



REPORT OF THE

**INTERNATIONAL**

**MEETING**

**ON CORRUPTION  
AND HUMAN RIGHTS  
IN VENEZUELA**

**fidh**

**apdhe.**  
1948 Declaración Universal DDHH

**75**  
años

**DPLf**

Fundación  
para el Debido  
Proceso

**TRANSPARENCY  
INTERNATIONAL**  
the global coalition against corruption

**TRANSPARENCIA**  
Venezuela

Madrid, April 18–19, 2023

Introduction .....	4
Summaries of each presentation .....	7
<b>PANEL I</b> .....	13
<b>THE DEFENSE OF HUMAN RIGHTS AND THE FIGHT AGAINST CORRUPTION: CONTRADICTION OR COMPLEMENTARY?</b>	
Katya Salazar, executive director of the Due Process of Law Foundation (DPLF) .....	14
María José Veramendi Villa, from OHCHR .....	15
Feliciano Reyna, president of Acción Solidaria and Civilis .....	16
<b>PANEL II</b> .....	19
<b>LJUSTICE AT THE SERVICE OF IMPUNITY. WHEN CORRUPTION VIOLATES HUMAN RIGHTS</b>	
Mildred Rojas, Investigation Unit - Transparencia Venezuela .....	20
Jimena Reyes, International Federation for Human Rights (FIDH) .....	22
Francisco Cox, Independent Fact-Finding Mission in Venezuela .....	23
Marcos Gómez, Director of Amnesty International Venezuela .....	25
<b>PANEL III</b> .....	27
<b>FORMAL AND INFORMAL MECHANISMS FOR CIVIL SOCIETY PARTICIPATION IN COURT PROCEEDINGS.</b>	
Ramiro Orias, Due Process of Law Foundation DPLF .....	28
Jan-Michael Simon, Max Planck Institute .....	29
Naomi Roht Arriaza, Professor, University of California, School of Law .....	30
Pablo Secchi, Executive Director, Poder Ciudadano, Transparency International Argentina .....	32
Belén Suárez, Anti-Corruption Prosecutor and representative of Spain in the Iberoamerican Network of Anti-Corruption Prosecutors .....	33
<b>PANEL IV</b> .....	35
<b>JUSTICE AND POWER. THE CHALLENGES OF MOVING FORWARD IN GRAND CORRUPTION PROCESSES.</b>	
Sergio Rodríguez, Administrative Investigations Prosecutor in Argentina .....	36
Maite Parejo Sousa, Criminal Lawyer, Partner at Maio Legal .....	38
Marino Alvarado, member of Provea .....	39
Eduardo Salcedo-Albarán, of the Vortex Foundation .....	41
<b>PANEL V</b> .....	43
<b>PROTECTION, RECOVERY AND MANAGEMENT OF RECOVERED ASSETS.</b>	
Kristen Sample, NDI's Democratic Governance .....	44
Feliciano Reyna, Acción Solidaria and Civilis .....	44
François Valérián, Transparency International France .....	46
Tutu Alicante, EG Justice .....	49
Karina Carvalho, executive director, Transparency International Portugal .....	50
Tania García Sedano, Asociación Pro Derechos Humanos, Spain .....	53
Agatino Camarda, CiFAR .....	55

<b>PANEL VI</b> .....	57
<b>TRANSPARENCY, THE RIGHT TO PRIVACY AND THE FIGHT AGAINST GRAND CORRUPTION.</b>	
María Fernanda Sojo, Investigation Unit - Transparencia Venezuela .....	58
Maira Martini, Transparency International Secretariat .....	60
Carlos Cordero, from Access Info .....	60
Joaquín Gil, journalist of the investigative team of the newspaper El País .....	62
Romina Colman, Investigative Journalist, OCCRP .....	63
<b>PANEL VII</b> .....	65
<b>STRATEGIC LITIGATION AND THE PROBLEMS ARISING FROM LITIGATING IN DIFFERENT JURISDICTIONS.</b>	
Mercedes De Freitas, executive Director, Transparencia Venezuela .....	66
Vladimir Aras, Federal Prosecutor of the Court of Appeals in Brasilia .....	68
Carlos Castresana, First Prosecutor of the CICIG. Prosecutor at Spain's Audit Court .....	69
Yesenia Valdez, of the Foundation for Justice and the Democratic Rule of Law. Mexico .....	71
José Ugaz, Member of the Anti-Corruption Task Force .....	73
Final thoughts .....	76

Transparencia Venezuela, the Due Process of Law Foundation, the Asociación Pro Derechos Humanos de España, the International Federation for Human Rights and Transparency International organized an **International Meeting on Corruption and Human Rights in Venezuela** on April 18–19, 2023 at Fundación Arquitectura COAM in Madrid.

The program included various issues, areas of development and obstacles that need to be considered and analyzed further in Venezuela and worldwide in order to successfully advance in the fight against grand corruption. The challenge of investigating the mechanisms, perpetrators and scope of grand corruption in Venezuela requires studying new ways to promote justice and the fight against impunity, in an effort to confront a system captured by transnational networks that have supported and protected criminal action. The various elements of the corruption pattern rooted in Venezuela, and the control over State structures, hinder the service of justice in Venezuela, and prompt us to try and find justice in other countries where Grand Corruption has had an impact, albeit with different modalities.

As of April 2023, Transparencia Venezuela has identified 146 cases of Venezuelan corruption that are being prosecuted in the justice systems of 26 countries: in the United States, Argentina, Colombia, Spain, Portugal, Mexico and other nations. Cases involving senior officials, in connivance with private individuals, who have stolen more than USD 64 billion, and are being criminally prosecuted in other countries for overpricing, money laundering, bribery, misappropriations, illegal interference in political processes and other crimes.

All the cases analyzed involve activities or are based in more than one country, either because persons of interest have allies and accomplices in the corruption mechanism in different places, or because they have established companies and consolidated alliances in an attempt to manage, operate or launder the money. This means that prosecutors in each nation require the support of justice institutions in different countries, and thus, international cooperation is the way forward. Although there are already experiences with this type of support, the reality is that greater and deeper cooperation is required.

In some countries, cases are closed, stalled or slowed down due to the lack of cooperation and response from the Venezuelan Prosecutor General; in others, due to the complexity of the plots involving billions of dollars, dozens of people, different jurisdictions, relationship with powerful individuals, skillful law firms and advisors in the laundering of illicit profits.

A discussion was raised, thus, on the need and timing to leverage the mechanisms for civil society participation in these processes and, in particular, in cases in which the justice system of the country where the offense is committed has chosen not to collaborate. Some innovative and successful experiences were presented through different formats, seeking to expand the possibilities for civil society to become an ally of justice, beyond traditional figures such as *amicus curiae*.

As is common in cases of Grand Corruption, the effects expand further than the group of people directly involved. International reports have shown the relationship and impact of corruption in the guarantee of human rights,<sup>1</sup> in sectors such as health, food,<sup>2</sup> education; quality of public services such as drinking water, electricity, as well as in development opportunities, overcoming poverty and inequality.

In two panels, participants dwelled on the legal discussion on the formal definition of “victims.” In Venezuela, there are millions of—some direct and many indirect—victims of corruption. However, it is an ongoing academic and legal discussion with interesting perspectives in this field, whose conclusion would reinforce the possibility of defining avenues of reparation in favor of those most affected.

The goal of this meeting was to build institutional and civil society capacities to curb impunity among grand corruption networks and their supporting groups, and thereby protect the rule of law and democracy. The discussion that took place in this event helped promote new and necessary strategies, legal opportunities, flexibility in rigid processes that in some cases lack the capacity to confront the robust and powerful networks of grand corruption.

The meeting brought together 33 panelists, including 27 international speakers, who discussed *The defense of human rights and the fight against corruption: contradictory or complementary?*, moderated by Katya Salazar, executive director of the Due Process of Law Foundation (DPLF) and featuring specialists María José Veramendi Villa, Human Rights and Anti-Corruption Officer at the OHCHR and Feliciano Reyna, president of Acción Solidaria and Civilis.

Justice at the service of impunity. When corruption violates human rights was a challenging topic moderated by Mildred Rojas, from Transparencia Venezuela’s Investigation Unit, and featured presentations by Jimena Reyes, from the International Federation for Human Rights FIDH; Francisco Cox, from the Independent Fact-Finding Mission in Venezuela and Marcos Gómez, Director of Amnesty International Venezuela.

Another issue raised during the meeting was the *Formal and informal mechanisms for civil society participation in legal proceedings*, featuring Ramiro Orias from the Due Process of Law Foundation (DPLF); Pablo Secchi, from Poder Ciudadano and Transparency International Argentina; Belén Suárez, from the Ibero-American Network of Anti-Corruption Prosecutors; Jan-Michael Simón, from the Max Planck Institute, and Naomi Roht-Arriaza, Professor at UCLA Law.

*Justice and Power. The challenges of moving forward in Grand Corruption proceedings.*

Moderated by José Ugaz, criminal lawyer, member of the Anti-Corruption Working Group, this session addressed the complexity of mechanisms behind grand corruption cases. Participants included Maite Parejo Sousa, attorney at Maio Legal; Sergio Rodríguez, Prosecutor for Administrative Investigations in Argentina; Marino Alvarado, from Provea, and Eduardo Salcedo-Albarán from Fundación Vortex.

1 <https://corruptometro.org/>

2 <https://chavismoinc.com/>

The program also addressed *Protection, recovery and management of recovered assets*. Moderated by Kristen Sample, from NDI and featured Feliciano Reyna, from CIVILIS; François Valerian, from Transparency International; Francia Tutu, from Alicante EG Justice; Karina Carvalho, from Transparency International Portugal; Agatino Camarda, from Civil Forum for Asset (CIFAR), and Tania García Sedano, from Asociación Pro Derechos Humanos de España (APDHE) the group discussed the need to strengthen mechanisms for civil society participation to achieve justice.

