- 142 United Nations Human Rights Committee, General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (Article 2), UN Doc. CCPR/C/21/Rev.1/Add.13, May 26, 2004.

- 143 Human Rights Committee, *Bautista de Arellana v. Colombia*, Communication No. 563/1993, CCPR/C/55/D/563/1993. Views adopted on October 27, 1995.
- 144 *ibid.*
- 145 European Court of Human Rights, *McKerr v. the United Kingdom*. Application No. 28883/95. Judgment of May 4, 2001.
- 146 *ibid.*
- 147 UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966 art 17 and art 14; Council of Europe, *European Convention on Human Rights*, as amended by Protocols Nos. 11, 14 and 15, ETS No. 005, 4 November 1950 art 13 and Art 6.
- 148 *Jann-Zwicker and Jann v. Switzerland* (application no. 4976/20) (ECtHR) [5].
- 149 *ibid* [14].
- 150 *ibid* [15].
- 151 *ibid* [81].
- 152 UN General Assembly, *United Nations Convention Against Corruption*, A/58/422, 31 October 2003 art 29.
- 153 (EU) directive 2024/1260 art 15 1(d).
- 154 *Jann-Zwicker and Jann v. Switzerland* (application no. 4976/20) (ECtHR) [81].
- 155 *Corruption and Human Rights.* n.d. U4 Anti-Corruption Resource Centre. <https://www.u4.no/topics/human-rights/basics>.
- 156 UNODC "Good Practices in Identifying the Victims of Corruption and Parameters for Their Compensation." 2016. <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf>.
- 157 *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* 53600/20 Judgment 9 April 2024 (ECtHR) [483].
- 158 *ibid*, [479].
- 159 *ibid*, [10].
- 160 *ibid*, [22].
- 161 *Ibid*, [487].
- 162 *ibid*, [513].
- 163 *ibid*, [533].
- 164 *ibid*, [489].
- 165 *ibid*, [502].
- 166 *ibid*, [489].
- 167 Association Sherpa, "Biens Mal Acquis — Guinée Equatoriale," Sherpa, October 5, 2012, accessed November 27, 2024, <https://www.asso-sherpa.org/bma-guinee-equatoriale>
- 168 CA Paris, 7, 2, 29-10-2009, n° 2009/03948.
- 169 Direction de l'information légale et administrative (Premier ministre), Ministère chargé de la vie associative, "Agrément d'Une Association," Service Public (République Française, June 3, 2024), <https://www.service-public.fr/particuliers/vos-droits/F11966>, accessed January 11, 2025.
- 170 Cass. civ. 1, 18 septembre 2008, n° 06-22.038, *Association française contre les myopathies (AFM)*, F-P+B.
- 171 *Ibid*, translated from the French "implique le soutien et la participation des organisations non gouvernementales, lesquels doivent se traduire en droit interne par la possibilité pour les associations légalement constituées [...] de se constituer parties civiles pour les infractions énumérées par cette Convention".
- 172 Cass. crim., 9 novembre 2010, n° 09-88.272, F-D, ECLI:FR:CCASS:2011:CR00918.
- 173 Human Rights Watch, "France : La Cour de Cassation Confirme La Condamnation Du Vice-Président de La Guinée Équatoriale," Human Rights Watch (Paris) (blog), July 28, 2021, accessed November 27, 2024, <https://www.hrw.org/fr/news/2021/07/28/france-la-cour-de-cassation-confirme-la-condamnation-du-vice-president-de-la-guinee>
- 174 Cass. crim. 7 septembre 2021, FS-B, n°19-87.031.
- 175 *Le Monde avec AFP*, "Anticor Perd Son Agrément Devant La Haute Autorité Pour La Transparence de La Vie Publique," *Le Monde*, December 27, 2024, accessed January 5, 2025, https://www.lemonde.fr/societe/article/2024/12/27/anticor-perd-son-agrement-devant-la-haute-autorite-pour-la-transparence-de-la-vie-publique_6470378_3224.html
- 176 PREMIER MINISTRE, Arrêté du 5 septembre 2024 portant agrément de l'association ANTICOR en vue de l'exercice des droits de la partie civile, *Journal Officiel*, n°0212 du 6 septembre 2024, Texte n°4.
