

Short WORKSHOP REPORT FORM

Number and title of workshop: Special Sessions – Finding the real cost of corruption: How to use the concept of Social Damage for the Anti Corruption struggle

Coordinator: Andres Hernandez, Senior Programme Coordinator, Americas Department, Transparency International and Manfredo Marroquin, Transparency International

Date and time of workshop: 12.11. 2010, 15h

Moderator: Delia Ferreira Rubio, Chair, TI National Chapter Argentina

Rapporteur: Anja Roth, Basel Institute on Governance

Panellists

Gilberth Calderon Alvarado, Director, Procuraduria de la Etica Publica Costa Rica
Joachim Eckert, Judge, Regional Court (Landgericht) Muenchen
Juanita Olaya, Director, Basel Institute on Governance
Andrew Feinstein, Former ANC Member of Parliament in South Africa and activist in the field of corruption and arms trade

Main Issues Covered/ Outcomes and the way forward

The concept of repairing the social damage in corruption cases is a relatively new concept with big potential for dealing with the consequences of corruption. It has gained increasing attention with the Alcatel and Fischel-cases in Costa Rica, in which this concept has been used innovatively. The workshop aimed at discussing this concept and its applicability.

The workshop started with **Delia Ferreira Rubio** introducing the different panellists, stating that the aim of the workshop was to look at the concept of social damage from the legal point of view and also on its potential in the fight against corruption.

Mr Calderon began his presentation by outlining the Fischel and the Alcatel cases where his office sought to apply the concept of social damage. The legal basis was provided by ART. 50 of the Costa Rican Constitution and Art. 38 of the Criminal procedural Code under which prosecutors can claim civil compensation for social damage.

Mr Calderon made it clear that the successful use of the concept of social damage in Costa Rica was promising because it is a useful tool to put a stop to corrupt practises in the corporate world and helps to reduce impunity of powerful actors and also because it can make corporations feel the effects more directly. Mr Calderon suggested creating one single definition of social damage. He proposed the **creation of an expert group at an international level** using the UNCAC as umbrella for strengthening international conventions and actions in line with the new concept.

Judge Eckert started his presentation by making it clear that the fight against corruption cannot be won per se, but that more effective tools need to be developed to lead this fight more effectively. He outlined the different areas in which corruption occurs and also explained

that Germany has no definition of social damage in its penal code. Judge Eckert concluded by stating that **there is a need for rules on social damage** and he welcomed the fact that this topic has been taken up. It became clear that Judge Eckert would like to use creativity, possibly involving the concept of social damage in his judgments, but that all of this had to happen within the German legal framework.

Andrew Feinstein used the cases of BAE and Mabey and Johnson to illustrate the fatale consequences of corruption for the population. He made it clear that corruption in those cases had undermined the institutions of democracy and the rule of law in South Africa. He also explained that in the BAE case in Tanzania, a settlement was agreed upon and BAE paid a fine of 3 million pounds for accounting irregularities. However, it was not clear where exactly this money would go. Andrew concluded that **the country of the corruptors benefited from the settlement and not the victims in the country where corruption took place**. He also raised the importance of pursuing strategies of debarment of companies that are serious corrupters and of developing an international framework to address reparation.

Dr. Juanita Olaya started her presentation by explaining why it is relevant to focus on the victims and that using the concept of social damage in corruption cases to account for victims' rights bore a lot of potential for the cause of fighting corruption, but that it still needed to be developed further. She made clear **that this concept could have a real impact on the life of people that are affected by corruption: a group that has so far been marginalized with international instruments focusing mainly on states and perpetrators**.

Dr. Olaya outlined the opportunities and challenges around questions of measuring the damage, providing evidence for it, the legal standing to claim it and the need to adopt a framework that addresses both the national and international dimensions. However, the Alcatel-case had shown that all of this was possible. She also emphasized that it would be important to develop ways by which the reparation of social damage really translates directly into benefits to the community and the public interest.

Dr. Olaya **motivated all the participants and panelists to join forces** and work together on making the social damage concept a useful tool in addressing the consequences of corruption and to identify cases where this can be further tested and implemented.

Manfredo Marroquin re-emphasised that the next step would be to try out the concept in the field and bring cases and to work on these using informal networks. For this purpose, he **supported the idea of creating an international group of experts and other collective efforts to further explore and use the social damage concept**.