*Transparency, the right to privacy and the fight against Grand Corruption* was the umbrella to discuss a legal aspect that has been an excuse for opacity. María Fernanda Sojo, journalist at Transparencia Venezuela's Investigation Unit, moderated this panel with Maira Martini, from the Transparency International Secretariat; Carlos Cordero, from Access Info; Romina Colman, from OCCRP and Joaquín Gil, from the newspaper El País, who discussed the "dynamic tension between the necessary transparency of public governance and the right to privacy, which has been used to protect agents related to corruption cases."

The last panel was entitled Strategic litigation and the problems derived from litigating in different jurisdictions. This included issues such as criminality (Is money laundering a corruption crime?); the interest or capacity of the country prosecuting the case (usually monetary or institutional), vs. the interest of the victims who are usually not from that country and who are more focused on the damage caused; and the future of joint investigations. Legal guarantees, tax havens, tax benefits, appealing cities: Why do people prosecuted or indicted in corruption cases choose to live in the U.S., Spain, Italy, London, despite the risks of being sanctioned? Participants included Mercedes De Freitas, Transparencia Venezuela General Director, as moderator; José Ugaz, of the Anti-Corruption Task Force; Carlos Castresana, Academic and Prosecutor from Spain; Yesenia Valdez, Mexico's Fundación para la Justicia; Olga Barat, and Vladimir Aras, Federal Prosecutor of the Court of Appeals in Brasilia.

You can watch the entire event on our Youtube channel by clicking on:  
<http://bit.ly/Corrupcion-DDHH> y <https://bit.ly/43Hydt0>

## SUMMARIES OF EACH PRESENTATION



**Katya Salazar**

Described the process of co-optation of justice by corruption, impunity and human rights violations in this context. She provided an overview of how the international legal framework has been addressing this relationship.



**María José Veramendi**

Addressed the impact of corruption on economic, social, cultural and environmental rights and the strategies designed at OHCHR to help counteract its effects, guaranteeing a victim-centered human rights approach.



**Feliciano Reyna**

Focused on the Complex Humanitarian Emergency that has been impacting Venezuela for seven years as a result of corruption and the collapse of institutions.



**Mildred Rojas**

Spoke of how corruption in the justice system is entrenched throughout the structure, and how it has deepened in the last 20 years, according to evidence from reports by international organizations and civil society.



**Jimena Reyes**

Emphasized the need for international organizations to establish the legal links between corruption and its victims, and to use their mechanisms to prosecute States for failing to prevent corruption. She referred to the Venezuelan case of the CLAP subsidized food programs.



**Francisco Cox**

Discussed the evidence provided by the fact-finding reports on Venezuela regarding the effects of corruption on human rights and the mechanisms through which the Venezuelan judicial system clearly guarantees impunity.



**Marcos  
Gómez**

Explained how the corruption of the judicial system in Venezuela impacts all areas of social life, and how it impinges on the rights of people in their daily lives and their actions are based on how useful they may be for the State. Citizens are in a state of defenselessness before the power of the State.



**Ramiro  
Orias**

Addressed the need to create standards and mechanisms for citizen participation in criminal proceedings in corruption cases, for example, when corruption affects the diffuse or collective interests of society as a whole.



**Jan-Michael  
Simon**

In international criminal law—at least in cases at the ICC—, we must explain economic interest as a motive for human rights violations. He emphasized the need to establish the causal relationship between the act of corruption and the victims. An example: the CLAP case and child malnutrition in Venezuela.



**Naomi Roht  
Arriaza**

The victim is a person who undergoes the damage, and in case of corruption in a hospital of the public health system, who is the victim? The health minister or the patients? The problem is that up until now the courts have answered it is the former. How is this issue handled in international law?



**Pablo  
Secchi**

Spoke about thinking outside the box and presented three landmark cases handled by Poder Ciudadano in Argentina, which allowed the organization to participate in the cases as civil society. One of the three cases relates to Venezuela.



**José  
Ugaz**

The intricate extradition request of Venezuelan national Nervis Villalobos in Spain helps to understand the difficulties of litigating in various jurisdictions. “It is a good idea to consider frustrating cases,” he said. And he warned about distinguishing Grand Corruption from general corruption or petty corruption, and how this difference not only relates to the magnitude of the crime but with the power that pulls the strings.





**Belén  
Suárez**

Addressed citizen participation in corruption prosecutions and how the Spanish justice system deals with this complex issue. She also illustrated her point with concrete examples of cases in which they have mobilized.



**Sergio  
Rodríguez**

“If democratic institutions are not strengthened, it is impossible to fight against corruption.” Argentina’s Anti-Corruption Prosecutor’s Office was an investigative commission of the Executive Branch and became part of the Judicial Branch. It was granted powers by law, without which it would be impossible to investigate acts of corruption, not only in Argentina, but in any country in the world. But there is also an anti-corruption office that reports to the Executive Branch.



**Maite  
Parejo de Sousa**

What are the problems in investigating Grand Corruption in Spain? That is the basic question asked by the Maio Legal representative. What are the disadvantages, advantages and challenges of globalization?



**Marino  
Alvarado**

How to undertake actions help prevent corruption, that help demonstrate that there is no will to investigate and punish, and how—even in the midst of adversities—we can some small wins that motivate and help bolster the fight against corruption.



**Kristen  
Sample**

She introduced the session by reminding that the money trail must be followed, and pointed to lessons learned on advocacy and strategic litigation, and return experiences for the asset recovery process.



**Eduardo  
Salcedo-Albarán**

Discussed how Venezuela’s transnational corruption scheme is the largest in the world. Five years of digital data collection and processing have helped visualize these highly complex plots that can become a veritable puzzle for the justice systems.



**Feliciano  
Reyna**

Spoke about the huge gap in the contributions of the UN mechanism for Venezuela compared to other countries with same humanitarian needs, and said that human rights cannot be above policies on the urgency to activate the Social Fund for the most vulnerable.



**François  
Valérian**

It is essential to identify the real victims in corruption cases in order to prevent the money from going back to the same people who stole it. Corrupt governments are quick to demand the return of seized assets on the grounds that the State is the victim of the theft, and not the citizens, who were deprived of the benefits of those public funds.



**Tutu  
Alicante**

Described a situation of state capture by members of the government, who seize a nation's resources for their own benefit. In order for the money from corruption seized in the destination countries to benefit the people—the actual victims—, it cannot be handed over to a de facto government.



**Karina  
Carvalho**

Drew attention to the need for governments of recipient countries to create mechanisms to defend themselves against transnational corruption, not only based on an altruistic vocation of democratic solidarity, but also to protect themselves from the consequences of corruption and its effects.



**Tania  
García Sedano**

Offered an overview of the tools in the legal framework available in Spain for asset recovery, as a recipient country of money or goods resulting from corruption activities.



**Agatino  
Camarda**

Human rights activist, especially in anti-corruption, migration and asset recovery, focused his remarks on the issue of asset return through third parties, with examples and best practices.



**María Fernanda Sojo**

Described the difficulties for investigators working in the media and civil society organizations in Venezuela to probe into these issues given the limited access to public information.



**Maira Martini**

The Panama Papers case exposed, thanks to the document leak from Panamanian law firm Mossack Fonseca, how major public figures owned a number of companies in tax havens and how many properties were used for money laundering, among other crimes.



**Carlos Cordero**

The right of access to information is not a privilege, nor a concession of power; we must make people understand that this information, unless it really affects and collides with another human right, should be public because it facilitates the exercise of other rights and also because it gives soundness and robustness to the rule of law and democracy.



**Joaquín Gil**

Venezuela has all the ingredients of corruption: money laundering, beauty queens, politics, suicides, lawyers engaged in polishing up images and laundering funds, front men, purchase of properties all over the world.



**Romina Colman**

recounted how OCCRP and other journalism data platforms have been finding new ways to communicate data amidst governments' attempts of concealing public information.



**Vladimir Aras**

Listed the complications of investigating transnational corruption cases, such as the location of evidence, inefficiency or lack of transparency of the justice systems in Brazil.



**Mercedes  
De Freitas**

Executive director of Transparencia Venezuela, explained how the corrupt protect themselves in democratic countries, with the rule of law, where their freedom can be guaranteed, and she highlighted the barriers that this transnational corruption movement puts up to prevent the culprits from being judged and punished, and that even if this happens, there are still traces of an immense scheme in other countries.



**Carlos  
Castresana**

Grand Corruption is transnational. Funds must be appropriated in a territory, and in order to secure them, they must be taken out and put in a tax haven, and for the perpetrators to enjoy them later, they must be laundered and reintroduced into the licit markets with no record of the illicit origin of such funds.



**Yesenia  
Valdés**

In Mexico, the legal structure for corruption cases is so broad that recommendations include the use issued judgments, explanations to prosecutors, using the current legal loopholes to continue creating concepts, possibilities and answers to existing problems.



# PANEL 1

## THE DEFENSE OF HUMAN RIGHTS AND THE FIGHT AGAINST CORRUPTION: CONTRADICTION OR COMPLEMENTARY?

**KATYA SALAZAR**

Executive director of the Due Process of Law Foundation (DPLF)

**MARÍA JOSÉ VERAMENDI VILLA**

From OHCHR

**FELICIANO REYNA**

President of Acción Solidaria and Civilis



Watch panel 1 here: <https://bit.ly/3qJFEkL>

This panel discussed the links between the fight against corruption and the defense of human rights, an issue that sparks a debate about different questions: Are they different agendas? Is it possible for both to feed back on each other? Can anti-corruption policies create tensions with respect to judicial guarantees or rather—from a human rights approach—can they reinforce and expand the possibilities of confronting impunity, exposing its negative impact on communities and people who have lost their rights? Katya Salazar, Executive Director of the Due Process of Law Foundation (DPLF); María José Veramendi Villa, Human Rights and Anti-Corruption Officer of OHCHR and Feliciano Reyna, Acción Solidaria de Venezuela, participated in this debate.

