

Short WORKSHOP REPORT FORM

Number and title of workshop:

WS 4.3 Legal Redress for Victims of Corruption: Enhancing the role of civil society in corruption related litigation

Coordinator:

Maud Perdriel-Vaissière, SHERPA

Elizabeth Ryder, Legal Consultant

Date and time of workshop:

11 November 9:00 – 11:00

Moderator:

Gillian Dell, Transparency International

Rapporteur:

Abiola Makinwa - Phd Candidate, Erasmus Universiteit Rotterdam

Panellists

Juanita Olaya - Director of the *International Centre on Asset Recovery* (ICAR).

Adetokunbo Mumuni - Executive Director of the *Socio-Economic Rights and Accountability Project* (SERAP)

Elizabeth Ryder – Senior Legal Consultant

Alan Bacarese - A United Kingdom Senior Crown Prosecutor, seconded to the *International Centre on Asset Recovery* (ICAR)

Edward Davis - Partner, Astigarraga Davis (Miami)

Vijay Anand - Director of the *5th Pillar*

Main Issues Covered

Presentations and discussion of eight cases illustrating victim and CSO participation in strategic litigation against corrupt officials and those who collude with them, including asset recovery efforts. Cases included both criminal and civil actions, common law and civil systems, international and national venues, and were drawn from various jurisdictions (African, Indian, North American and European).

Main Outcomes

- State actors supported by subpoena and other powers are well placed to lead the enforcement of anti-corruption norms. However illegal conduct is not pursued by state actors for a host of reasons (including scarce resources, shifting priorities, the political sensitivity of high-level investigations). In these instances CSOs have an important role to play by initiating legal action directly against the worst violators or by checking prosecutorial discretion through various means, including judicial review.
- International conventions compel signatories to put laws in place so that victims, as opposed to state actors, can hold violators accountable. But in many jurisdictions the laws are unclear, untested, or unavailable. Obtaining clarity on the legal landscape is a priority.
- Legal standing is a potential issue in both criminal and civil actions, requirements vary considerably between jurisdictions.
- The ability to participate and challenge arbitrations is an important avenue to explore.
- Regional tribunals that have some distance to national political influences should be considered viable venues.
- Human rights instruments may provide the legal basis on which anti-corruption claims can be brought.
- In addition to bringing legal actions, CSOs have a crucial role to play in focusing media attention on the action and generating public support.
- Freedom of Information requests can be an important tool to gather evidence for legal actions.
- Today's anti-corruption strategies are built on the conviction that greater disclosure will generate information that can be used to hold violators accountable. This information can and should be used by CSOs to hold the worst violators legally accountable.

Main Outputs

Recommendations, Follow-up Actions

A follow-up workshop will be held tomorrow to tease out some of the issues that were raised today. The network should be formalized and should consider devoting resources to create a Legal Remedies Digest which describes legal actions and theories that may be used by practitioners to protect the rights and interests of victim populations. The research produced should be made available as a web-based resource to reinforce knowledge of laws and legal tools, and to share promising approaches that may be applicable but which are, as yet, untested.

Workshop Highlights (including interesting quotes)

On Tuesday of this week the top French appeals court authorised the judicial investigation of a corruption case involving three African heads of state and their relatives. This landmark decision that creates a precedent under French law and marks a sea change in corruption related litigation. Maud Perdriel-Vaissière of SHERPA, and a coordinator of the workshop, was intimately involved in the proceedings and the case was used to inspire the participants.