- 177 Chantal Cutajar, "L'agrément d'Anticor : Les Leçons de L'imbroglio," *Recueil Dalloz* 2024, 2024, 1712
- 178 Anticor, "Procès Des Financements Libyens de La Campagne de Nicolas Sarkozy : Sherpa, Anticor et Transparency International Font Front Commun," Anticor website, January 6, 2025, accessed January 11, 2025, <https://www.anticor.org/2025/01/06/proces-des-financements-libyens-de-la-campagne-de-nicolas-sarkozy-sherpa-anticor-et-transparency-international-font-front-commun/>
- 179 Salvatore Zappalà, "The Rights of Victims v. the Rights of the Accused," *Journal of International Criminal Justice* 8, no. 1 (March 2010): 137–141, <https://doi.org/10.1093/jicj/mqq001>.
- 180 United Nations General Assembly, *International Covenant on Civil and Political Rights*, adopted December 16, 1966, entered into force March 23, 1976, Article 14, 999 UNTS 171.
- 181 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, November 4, 1950, ETS No. 5, Article 6.
- 182 United Nations Human Rights Committee, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to a Fair Trial)*, UN Doc. CCPR/C/GC/32, August 23, 2007.
- 183 United Nations, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted by the General Assembly, 1985.
- 184 *Ibid.*
- 185 European Court of Human Rights, *Pérez v. France*, Application No. 47287/99, Judgment of February 12, 2004, Grand Chamber.

- 186 Ibid.
- 187 Hugh Jordan v. the United Kingdom, no. 24746/94, European Court of Human Rights, 4 May 2001.
- 188 Ibid.
- 189 Ibid.
- 190 UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, 26 May 2004.
- 191 Maria Suchkova, The Importance of a Participatory Reparations Process and its Relationship to the Principles of Reparation (University of Essex, Transitional Justice Network, Reparations Unit, Briefing Paper No. 5, 2011), 5.
- 192 MD v Malta App no 12427/22 (17 October 2023) ECHR [53].
- 193 Ibid.
- 194 Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose", Costa Rica, -, 22 November 1969 art 63(1); *ibid* [302].
- 195 Massacres of El Mozote and Nearby Places v El Salvador Report N. 24/06 - Case 10.720, Inter-American Commission on Human Rights (IACHR), 2 March 2006 [62-113].
- 196 *ibid*, [203-205].
- 197 Massacres of El Mozote and Nearby Places v El Salvador 25 October 2012 (IACtHR) [357].
- 198 *ibid* [188].
- 199 Massacres of El Mozote and Nearby Places v El Salvador 25 October 2012 (IACtHR) [33].
- 200 The Punta Piedra Garifuna Community And Its Members V. Honduras Judgment October 5 2015 (IACtHR) [334].
- 201 African Commission on Human and Peoples Rights v Republic of Kenya (Application No. 006/2012) [2022] AfCHPR 18 (23 June 2022), <https://africanlii.org/akn/aa-au/judgment/afchpr/2022/18/eng@2022-06-23>
- African Commission on Human and Peoples' Rights v. Republic of Kenya, Application 006/2012, Judgment (Reparations), 23 June 2022, para. 142
- 202 African Commission on Human and Peoples' Rights v. Republic of Kenya, Application 006/2012, Judgment (Reparations), 23 June 2022, para. 142
- 203 *Ibid*, para. 142.
- 204 *Ibid*, para.143.
- 205 *Ibid*.
- 206 *Ibid*, Para.156.
- 207 *Ibid*, para. 142.
- 208 *Ibid*.
- 209 *Ibid*, para. 139, 142, 144.
- 210 *Ibid*, para. 154