Already in 2019, the United Nations qualified the crisis in Venezuela as a Complex Humanitarian Emergency. This is a category to define the urgent need for humanitarian aid in the country. Despite its natural resources, i.e. oil, gold and other minerals, Venezuela is a bankrupt country, with a staggering USD 160 million debt, and with urgent requirements that compel us to inquire about how corruption could be the cause of this emergency, which is impacting human rights, especially ESCR.

## KATYA SALAZAR

Executive director of the Due Process of Law Foundation (DPLF)

Director of the Due Process of Law Foundation, headquartered in Washington DC, with a mandate to strengthen the rule of law and human rights in Latin America, Katya Salazar stressed the need to link corruption with its impact on human rights and to show the world that it does not only affect the treasuries of the States but the people themselves.

What are we talking about when we talk about corruption and human rights? Salazar asks. “It is important to remember that during the 1980s and early 1990s in Latin America there were several civil wars, internal armed conflicts, military or dictatorial governments, with a variety of human rights violations such as extrajudicial executions, torture, forced disappearances and arbitrary detentions. To address this reality and these challenges, Non-Governmental Organizations (NGOs) emerged to represent the victims of these horrendous events.

Salazar recalled that, in the 1990s, the reality of the region changed and the serious conflicts of the 1980s were left behind. However, human rights violations had not disappeared, but had been transformed. “Now we see more complex human rights violations, less linked to ideological reasons and more linked to economic factors, more sophisticated, more underhanded.” Thus, we began to feel that the institutional architecture we had in place to deal with ‘traditional’ human rights violations was too small.”

Think about countries where justice is co-opted by criminal groups or political power. In Mexico, for example, forced disappearances are part of the business scheme of drug trafficking groups that are linked to government officials; i.e., they are not isolated events, but are part of a pattern where disappearances are the “visible part” of a very sophisticated business, where government and non-government actors participate, even those in charge of investigating these events. “From the human rights movement we have been trying to better understand these new realities. First, we need to understand how these corrupt systems work and to encourage our courts, national and international institutions, to address these new challenges with relevant instruments, i.e., to help them “catch up.”

The Inter-American system, specifically the IACHR, has made great strides in this direction, Salazar recalled. Although the word “corruption” is not in the American Convention on Human Rights, the IACHR “approved several very important resolutions on impunity, corruption and human rights, and at the end of 2020, it approved a thematic report on corruption and human rights, with concrete recommendations to combat corruption from a human rights perspective. Among other topics, the report puts victims at the center of the discussion and promotes their participation and that of civil society in the fight against corruption. The challenge, says Salazar, is to ensure that the IACHR report is used, understood and followed.

Although we all know that corruption affects individuals and society in general, criminal proceedings on corruption “affect” the state, he said. This is something we want to change, we want to promote that specific victims are able to appear in these proceedings, giving them visibility and allowing their voices to be heard. Current normal practice “in corruption cases is that the victims are not represented, only the judge, the prosecutor, the accused and their lawyers, and they are the ones who decide, agree and settle. The victims or their relatives are not present and have no say in these procedures. Can you imagine the kind of decisions that are reached with such opacity?

Therefore, according to Salazar, it is very important to be able to identify specific victims in corruption cases and for them to appear in the proceedings in order to be heard and obtain reparations.

### MARÍA JOSÉ VERAMENDI VILLA

From OHCHR

Attorney at law, Master in International Legal Studies and Human Rights and Anti-Corruption Officer at the Office of the United Nations High Commissioner for Human Rights, Veramendi began her intervention by recalling that, in July 2022, a position was established at the OHCHR for working on human rights and corruption globally, a milestone decision that links corruption and human rights.

Veramendi referred to the need to work on the impact of acts of corruption on the effective enjoyment of economic, social and cultural rights. “We have focused on designing a strategy for the work on corruption and human rights for the next five

years,” she said. The anti-corruption expert identified two lines of action of her work. The first is to ensure a victim-centered approach to HR. The second deals with the investigation of cases of human rights violations arising from corruption cases that infringe economic, social and cultural rights from a perspective that involves prevention, effective administration of justice and reparations for victims of corruption-related crimes.

Veramendi reiterated that the work on human rights and corruption at the OHCHR is not new, and that back in 1992, the then Commission on Human Rights adopted a resolution that, made the link for the first time between corruption and human rights. In 1994, the Sub-Commission on Prevention of Discrimination and Protection of Minorities produced the Preliminary Report on the fight against impunity for perpetrators of human rights violations (economic, social and cultural rights), prepared by Mr. Guissé and Mr. Joinet under Resolution 1993. It recommended the establishment of an international convention to combat corruption; even in 2022, a rapporteurship on corruption and its impact on the enjoyment of human rights, in particular economic, social and cultural rights, was established and produced a series of important reports that make a link with ESCR.

Veramendi highlighted three fundamental resolutions in the Human Rights Council on this matter: the resolution on good governance and human rights; the negative effect of the non-repatriation of illicit funds to the countries of origin on the enjoyment of human rights. In this regard, the HR Council asked the office to report on the obstacles preventing the repatriation of funds. The third resolution will be presented in June 2023 and deals with the negative effects of corruption on human rights.

Veramendi listed a series of reports produced by the OHCHR and the Advisory Committee of the Human Rights Council. The latter has made recommendations on the possibility of having a special procedure on corruption and human rights, either in the form of a rapporteurship or a working group.

She said that there are opportunities as regards the Universal Periodic Review, before the United Nations treaty bodies. In 2021, the treaty bodies issued a joint communication on corruption and HR and called on States to submit information on this issue and that the fundamental role of organizations to deliver information is important. “In the framework of the strategy that we are designing in the coming years, the exchange of information between the organizations that are part of the United Nations is important.”

“Regarding the investigation of human rights cases related to acts of corruption, one of our strategies is to design an analysis methodology, in which we can identify acts of corruption that trigger human rights violations, and work on the identification of victims, the causal link and the analysis of human rights, and then make specific recommendations.

“Corruption is a crime with victims,” she said.



## FELICIANO REYNA

President of Acción Solidaria and Civilis

Human rights advocate in Venezuela, founder and member of Civilis DDHH and Acción Solidaria, coordinator of their humanitarian program since the onset of the Complex Humanitarian Emergency in 2016, Feliciano Reyna noted that, when the collaborating civil society organizations made reports on Venezuela, it was evident that we were facing a massive situation of structural human rights violations.

“At the end of 2015 we found the definition of Complex Humanitarian Emergency at the University of the Basque Country. These are situations that are not the result of natural disasters or armed conflicts, but due to abuse of power and lack of rule of law; corruption was barely mentioned, as relates to the creation of certain parallel market structures or mafias, but not as something that produces harm. These situations are massive and deliberate violations of human rights.”

Reyna believes that these years of abuse of power, the dismantling of the State, but also the emergence of these elements of corruption at all levels, brought about the situation that has impacted millions of people.

When we start to see sustained deterioration in human rights in Venezuela, which has been in Chapter IV of the Inter-American Commission on Human Rights due to structural situations in terms of violations, corruption issues are not mentioned until 2013. And, says Reyna, the serious impact caused by corruption on Human Rights is not even mentioned, but only in relation to an action against Transparencia Venezuela, after that organization noted that the government was reported to enact a law on sovereignty and self-determination, because the organization reported cases of corruption and named deputies to the National Assembly. No reference is made to corruption mentioning the affected population.

Then Reyna recalled that, in 2014, there was talk about how the lack of access to public information promotes corruption in the country, “but there was no further discussion.”

In 2015, reports stated that the fight against corruption was a catchphrase widely used by the Venezuelan government in times of political tension and electoral campaigns, but it has not translated—neither then nor now—into an implementation of a program backed by institutions.

In 2018, Reyna also recalled, there was mention in several reports that corruption was already widespread and that it was one of the causes of the food and health crisis. “The only Venezuelan organization that reports corruption in Venezuela is Transparencia Venezuela,” he noted.

The Fact-Finding Mission on Venezuela concluded that one part of the crisis in Venezuela that warrants thorough investigation is the nexus between corruption and serious human rights violations.

If we consider that the humanitarian emergency is a slow-evolving process, and the cases of corruption suggest that it is a gradually expanding phenomenon, making that linkage is not so easy. In that report, the Mission notes that several of the sources they consulted, all current members of government and military personnel, have said that a factor that encourages human rights violations is the personal economic benefits derived from the capture of state institutions. “And that, precisely, is an incentive for agents to stay in power and ensure impunity. We are missing that connection between HR and corruption in people’s daily lives,” Reyna concluded.

He provided details of the impact of corruption on human rights, based on data from more than 6,500 surveys conducted in Venezuelan households, published by the HUM Venezuela platform, in which dozens of civil society organizations participate:

- At least 7 million people in Venezuela are in need.
- There are currently 19 million people in Venezuela in need of assistance. They have exhausted their livelihoods; the only way to make ends meet is, for example, to refrain from spending in education or medicines, but only in food. Of these, some 10 million people are in humanitarian need, twice as many as the UN system can handle.
- About 12 million people are—severely and moderately—food insecure. There is chronic hunger and malnutrition, also in children. Pregnant women are enduring acute malnutrition, hypertension and diabetes because the food provided by the government consists only of carbohydrates. Sometimes they receive a can of tuna, but all they eat is cornmeal, bread and non-nutritional food.
- According to the National Hospital Survey, the shortage of supplies in 2022 stood at 45%; most available supply was (80%) was oxygen, which should be available 100% of the time. A total of 88% of 40 hospitals did not have CT or MRI machines available throughout the year.

“We have lost human talent,” Reyna laments. “The dismantling of protection systems prompts millions of people to migrate, and when they leave, they endure a number of situations of violence,” he says.

