

WORK TOPICS FOR THE CJI/OAS.

DEVELOPMENT OF INTER-AMERICAN GUIDELINES ON THE PARTICIPATION OF VICTIMS IN CRIMINAL PROCEEDINGS AGAINST ACTS OF CORRUPTION

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Background

Due to the fact that corruption crimes are usually classified as relating to crimes against the property of the State or the public function in regional criminal codes, one often hears that they are “victim-less crimes”, since the damage abstractly affects public bodies, no matter that the determined and direct individual or collective victims who suffer the consequences of acts of corruption are not always identified.

Article 32-5 of the **UN Convention against Corruption** sets out that: “Each State Party will allow, subject to its domestic law, the **opinions and concerns of the victims to be presented and considered at appropriate stages of the criminal proceedings...**” Likewise, article 35 presents the possibility that these victims can claim compensation for the damages suffered as a result of an act of corruption. On the other hand, Article 47 establishes that, when defining the disposition and restitution of confiscated property, “priority consideration will be given to the restitution of such property to their previous legitimate owners or to the compensation of the victims of the crime”.

Although the **Inter-American Convention on Corruption** does not directly address the issue of the procedural participation of victims, it does set out the obligation of the States to promote the development and harmonization of national legislation to meet the objectives of this Convention, one such objective being the adoption of mechanisms to stimulate the participation of civil society and non-governmental organizations in anti-corruption efforts (Article III-11); one form of participation could be by procedurally representing the collective victims of such acts of corruption.

From the point of view of comparative law, it is interesting to study the Civil Law Convention on Corruption approved by the **Committee of Ministers of the Council of Europe** on November 4, 1999, which in article 3-1 states that “Each Party shall provide in its internal law that people who have suffered damages resulting from an act of corruption have the right to open actions in order to obtain full compensation for said damage”.

At the **VIII Summit of the Americas** held on April 13 and 14, 2018, the OAS member states signed the **COMMITMENT OF LIMA - DEMOCRATIC GOVERNANCE AGAINST CORRUPTION**, stressing that the participation of civil society should be considered in measures to prevent and confront corruption in the region. One of the forms that this participation might take is by enabling or reinforcing their procedural role in investigating and prosecuting acts of corruption, as well as the legal representation of victims, whether individual or specific, or in the case of collective victims when they trespass on the diffuse rights of certain communities or the public interest.

For its part, among other recommendations, the **Inter-American Commission on Human Rights**, in its 2019 Report on Corruption and Human Rights, set out a series of fundamental principles that enable these public anti-corruption policies to be developed with a human-rights perspective. These principles include “the centrality of the victims of corruption and the need for adequate measures for reparation”. To this end, the IACHR recommends that when “there is evident social damage caused by corruption, the States must make every effort to identify the direct victims

so that they can be fully repaired, as well as the affected social sectors; the satisfaction of their rights has to be made a priority”.

Likewise, the IACHR suggests in its Report that the participation of the victims should not be limited to a claim for civil reparation. Recognizing the status of persons or groups affected by corruption as victims also includes, for example, their right to justice, in other words to have the responsible parties investigated and punished, thereby guaranteeing that the victims enjoy some form of participation as subjects in the criminal process.

In light of the State's obligation to investigate acts of corruption:

... the State authorities ... must start without delay a serious, impartial and effective investigation using all available legal means and aimed at determining the truth of the facts and the prosecution and eventual punishment of the perpetrators. **During the investigation and judicial processes, the victims must have ample opportunities to participate and be heard, both in order to clarify the facts and to punish those responsible, as well as to seek just compensation.** (par. 263)

In the regional criminal procedure codes there is no uniform practice for legislating on the possibility for direct victims of corruption to be accorded active legitimacy in such processes, whether as plaintiffs, private accusers or some other modality of contributor of the public ministries in combating impunity for crimes of corruption.

Some countries have established that civil associations can participate as plaintiffs or complainants in judicial processes where a claim is made for appropriation of collective property or diffuse interests, but it is not always clear if corruption crimes are in this category. Thus, for example, among the countries that recognized collective complaint for cases of public interest are Bolivia, Ecuador, Peru, Chile and Costa Rica; the latter also expressly provides for collective complaint in cases of corruption. Another special case is that of Brazil, which provides for private action in crimes of public action only in cases when this has not been entered by the Public Prosecutor's Office within the legal term.

In recent years, some civil-society organizations, the human-rights movement and regional transparency networks have been stimulating this discussion; in particular, the Foundation for Due Process (DPLF) has contributed to bringing together a nucleus of experts and skills that have prompted this discussion.

Aim

To contribute to the process of progressive development of inter-American standards for the procedural participation of civil associations and private, whether individual or collective, of acts of corruption for the purpose of promoting harmonization of regional legislation on the matter.

Possible activities:

- Open academic events and workshops with universities.
- Compiling national regulations and consulting the regional civil-society organizations.
- Compiling national regulations, consulting the regional civil-society organizations, and forming a consultative group of experts with the support of the DPLF.
- Preparing a Regional Report on the state-of-the-art on this topic.:
- Preparing a document with the proposal of inter-American principles.