

# LOOKING AHEAD - STRATEGIES ADDRESS THE ISSUE OF CORRUPTION IN THE WORK OF THE UN TREATY BODIES

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20 FEBRUARY, CICG – GENEVA

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# VICTIMS RIGHTS

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*“If police, the justice system and communities can offer victims of crime safety, access, information, support, continuity and voice – justice will result.”*

- Acknowledgment of wrongdoing and victimhood
- Right to information (also on procedure)
- Enhancing capacity (incl. strategic litigation) & participation
- Transitional justice → transformative justice
- Reforms and prevention of future violations
- (Responsible) asset recovery
- Redirect resources toward providing the medical, economic, and emotional support that victims need

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# UN HUMAN RIGHTS TREATY BODIES

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- Human rights treaty bodies with individual complaints mechanisms:
  - CCPR – civil and political rights
  - CAT – torture
  - CESCR – economic, social and cultural rights
  - CRC – children
  - CERD – discrimination
  - CRPD – people with disabilities
  - CEDAW – women
  - CED – enforced disappearances
- UN Human rights treaty bodies: other avenues – monitoring implementation through periodic reports, country inquiries
  - Country inquiry: reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.
- Inter-State complaints?
  - These procedures have never been used (!)
- General comments
  - Interpretation of the content of human rights provisions on thematic issues or methods of work
- Meeting of chairpersons
  - Forum for members of the ten human rights treaty bodies to discuss their work, share best practices, and consider ways to enhance the effectiveness of the treaty body system as a whole
- Universal Periodic Review
  - Deliver input for recommendations (Cf. Hans Fridlund)
- Special Procedures of the Human Rights Council (OCHRC)

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# POSSIBLE AVENUES OF APPLICATION

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- (More) (strategic) litigation in individual complaints mechanisms
  - Admissibility (definition of ‘victim’ (including at domestic level) – *ratione personae*, no anonymity (whistleblowers), no *actio popularis* (role CSO’s), *ratione materiae* (substance/details, see merits), exhaustion domestic remedies (corruption judiciary/procrastination/no investigation → no proof))
    - Secretariats Treaty Bodies: open to signals → ask additional information from authors
  - Merits (“enjoyment of human rights” → direct, indirect, remote, causality, aggravated factor)
  - Remedies (word limits recommendations, follow-up/procrastination, restitution: asset recovery)
- Input of legal scholars/representatives and CSO’s to all procedures of the bodies
  - Committee’s are limited to input provided by authors/States Parties
  - Shifting burden of proof? Need for new evidentiary standards / causality (cf. criminal law / José Ugaz)?
  - Input experts/victims: participation – is there a framework? Does the framework work? Guidelines on third party interventions?
  - ‘Menu’ of recommendations (molded case-by-case) – individual complaints, country reviews, UPR
- Information/research on the links between corruption and human rights, from both perspectives (fitting in the existing framework, improve/strengthen earlier texts)
- Training of secretariat, judges, committee members, legal representatives & victims

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# EXAMPLE: UNCAC & THE DUTCH STATE

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- Article 35: “Each State Party shall take such measures as may be necessary (...) to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.”
- Dutch State: “The Netherlands confirmed that it fully implemented this provision of the Convention.”
- Dutch Criminal law (article 51a Code of Criminal Procedure): “Anyone who directly has sustained damage/loss as a result of a criminal offence may join a claim for civil damages as the injured party.”
- Burden of proof on ‘victim’ – difficult proving ‘victimhood’
- Strategic litigation: file claim on behalf of group of victims
  - For example: telecom corruption by Dutch companies in Uzbekistan: who are victims? The Dutch or Uzbek State? Competing telecom companies? Dutch shareholders of corrupt companies? Uzbek users of telecom services?  
Population Uzbekistan at large (BEST MATCH WITH HUMAN RIGHTS)?
- If claim Uzbek people at large and all appeals denied (“no direct damage”): individual complaint? UNCAC does not provide such a mechanism. ICCPR – fair trial? ICESCR – food, health, education? CAT – prohibition of torture? What is the scope of State responsibility?



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