Reyna refers to the paradox between the minimal impact of reported corruption and human rights violations, compared to the impact corruption has had on people’s lives. “We need to get everyone to understand it.”

And as a landmark case, Reyna mentioned that, in 2009, the first military staff appointed as health minister pledged to renovate 52 public hospitals. “Ten years later, none of them were completed. No progress was made on the facilities. Then there was an accusation against the fourth military-staff-turned-minister, Eugenia Sader, for a case that was negligible compared to the gigantic damage caused by that first minister.”



# PANEL 2

## JUSTICE AT THE SERVICE OF IMPUNITY. WHEN CORRUPTION VIOLATES HUMAN RIGHTS

**MILDRED ROJAS**

Investigation Unit - Transparencia Venezuela

**JIMENA REYES**

International Federation for Human Rights (FIDH)

**FRANCISCO COX**

Independent Fact-Finding Mission in Venezuela

**MARCOS GÓMEZ**

Director of Amnesty International Venezuela



Watch panel 2 here: <https://bit.ly/42NjNX2>

This panel focused on the violations of rights that occur when corruption captures justice, based on the case of Venezuela. Not only does corruption in healthcare or food violate rights; impunity ensured by judges and prosecutors involved in bribery, extortion or illicit acts also violates rights, with the complicit silence or sometimes direct involvement of representatives of the justice system in abuses, violations, torture, extrajudicial executions, forced disappearances. Analyses were carried out based on case information.

Participants included Mildred Rojas, from the Investigation Unit of Transparencia Venezuela; Jimena Reyes, from the International Federation for Human Rights (FIDH); Marcos Gómez, executive director of Amnesty International in Venezuela, and Francisco Cox, member of the Independent Fact-Finding Mission to Venezuela, OHCHR.

## MILDRED ROJAS

Investigation Unit - Transparencia Venezuela

An attorney at law, member of Transparencia Venezuela's Investigation Unit, Mildred Rojas has worked on corruption cases linked to the justice system, and on corruption within the justice system as one of the greatest triggers of impunity. She recalled that reports from international organizations and civil society have made it clear that the Venezuelan justice system is co-opted.

"Corruption in the justice system is entrenched in the entire structure. It is not a conjunctural problem, and it has exacerbated in these last 20 years," she said. Rojas also highlighted that the first 2020 report of the Fact-Finding Mission on Venezuela identified that, to a large extent, international crimes committed in Venezuela since 2017 had a significant level of liability attributable to the judiciary, either by action or omission.

The judiciary, said Rojas, has been intervening in processes of political persecution involving arbitrary arrests, validated by judges or prosecutors who, once they left the country, have stated how they had been victims of undue pressure to issue arrest warrants or rigged proceedings against members of the opposition.

Rojas also reported the omission in the investigation of landmark cases of grand corruption, involving the embezzlement of billions of dollars, which have benefited a few and have exacerbated poverty and inequality in Venezuela.

Rojas lists a pattern of formal actions that have led to co-optation and corruption in the justice system:

- Appointment of prosecutors aligned with the ruling party.
- Dismissal of judges without complying with the statutory procedure.
- Political intervention of the Supreme Court of Justice.
- Appointment of prosecutors and judges without public competition for more than 16 years.

“It is no coincidence,” Rojas says, “that there are open investigations for cases of grand corruption against the highest authorities in the justice system. Maikel José Moreno Pérez, former Presiding Justice of the Supreme Court from 2017 to 2021, has been indicted in a US court as he allegedly ‘kept a bribe book that tracked millions of dollars in incoming bribes and personal expenses’. He is also reported to have received money and assets to influence lower court civil and criminal cases in exchange for releasing defendants or dismissing charges.”

Transparencia Venezuela has also reported investigations against judges and prosecutors who receive money for refraining from prosecuting people who have been accused.

An official named Mario Aquino, who became an anti-corruption prosecutor, was arrested in February 2023 for his involvement in the release, on January 9, 2023, of the alleged terrorist Oswaldo José Cheremos Carrasquel, member of a “mega-gang” known as El Tren del Llano. The accused allegedly paid USD 240,000 to be tried in absentia after the efforts of Loreannys Mariana Mejías Díaz, a woman who appeared before court as an “envoy” of the National Assembly, who had been an assistant of a pro-government deputy.

Apparently, says Rojas, these events, far from rare, are a usual practice in the Caracas Courthouse. In fact, in August 2021, a group of members of Parliament (Constituent Assembly) elected in the questioned elections of 2020, ordered a judge to release two persons accused of smuggling gold.

Transparencia Venezuela obtained testimonies from lawyers and judges through surveys that provide evidence that justice in Venezuela is a sort of merchandise from which many officials profit. “They all agree that it is impossible to think that senior authorities of the Judiciary are not aware of this,” said Rojas.

A substitute Justice of the Criminal Cassation Chamber of the Supreme Court, reported Rojas, revealed that they charge USD 200 for a case to be assigned to a specific court; for a release or transfer order, you have to pay about USD 300, and a favorable sentence runs in the thousands of dollars. A practicing criminal lawyer said that the Caracas Courthouse is known as “Ciudad Banesco,” in reference to the main headquarters of one of the largest private banks in Venezuela, and that the police and national guards who guard the detainees demand payments from relatives who try to talk to them.

The opacity of the justice system is another ingredient for impunity. Since 2017, the Public Prosecutor’s Office has not published its management report. Information on its actions is limited to statements by the Prosecutor General, press releases and news in national or regional media. In some cases, says Rojas, the information is misleading, contradictory and can end up misinforming or distorting reality.

## JIMENA REYES

International Federation for Human Rights (FIDH)

Jimena Reyes has investigated human rights violations and public policies in 17 countries in Latin America and North America, and has contributed to more than 30 reports on human rights issues. She kicked off her remarks by warning that human rights protection bodies are only now beginning to work on creating the legal link that will allow them to use their mechanisms to prosecute States for failing to prevent corruption. “They have taken a long time.”

As of 2015, the universal system is starting to say “yes, corruption has a negative impact on human rights” and after many years, there is a report that says that acts of corruption can be generators of human rights violations.

Reyes mentioned a report of the Inter-American Commission and an interesting booklet of the Inter-American Court (although there is no jurisprudence yet) that says that States may be disregarding their obligation to prevent human rights violations due to acts of corruption.

“Sadly,” she says, “Venezuela is the most emblematic case that reflects our situation in Latin America. Indeed, in some countries we are facing kleptocratic elites, organized crime and companies that are capturing State structures to become richer and to divert the State from its obligation to act in the general interest.”

Last year, together with Provea, FIDH published the report Food is not a Game, where it explains why the Venezuelan State is considered to have seriously infringed the right to food in the last six years. Speaking of the analysis of the right to food, according to Reyes, there is clearly a challenge for Venezuelan civil society to document corruption and the situation of the right to food, in view of the fact that there is not even official information on malnutrition.

“However,” said Reyes, “we documented that Venezuela had managed in 2012 to reduce the proportion of people in a situation of hunger to less than 5% of the population, positioning Venezuela as one of the best performers in the region, but between 2017 and 2019, the undernourishment rate skyrocketed to 31%. The World Food Program published an estimate for 2019 on acute food insecurity, which affected 32% of the population.” Although the report did not focus on corruption and the right to food, there are some elements that try to establish the linkage.

Back to the issue of ESCRs, there is an obligation on the State to adopt measures to progressively achieve the full exercise of the right to food, but also an obligation to adopt measures to mitigate and alleviate hunger, and it must guarantee a minimum essential level to protect people against hunger, explained Reyes. “Our conclusion is that the Venezuelan State failed to meet the obligation to protect citizens against the actions of businessmen and individuals who, through corruption, violated human rights,” she added.

Reyes pointed to the Local Supply and Production Committees (CLAP) as a landmark case of the relationship between corruption and ESCRs. “A program conceived for

the sale of subsidized food was created in 2016, in the midst of the food crisis, which derived into a source of corruption.” Various journalistic investigations have shown that there are powerful corruption networks involving tens of millions of dollars and top players who bought poor quality products, overbilled it and kept part of the funds through shell companies in various countries.”

“Grand Corruption prevented the people from having adequate nutrition,” she lamented.

The CLAPs involved also petty corruption at the distribution level, where there is a system of discrimination, clientelism and corruption. “Therein lies the link between corruption and the violation of the right to food.”

In addition to the obligation to protect people from the actions of third parties, the Venezuelan State also has an obligation to respect the right to food.

In the aforementioned report, it was described how—starting in 2014—the government implemented public policies that resulted in preventing the people’s access to adequate food. What is interesting about this link is the issue of corruption in parallel with the new public policies and the accelerated exacerbation of the food situation.

“These economic measures include,” explained the expert, “an excessive price control, which had a severe impact on agricultural and industrial property, causing food shortages, the decision of the State to prefer imports instead of domestic production, but at the same time also corruption through bribes.”

Reyes insists that this is an example that must be taken to the courts or HR committees, which defines or describes this link between corruption and the right to food. “It is our role as civil society to insist on demonstrating a link between these crimes and the victims.”

Jimena Reyes concludes that, in Venezuela, there is no independence of Justice because the judicial system has been destroyed and because there is State interference. And she warned that, “as long as the necessary convictions are not issued, we will not be able to have a proper functioning”.

## FRANCISCO COX

Independent Fact-Finding Mission in Venezuela

The Chilean lawyer and criminal lawyer who has litigated before the International Criminal Court, including in the case against Dominic Ongwen, in which he represented 2,605 victims of the armed conflict in northern Uganda, reflected on the mechanism through which the rule of law is undermined in Venezuela to favor economic interests and how the independence of the Judiciary has been affected.

Cox warned that the Fact Finding Mission’s evidentiary standard is very different from a criminal trial, therefore, its conclusions are sustained on the standard of reasonable grounds to believe, “and this is a much lower standard that goes beyond reasonable doubt.”

“We conducted more than 117 interviews with judges, prosecutors, lawyers and counsels of different defendants, to see what the justice system was like in the Bolivarian Republic of Venezuela. We have a fairly strict or relatively strict mandate that we have tried to interpret conservatively,” he explained.

At the outset, there were only four mandates, but now these have been extended to include serious human rights violations in the latest resolution, which includes gender-based violence. Initially, only the four violations that lay the foundation of the mandate governing the Mission were analyzed: extrajudicial executions, torture, arbitrary arrests and forced disappearances.

“In that first report, we concluded—with reasonable grounds—that there were two state policies related to crimes against humanity in Venezuela. One policy was the crushing of the opposition or those perceived as opponents by the government, and extrajudicial executions in the context of the fight against crime,” Cox explains.

The Mission’s analysis of the behavior of the Judiciary is related to the policy of crushing the opposition, and this analysis concluded that the independence and impartiality of the Judiciary were indeed impaired.

At least between 2015 and 2018—Cox detailed—the Executive Branch used three methods of control over the Judiciary. One was direct appointments from the Government Palace. Judicial officials were summoned directly there to receive instructions. The second method that has been used is that, through the president of the criminal circuit, messages from Maikel Moreno were sent directly to these criminal court presidents, who delivered the information and determined how the cases should be judged. Lastly, through public statements of high level authorities, very clear messages were given as to how a certain matter should be resolved.

This implies, according to Francisco Cox, a very direct control and relationship between the auxiliaries of the Public Prosecutor’s Office, the police, the Executive Branch and the immediate transfer of information with the consequences of sending the message to those who have to make the decision. “We concluded that 23% of the cases we reviewed ended up with control judges in the area of terrorism,” he said.

Cox thinks there is “leniency” about the effects of corruption on the direct victims of human rights violations, but it is used as a tool to persecute civil society in authoritarian contexts. “Venezuela itself is an example; money deliveries are used as an excuse to persecute members of civil society. Many prosecutors and judges have told us that, when there are strong economic and political interests, it is easy to predict the outcome of a proceeding because it will be aligned with those interests.”

The Mission was also able to confirm that one way in which the independence and impartiality of members of the Judiciary is undermined is through low remuneration. The compensation of judiciary officials creates incentives for corruption, and this triggers a risk of bias in decisions by the different bodies. “We were able to conclude,” said Cox, “that instructions are indeed received. Many prosecutors realized that, before the decision was made, it was clear that the judge had received an instruction.”



Cox expressed his concern regarding this issue, which “is particularly delicate in our reports, because it often meant that decisions on reports of torture of detainees were dismissed or simply not heard.”

Another “extremely worrying” issue noted by the mission is the participation of judiciary officials in arbitrary arrests through “pre-dating”, i.e., forging the date of an arrest to meet judicial deadlines, but there was usually a video of the detention matching a certain date, and the arrest was claimed to have been made later, in order to meet the deadline.

We were also able to confirm the use of fabricated or planted evidence to incriminate individuals, and this has been used by the justice system to issue convictions.

The latest report describes, Cox explains, how personal interest was a factor that influenced the arbitrary detentions. This is done by the coerced signing of documents, money transfers, in favor of certain companies, to which these detainees were allegedly linked.

## MARCOS GÓMEZ

Director of Amnesty International Venezuela

The director of Amnesty International Venezuela specifically addressed how corruption also takes over even the smallest spaces of society.

The Judiciary in Venezuela—warned Gómez—“does not move if it is not useful for the State. If there is no usefulness, it will not advance; on the contrary, if there is an interest related to repression, any case will definitely move forward.”

Corruption—says Gómez—acts even in tiny spaces that impact regular citizens. When a person is detained, “it is a nightmare for the family finances, because that family will have to face a roller coaster of corruption,” and that is not just about getting a sentence. It costs a lot of money to simply get the detainee to stay in an area of a prison where their life will not be in danger.

Gómez recalls that seven million people have left the country, fleeing this reality, and that many of the migrants had to endure a corruption-ridden process in order to obtain their documents. “For a migrant, to lose one of these papers can simply jeopardize their life.”

It is hard to understand, as Gómez points out, that such a gigantic flow of money has left Venezuela through Grand Corruption to other countries, “but how come they didn’t detect it? Much of that money is in Europe, “many of those people are seen in the United States, in countries where Human Rights tend to be respected more.”

“The money that funds the work of human rights organizations is thoroughly scrutinized, but the gigantic flows of billions (as a result of corruption) that should be used to serve to the population, emerge in countries like Spain.”

In relation to the defenselessness of civil society in Venezuela, Gómez recalled the case of Venezuelan newspaper El Nacional. “That newspaper published an article citing what another newspaper had published about a very powerful public official in Venezuela. For that republication, which anyone can do, they took away the assets of Miguel Henrique Otero, as reparation for a moral damage to a public official.”

This is a landmark case in the tendency of the Venezuelan government to enact discretionary laws aimed at subduing and/or eliminating independent media and undermining freedom of expression.



# PANEL 3

## FORMAL AND INFORMAL MECHANISMS FOR CIVIL SOCIETY PARTICIPATION IN COURT PROCEEDINGS.

**RAMIRO ORIAS**

Due Process of Law Foundation DPLF

**JAN-MICHAEL SIMON**

Max Planck Institute

**NAOMI ROHT ARRIAZA**

Professor, University of California, School of Law

**PABLO SECCHI**

Executive Director, Poder Ciudadano, Transparency International Argentina

**BELÉN SUÁREZ**

Anti-Corruption Prosecutor and representative of Spain in the Iberoamerican Network of Anti-Corruption Prosecutors



Watch panel 3 here: <https://bit.ly/3N8fxel>

According to many criminal procedural codes in Latin America, civil society organizations may have standing to represent collective or diffuse rights, which will allow CSOs to play a more pivotal role in criminal proceedings in corruption cases.

Special collaboration, coadjuvancy, popular accusation, are some of the figures that were analyzed in this session. Ramiro Orías, DPLF and member of the Inter-American Juridical Committee of the OAS; Jan-Michael Simón, researcher at the Max Planck Institute; Naomi Roht-Arriaza, Professor at UCLA Law; Pablo Secchi, executive director of Poder Ciudadano, TI Argentina, and Belén Suárez, anti-corruption prosecutor of Spain and representative to the Ibero-American Network of Anti-Corruption Prosecutors, spoke about these issues.

## RAMIRO ORIAS

Due Process of Law Foundation DPLF

More than twenty years of experience promoting issues of access to justice, criminal reform, human rights and international law in Bolivia, accredit Orías to embark upon the complex task of finding the figures that allow citizen participation in corruption trials.

The United Nations states that victims must be heard in the investigation, punishment and reparation processes. It also establishes that States must promote the active participation of civil society organizations in the fight against corruption, although it does not necessarily say how this should be applied. This prompts the need, says Orías, to improve and begin to develop international standards, good practices, to help States apply that principle. One of these ways, Orías suggests, can be through their court appearance representing the interests of the victims, in cases where the victim's involvement is not clear, as in the case of corruption affecting the diffuse or collective interests of society as a whole.

Who represents that interest? Orías asks.

States have developed procedural rules on this issue. There is a model based on which the direct victim, who has endured direct damage, brings the action. And there is another model on how civil organizations can sue in public interest cases where there are diffuse interests, where civil society is required to develop its project (this has to do with the location of the damage).

But there is a third group of countries, says Orías, which—in addition to recognizing the participation of civil society as plaintiffs, as victims—establish that any person can file a lawsuit in cases involving crimes of power.

In cases of human rights violations, in cases of embezzlement of public funds, civil society—in terms of collective persons—can appear, report, file complaints, and sponsor cases. In Spain, the mechanism of popular participation offers opportunities for

participation in criminal proceedings, which offers many participation mechanisms to civil society.

But, in short, Orias invites civil society to challenge the courts. With citizen participation, a balance is achieved, which expedites the process. But there are other ways and tools that civil society can use," he said, "and we are going to ask Jan-Michael Simon to start with the first presentation."

## JAN-MICHAEL SIMON

Max Planck Institute

A member of the UN expert group on Nicaragua, who has just presented an important report, Jan-Michael Simon addressed the opportunities provided by the mechanisms for civil society participation in court proceedings, as well as grounds, justiciable acts of corruption and damages for acts of corruption.

The presentation kicks off with the question: What does civil society participation mean?

In international criminal law, at least in cases before the ICC, economic interests must be explained as a motive for human rights violations—warns Jan-Michael Simon—, adding that "any case has some economic interest behind it," and that "whenever there is a case of corruption, the responsibility of the State must always be analyzed."

As part of mechanisms or formal opportunities, civil society can:

- denounce
- collaborate in investigations
- be a party on behalf of the victim

and there are two fundamental principles that apply to the region:

1. **Model criminal procedure code for Ibero-America.** The victim must file a report; a (broad or conditional) class action must be filed and the intervention must be requested by the victim (they must have perceived an individual or collective damage to fundamental rights).
2. **United Nations Declaration of 1985.** The victim is identified as having suffered harm in violation of criminal laws, including those prohibiting criminal abuses of power (corruption).

He pointed out that "the victim is not an ontological entity with arms where blood flows. It is a normative construction in law." First, they must have suffered damage that infringes criminal laws prohibiting abuses of power, and corruption involves an abuse of power for personal gain. "We have an example in Venezuela of 124 large cases of corruption, with more than 1000 people involved," he said. "When we make the analysis, we can see that it is not the fraud, but it is crimes of conspiracy and money laundering that are the most common in these cases."

In Texas, United States, a case was opened on the CLAPs, and in Mexico, a reparation agreement was reached after an investigation on the CLAPs, “but this agreement does not even reach 1% of the total money laundered.” This suggests that “we must start from the fact itself (the CLAP boxes) all the way to child malnutrition, based on the quality of the milk.”

Jan-Michael Simon drew particular attention to the importance of “business” in the 1985 UN Declaration, where it explains, with causality data, from the facts in Mexico to child malnutrition in Venezuela. “And if you have the rulings on the composition of the powdered milk and the customs export numbers, and you identify the places it was distributed in Venezuela, this could even prove a very specific damage in an individual who, in the worst case, could be a baby,” he emphasized.

Strictly speaking, Simon spoke about the damage to interests protected by law (individual, collective and diffuse interests) and causality, the link between the conduct and violation of the rule, the link between the fact and the damage.

## NAOMI ROHT ARRIAZA

Professor, University of California, School of Law

The victim is a person who endures harm, and when there is an act of corruption in a hospital of the public health system, who is the victim? The minister of health or the patients? With this question, Ramiro Orias leaves the floor to Naomi Roht Arriaza, who has contributed to the defense of human rights through legal support to social sectors.

“The problem,” replies Roht-Arriaza, “is that so far the courts have answered it is the former. They have said that the victim is the State, it is the Ministry, that the money embezzled was property of the Ministry, and therefore, the Ministry is the victim. And all the people who stopped receiving healthcare services and saw their medical condition worsened? Well, they have not been seen as victims.”

The professor then pointed out some jurisprudential developments.

Up to now, determination of the victim has been more effective from a human rights position than from the position of international law on corruption or the United Nations Convention against Corruption, which has articles that supposedly allow for the victim to participate in the proceedings, to receive reparations, and for a return of the assets, but they have not been effective in the courts.

A positive example of a human rights approach to corruption is the case of Honduras, she says. A hydro power plant was built without consulting the Lenca indigenous people. The licenses were forged; the environmental study was done in five hours and was presented with no professional validation; the financing was irregular at best. Faced with these arbitrary actions, the indigenous people asked to participate in the trial because their rights were being violated, namely water and land.

The case reached the Supreme Court of Honduras, which ruled in favor of the indigenous community based on human rights law, which in Convention 169 of the International Labor Organization requires consultation with indigenous peoples in cases where their rights are affected. Of course, they limit the ruling to indigenous peoples, although there is language that could be used to extrapolate it," says Roth-Arriaza. In any case, it is a precedent on the definition of collective rights, and demonstrates the power of ideas coming from human rights law."

Roth-Arriaza offered another less-than-successful example:

The Supreme Court of Mexico decided, based on an amparo measure that argued the unconstitutionality of the Victims Law and the Code of Criminal Procedure, which, according to the court, establish only the victim as a subject, and not as a complainant representing the public interest. This means that the whistleblower is prevented from acting as a party. What people want is access to the case file, to what the Prosecutor's Office is doing, and this decision hinders this claim.

The complainants claim that they must be accepted as victims, because of the Merida Convention. The Court argues that those articles of the Merida Convention are not binding or do not require participation in the criminal action and alleged victims must demonstrate that they suffered physical harm, financial loss or impairment of individual rights. This decision in Mexico concludes that it being a whistleblower of a corrupt act is not enough.

Another case in the United States: Relatives of passengers who died in a plane crash claimed to be victims. Boeing committed fraud in the sale of an airplane model, and as a result two airplanes crashed, 300 people died and the relatives of the deceased presented themselves as victims. In a ruling this year, the judge argues about the causal link: the only requirement was a direct causality (the result would not have occurred without the corrupt act) and proximate causality (reasonably foreseeable). The decision is based on a law on rights of victims that guarantees victims of a federal crime the right to be heard in any public proceeding involving conviction or sentencing.

As a final reflection, based on the U.S. cases, Roth-Arriaza said that causation is a good line of jurisprudence "and it should be applied, considering that many of the crimes committed in Venezuela end up being tried in the United States."

## PABLO SECCHI

Executive Director, Poder Ciudadano, Transparency International Argentina

"We have listened to the theoretical, jurisprudential developments of the topic at hand today. Next we have Pablo Secchi, director of Argentina's Poder Ciudadano. We are going to ask him to tell us about the experience of civil society participation in proceedings against acts of corruption in Argentina," said moderator Ramiro Orias.

At the outset, Secchi finds similarities between what Transparencia Venezuela is doing and what was done in Argentina with the Nunca Más (Never Again). “Venezuela realized that what we had been doing, controlling public affairs, was not enough, and that we had to do a totally different work. They left Venezuela and went to the countries to which corruption is being exported to see what can be done from there.”

What these countries can do is to revive their justice system so that they realize how slow they are. “We try a checkmate strategy, of pushing the boundaries imposed by institutions, we try to step out of the modus operandi with which we normally work.”

As a sample, Secchi offers three examples of the representation that have been used in the defense of victims’ rights:

First, he referred to a presentation at the World Bank on a corruption case related to the factory that printed banknotes. An Argentinean official of the World Bank was one of the accused, and a judge asked him to testify, but he answered that he could not, due to a trip abroad; however, two other Argentinean officials of the World Bank leaked that their colleague was lying. What does the World Bank do? It sanctioned the two officials who leaked the information to the media. Poder Ciudadano made a short presentation at the World Bank’s ethics committee. They listened to them, decided not to sanction the two officials and, incidentally, changed the internal policies regarding those who collaborate with justice in corruption cases.

Another case reported by Secchi concerns the Argentine State and a public university. The State hired an engineering university to audit social plans. They allegedly hired 500 engineers to carry out the audit, but these people never heard about it, even though checks were issued in their name. We received the claim and we represented them. But we, at the same time, presented ourselves as affected parties because the funds were public and were not used for their intended purpose. This is the first time in Argentina that a civil organization is accepted as plaintiff in a corruption case.

The third case deals with Venezuela. Poder Ciudadano is supporting Transparencia Venezuela in solving a very serious problem: the Argentinean justice system wanted to advance in judicial cases with letters rogatory to Venezuela, but the Venezuelan State has never responded. That is why Poder Ciudadano started to visit prosecutors in Argentina, to ask them what sort of information they were requesting from the Venezuelan justice system.

“We met with several good-willed prosecutors and judges to try to get that information. We received their request and forwarded it to Transparencia Venezuela, which found a lot of data to help further investigate corruption cases. We filed an amicus curiae, but the judge rejected the petition; nevertheless, it opened the opportunity for us to do something to get data in Venezuela, something that the justice system itself cannot do.”

That is why it is important to “think outside the box” and start looking for strategies, different paths.



## BELÉN SUÁREZ

Anti-Corruption Prosecutor and representative of Spain in the Iberoamerican Network of Anti-Corruption Prosecutors

Prosecutor Belén Suárez offered her vision “from the other side of the desk” within the justice system, through her experience working with civil society in Spain.

“The subject of class action sparks both phobias and adherence,” started Suárez. Class action in Spain has a long history, but since the Constitution of 1812, it was understood that public meant all citizens. But there were no mechanisms of participation.

Afterwards, limits began to be drawn: not just anyone can present themselves as a representative of the class action; they have to do so by means of a lawsuit. You have to appear with lawyers, and a bond is required. Jurisprudence defines how the class action is exercised; it establishes the type of participation in this criminal prosecution.

The major cases of political corruption in Spain, says Belén Suárez, led to the mobilization of public associations and consumer groups, which went to court. That triggered some of the conflicts. A portion of the doctrine justified the class action in that: “There is distrust in the Public Prosecutor’s Office, which is somehow controlled by the Executive Branch and administrative authorities. Thus, oversight is exercised regarding a possible omission of the role of the Public Prosecutor’s Office when investigating this type of crime. “Jurisprudence has also established the participation of the class action which, beyond individual interests, defends collective rights.”

In Spain there were three rulings that limit how class action is exercised and how it affects public interests. Suarez cites one example:

A criminal proceeding was opened for damage to the Treasury by the former president of Banco de Santander; parties include the Public Prosecutor’s Office because it is a public offense; the State’s attorney, as representative of the Treasury; and two organizations as representatives of the class action.

Right before the judgment, the Public Prosecutor’s Office and the State’s attorney dropped the claim and did not file an indictment, which was filed, however, by representations of those exercising the class action. At the oral trial, the defense argued against the class action filing the accusation over those who defend the public interests (referring to the Attorney of the Treasury and the Public Prosecutor’s Office).

The judge denied the class action, the case did not go to trial, and the case was closed.

Suárez also discussed the nature of the bond. The bond was justified to prevent claimants from appearing with spurious interests, just to hear the case, or to hinder the process. “Selective criteria must be established at the time the judge decides, to defend the right to defense and collective rights. On some occasions,” says Suarez, “bond has been symbolic, one euro. But there have also been proceedings in which the class action has been dismissed due to hindrance.”

In relation to the PDVSA case, when the judge ponders the exercise of the class action, he does not necessarily have to establish a link with what is happening in the Venezuelan oil company, but he must have selective criteria, such as knowing which organization is being represented, explains Suárez. There are many criteria that a judge assesses to admit or not a class action, and these criteria are put into play when determining the bond.

Ramiro Orias, moderator of the panel, added in closing: “In order for civil society to play a leading role in the prosecution of corruption, “we need sufficiently sound and rigorous legal frameworks to allow participation. But we must also challenge the system to initiate, as civil society, litigation actions in innovative ways.”



# PANEL 4

## JUSTICE AND POWER. THE CHALLENGES OF MOVING FORWARD IN GRAND CORRUPTION PROCESSES.

**SERGIO RODRÍGUEZ**

Administrative Investigations Prosecutor in Argentina

**MAITE PAREJO SOUSA**

Criminal Lawyer, Partner at Maio Legal

**MARINO ALVARADO**

Member of Provea

**EDUARDO SALCEDO-ALBARÁN**

Of the Vortex Foundation



Watch panel 4 here: <https://bit.ly/3X67TpH>

The complexity of the mechanisms involved in cases of grand corruption, the participation of powerful people with large fortunes, as well as the scarce resources available in the justice systems of the different countries, represent great advantages for corruption networks, which are able to take advantage of the guarantees that the rule of law should offer to citizens.

Discussing these issues were José Ugaz, criminal lawyer, former Prosecutor General of Peru, former president of Transparency International and member of the Anti-Corruption Task Force; Maite Parejo Sousa, partner of the law firm Maio Legal; Sergio Rodríguez, National Prosecutor of the Office of the Prosecutor General for Administrative Investigations of Argentina; Marino Alvarado, member of the Venezuelan human rights organization Provea, and Eduardo Salcedo-Albarán, from the Vortex Foundation.

## **SERGIO RODRÍGUEZ**

Administrative Investigations Prosecutor in Argentina

“It is always very stimulating to listen to José Ugaz, a man of his experience in the trenches,” says Sergio Rodríguez.

The Anti-Corruption Prosecutor’s Office in Argentina was created more than 60 years ago as an investigative commission of the Executive Branch, and after several legislative reforms it became part of the Judicial Branch. Today, after the constitutional reform of 1994, it became part of the Public Prosecutor’s Office and was granted powers without which it would be impossible to investigate acts of corruption, not only in Argentina but in any country in the world.

Notwithstanding the fact that Argentina also has the Anti-Corruption Office, an internal oversight agency of the Executive Branch, “as it does not have sufficient independence, since its head is appointed and removed by the incumbent government by decree, its activity usually becomes sterile because it only investigates the opposition, and not the ruling party. Therefore, I believe that in order to investigate Grand Corruption it is necessary to have functional and economic autonomy and proper independence.”

In Argentina, in the second half of 2022, information from the National Institute of Statistics and Census showed that 40 % of the population is poor, 30 % of households are poor, 9 % of the population destitute, and 45 % of children up to 15 years old are poor. “This is partly a consequence of the Grand Corruption that affects human rights. And at the Prosecutor’s Office, we propose several lines of work, including the gender perspective, since women, girls, adolescents and other female identities are more vulnerable to corruption than men. They are impacted by corruption in a totally different way.”

If democratic institutions are not strengthened, it is impossible to fight corruption, warns Rodríguez, and explains that the Prosecutor General’s Office he presides over has different functions from other prosecutors’ offices. “We can intervene in any relevant

corruption case and we can follow a case from the moment it is initiated until it ends in the Supreme Court. Without that autonomy we would not be able to address a corruption case.”

In 2007, the National Institute of Statistics was intervened, and thus, we did not have reliable poverty and population figures. Today, we are paying lawsuits abroad from bondholders because the INDEC was forging inflation figures. “Through the intervention of the Public Prosecutor’s Office, we were not only able to prosecute some of the culprits, but also to restore the institute. Now, its statistics are regaining credibility, and no one disputes its data.”

“We believe that the human rights affected by corruption are all, civil, social, cultural and environmental, and directly impact people. It is sometimes said that in corruption, the victim is the State, and it is depersonalized, it is believed that there are no people behind it,” says Rodriguez.

In the pandemic, says the prosecutor, healthcare centers were not prepared to address even a tenth of the emergency, and the money that should have been used for infrastructure and supplies was used for these purposes. “Sputnik vaccines were a very precious and scarce commodity. The doses were absolutely insufficient and instead of vaccinating healthcare staff, which was the priority, they began to be administered to businessmen, high officials, friends of power.”

The case that became known as “Vacunatorio VIP” (VIP Vaccination campaign) was denounced by civil society organizations, explained Ramírez, and the judge closed the case unexpectedly, arguing that taking those vaccines was a moral issue, but not a crime, and the prosecutor agreed. “Then the Prosecutor’s Office of Administrative Investigations filed an appeal and the Court of Appeals reopened the case. The case is ongoing and we will be soon requesting indictments of several public officials, including the former Minister of Health.”

In Argentina, of all complaints against public officials for human trafficking, only 1.9% of officials have been convicted. “And it is very clear that, if there is no collusion of the State, human trafficking networks cannot exist. Thus, we are working together with the Ibero-American Network of Prosecutors against Corruption to find out who are the officials who allowed the entry of minors, those who forged permits, those who set up places as brothels.”

Lastly, Rodriguez informed that Argentina is arranging meetings with international prosecutors to deal with the Venezuelan case and to support them with information in the different countries where these cases are being opened.

## MAITE PAREJO SOUSA

Criminal Lawyer, Partner at Maio Legal

Maite Parejo, a criminal lawyer with a background in human rights issues related to corruption, with extensive experience in proceedings aimed at the protection of fundamental rights, before Spanish judicial bodies and before European and international bodies, stated: "Corruption is one of the great evils of this century, although it is not recognized by everyone."

What are the problems in Spain for investigating Grand Corruption? , asked the criminal lawyer to kick off her remarks.

Democratic societies are supposed to guarantee the rights of all citizens as the only way to enjoy free personal development, and also as a way of bringing order to the coexistence among the different sectors of the population. Globalization has had an impact on how these rights are guaranteed, how they are violated, and how the actions that we qualify as corruption are committed. Globalization has advantages, but it has helped to perpetuate certain social imbalances, such as the distribution of wealth and how it has devolved over the last 30 years.

The main threats also fostered by globalization of today's societies include political violence, corruption and organized crime.

The effects are suffered in both democratic and non-democratic societies. In non-democratic societies, Grand Corruption and political violence help perpetuate authoritarian structures and impede political and economic development and evolution. In democratic societies, it significantly hinders the functioning of institutions and political and economic development.

Globalization has a direct impact on the pattern of corruption.

"One could speak of traditional corruption," says Parejo Sousa, "in which a certain person who lacked economic power accesses public office, and once in office, takes advantage of it to benefit from public funds (embezzlement) or to accept bribes, and this may occur in their own interest, of the political party they represent, or third parties." And he warns: "But there is a new modality, i.e. the transfer from the private to public assets, people who already have an economic, business or any other kind of power and who join the public service knowing the rules of the market and with their equity. Corruption materializes there in a different way, in the use of privileged information. There is a blurred line between the public and the private, the growth of business groups is favored from the public sector. There is influence peddling, bank transactions that end up in tax havens over which there is no control, and this has to be investigated."

But there are obstacles to confronting this type of corruption, he points out. "At the international level, there is a lack of criminal judicial cooperation. In Europe, 20 years ago, part of the problem was solved. But everything has to go through the justice system and there is no direct communication between courts and prosecutors and they encourage each other."

The opacity, the existence of tax havens and the lack of recognition of Grand Corruption as an international crime is a problem of origin. “The Rome Statute does not mention the illegal financing of political parties, it does not mention money laundering, it does not mention bribes from multinationals, and this leads to impunity. Impunity of bankers, of politicians, of the powerful.”

In Spain, warns Parejo Sousa, there is a lack of legal, technical and personal resources. “We spend years talking about the modernization of justice and it never seems to arrive. While everyone seems to care about it, it is hard to understand why it does not work. There is a lack of officials at the prosecutor’s offices, and this cannot be offset simply by the good will of the prosecutor. There is no equal forces in these cases. When there are class actions, which are exercised by human rights organizations, the people they accuse have all the means at their disposal, they have an army of lawyers, they have all kinds of experts.”

Another important issue for Parejo is the pressure exerted by some media, sometimes because of sensationalism, other times because they are bought off by power groups and are aligned with those interests.

Sergio Rodríguez took the floor and pointed out that all this translates into a lack of independence. “It seems that there is no separation of powers in Spain. I don’t think that Spanish judges are bribable, but when one of these major cases of Grand Corruption falls on their desk, some of them tremble because they know that any ruling they issue can condition to some extent their professional career.”

## MARINO ALVARADO

Member of Provea

For Marino Alvarado, a renowned activist winner of the Canadian Embassy’s National Human Rights Award, discussing the current Venezuelan context and the issue of corruption is timely and necessary.

“Fighting corruption in Venezuela is a challenge. First, because there is a dictatorship in Venezuela, which implies a series of risks and obstacles, as there is no independent Public Prosecutor’s Office, no independent judiciary, no independent Comptroller General. So, Alvarado asks, how can we fight against grand corruption? “When the ruling elite and possibly some of its senior officials involved in corruption control the institutions, the challenge is what to do. Even amidst that adversity, it is possible to do something,” says Alvarado.

How can we undertake actions that contribute to prevention, that allow us to demonstrate that there is no will to investigate and punish? How can we achieve that? Even in the midst of adversities, we can have some wins that motivate us and allow us to strengthen the process of fighting corruption.

Transparencia Venezuela, Acción Solidaria, Espacio Público and Provea obtained a statement from the Human Rights Committee regarding a case of corruption, brought through access to information. The Comptroller General published in one of its reports in 2010 that there were wrongdoings in the purchase of medicines between the Venezuelan government and the Cuban government. And, in spite of the fact that it was about Cuba and the lack of independence, the Comptroller's Office dared to report the wrongdoings.

The four organizations asked the Comptroller's Office for information about the contracts, said Marino Alvarado. "They did not give us the information, as is common in Venezuela, and went to the justice system through an amparo action. The Supreme Court responded that such action was not the appropriate route, that an administrative recourse had to be filed. They followed the administrative route recommended by the Supreme Court, and the Supreme Court itself told them that it was inadmissible, and that they were wasting their time."

Later, Alvarado commented, they took the case to the UN Human Rights Committee, and in 2021, they obtained a statement ordering the State to deliver the information, making very clear indications about the need to respond to the citizens' right to request information.

Venezuelan legislation, Alvarado reflects, allows people to resort first to lower courts, where perhaps claimants may find certain officials who may be sensitized. Thus, a case related to human rights (right to health) was connected with a human rights protection instance. A ESCR was connected with the right to health and with a corruption case.

Marino Alvarado recommended that cases be processed through lower-level municipal courts, where officials can be influenced and sensitized. This strategy works sometimes, especially in terms of services.

Alvarado recalled that organizations have to be consistent in the fight against corruption. And, particularly in Venezuela, he called to "wage a fight against the anti-blockade law, because it penalizes cases where wrongful situations of contracting between the State and any national or foreign company are brought to public light.

And, lastly, Alvarado referred to the law against hate, "a sword permanently above us. If you fight against corruption and you single out senior officials, the State can interpret that you are promoting hatred."

If fighting corruption is a permanent fact of life, doing so in the context of a dictatorship like Venezuela's is truly heroic. This is how the moderator José Ugaz concluded.

"We closely witnessed what Venezuelan colleagues are doing, the spaces they have conquered through strategies in the international system, and that, of course, is greatly encouraging for all of us. This has to bring a positive result in the short term."



## EDUARDO SALCEDO-ALBARÁN

Of the Vortex Foundation

Known in some media as the 21st-century Sherlock Holmes, and as a “philosopher of crime” in the field of law, Bogotá-born Eduardo Salcedo-Albarán has specialized in using advanced technologies for data processing in his investigations against corruption, organized crime and money laundering. “Since Salcedo-Albarán joined these investigations on Venezuela his contributions have been fundamental to move forward,” said José Ugaz.

Salcedo-Albarán pointed out that for the last five years, information on corruption cases in Venezuela has been systematized, “because we all know that this situation continues: cases are constantly being opened and others are being closed.”

“Every day, information is collected and organized. This has helped us identify the corruption network that operates inside and outside the country,” he explained. “The Venezuela case is unlike any other, there is no other known case in which so many public resources have been compromised and lost. The Venezuelan case is a super corruption network. It does not even resemble the Lava Jato case, which is the second largest case.”

The patterns that can be observed through technologies for sorting and analyzing data have no precedent in methodology or findings.

With the information analyzed so far, a super network of corruption in Venezuela has been modeled, made up of 10,251 nodes (companies and individuals). These 10,251 nodes establish 24,682 interactions that link them around the world. These is the magnitude that any prosecutor and any judge must face in making decisions on these cases. Moreover, these interactions are distributed across 152 countries, in some which court proceedings take place. For example, the most mentioned individual in the cases under investigation in Spain is Nervis Villalobos, who remains in that country and has not yet been extradited to the United States to stand trial.

According to Salcedo-Albarán, there is a database with 24,682 entries, clearly specifying who is the active-issuing agent, who is the passive-receiving agent, and what is the empirical source, i.e. the court document, or the report-source that enabled that interaction. It is also possible to see which nodes are companies and which are individuals. He emphasized that this magnitude of information is impossible to sort and interpret without the assistance of advanced computer systems.

Salcedo-Albarán invites us to consider the scenario of a prosecutor, a judge in Venezuela, Colombia, or Argentina, the size of the task they face if they want to understand this phenomenon. “Even if there were a justice system with relative independence in Venezuela, any prosecutor would be paralyzed in the face of such complexity. This level of corruption overflows and exceeds the capabilities of any prosecutor’s office, court or justice system.”

The situation is more worrying, says Salcedo-Albarán, “if you consider that, in transnational terms, there is no prosecutor’s office that seeks all this information to understand the phenomenon as a whole; if we look at it in transnational terms, those 152 countries have financial oversight systems that are assumed to be strong, but are actually weak (like Spain, for example), which allows the corrupt to establish shell companies, so that the money stolen from Venezuela’s public treasury ends up in castles, yachts, gold, horses. No prosecutor’s office in the world is trying to understand this network.”

“To conclude, this is the level of complexity that needs to be understood and addressed, especially in the case of judges and prosecutors who would like to make decisions involving, for example, the super-network of Nervis Villalobos, whose criminal structure in Spain alone includes 124 individuals and organizations. Let’s imagine the other 20,000 subjects.”

In closing the panel, moderator José Ugaz remarked: “This can be very overwhelming and frustrating if we do not have the motivation. I think this is rather an incentive to put an extra effort to our work, but imagine a prosecutor who only has a computer and an assistant with a basic course in computer systems and has to deal with a network, maybe not of this size, but even if it is ten times smaller, it is a very asymmetrical relationship in our countries.”

In the Q&A, comments were made about a request to create an International Anti-Corruption Court in the style of the International Criminal Court, or to modify the Rome Statute to include crimes of grand corruption as a crime against humanity, which can be prosecuted in the current ICC system. According to Ugaz, “amending the Rome Statute is not an option, it is not real.”

Transparency International, informed Ugaz, is strongly supporting the creation of the Anti-Corruption Court and has been meeting with countries such as The Netherlands and Canada, which support this initiative, but “we would have to ask which of our governments would be willing to sign a treaty that could lead to a prison in Europe. There are those who point to the CICIG model, which has yielded such good results.”



# PANEL 5

## PROTECTION, RECOVERY AND MANAGEMENT OF RECOVERED ASSETS.

**KRISTEN SAMPLE**

NDI's Democratic Governance

**FELICIANO REYNA**

Acción Solidaria and Civilis

**FRANÇOIS VALÉRIAN**

Transparency International France

**TUTU ALICANTE**

EG Justice

**KARINA CARVALHO**

Executive director, Transparency International Portugal

**TANIA GARCÍA SEDANO**

Asociación Pro Derechos Humanos, Spain

**AGATINO CAMARDA**

CiFAR



Watch panel 5 here: <https://bit.ly/3P74ANa>

In the context of the signing of the Social Agreement between the Unitary Platform and the government of Nicolás Maduro, it is pertinent to discuss lessons for the recovery and protection of assets in contexts of kleptocratic regimes. This panel addressed the development of collective reparation mechanisms to ensure that the frozen assets of the Venezuelan government are used to repair the victims of corruption and to mitigate and overcome the humanitarian emergency. In addition, the panel addressed the need to strengthen mechanisms for civil society participation, especially to ensure that financed projects benefit Venezuelans.

This debate was moderated by NDI's Kristen Sample, and presentations were made by Feliciano Reyna of Acción Solidaria and Civilis; François Valérian of Transparency International France and member of the Board of Transparency International; Tutu Alicante of EG Justice; Karina Carvalho, executive director of Transparency International Portugal; Tania García Sedano, president of Asociación Pro Derechos Humanos de España - APDHE, and Agatino Camarda of CIFAR.

## KRISTEN SAMPLE

NDI's Democratic Governance

"This panel helps us finalize some issues. We have to follow the money trail, someone said in the morning, and if we follow this advice, we will get to the recipient countries," said Kristen Sample, director of NDI's Democratic Governance team, with more than 20 years of experience in democratic governance programming.

"We will hear lessons learned from organizations that have worked for years on advocacy and strategic litigation issues. We will also hear experiences of returned assets and how this process can be done through an independent, transparent channel, a third-party mechanism," said Sample, and this session addressed the protection and management of assets found in recipient countries and shared experiences of advocacy organizations.

## FELICIANO REYNA

Acción Solidaria and Civilis

"What are the opportunities for recovery and return of funds? What is the Social Fund created in 2022 in Venezuela? What are the parameters, the visions, the possibilities, the limitations for accessing this fund, and where is it located?" With these questions Sample introduced Feliciano Reyna, one of the most influential human rights activists in Venezuela.

"There is an urgent need for the Social Fund to operate, and that the money there is indeed used to mitigate the needs of the most vulnerable groups," noted Feliciano Reyna categorically, recalling that in 2021 a memorandum of understanding was signed between the unitary platform of opposition parties and government representatives, containing seven items and one of them is the protection of the national economy and social protection measures to the Venezuelan people.

“You will not see the humanitarian aspect anywhere,” explained Reyna, “because 2019 was very complicated. That process that took place between Cúcuta and Venezuela, was not really a humanitarian operation, it was a political operation and that managed to veto the term humanitarian.” That is why, Reyna explains, in 2019 the UN system took more than half a year to set up a humanitarian team and start designing a response plan for Venezuela.

In the year 2022, returning to the subject of the Social Fund, an agreement was signed for the creation of the Social Protection Fund, and there was talk of US\$3 billion, to begin with, according to data obtained from FTSOCHA, the open-access United Nations system’s tracking platform to follow up humanitarian investment in Venezuela and in other recipient countries.

But it is essential, warns Reyna again, “to think about how to make this agreement work, for and by the Venezuelan population.”

The humanitarian response plan in 2019, Reyna informed, was for USD 222 million, and 31% of that was produced. In 2020, 24% was delivered, i.e. already USD 700 million, “a tiny amount for the seven million people the UN is talking about” and it continues to be so, because “there is a ceiling in relation to the number of people in need that can be included in the humanitarian response plans.” In 2021, 37% was raised, in the midst of responses to the coronavirus pandemic. That was the year with the highest collection.

“If we review entries on the emergency fund, Venezuela ranks 32nd, with 1.5%. In the case of other funds, such as the so-called Humanitarian Country Fund, which is administered by the United Nations, Venezuela ranks 15th with USD 3.4 million. As comparison, Afghanistan’s is USD 180 million, Ukraine’s is USD 113 million, Syria’s USD 87 million, “and of course we are not trying to belittle the needs in these areas, but this happens while Venezuela has been evaluated as the fourth most serious situation in terms of food insecurity in the 2020 Global Report, and together with Ukraine and Syria, as the most serious migratory situations,” explained Reyna.

If we also look at the requests for funds unrelated to the regional response, Venezuela ranks again 15th, with some USD 700 million, while the response for Syria has been USD 4.8 billion, USD 4.6 billion for Afghanistan, USD 4.3 billion for Yemen, USD 3.9 billion for Ethiopia. In other words, according to Reyna, “we are facing an enormous need for the population, but we are very far from securing the funds that the population needs.”

The Social Fund means an agreement with five stakeholders. Apart from the Venezuelan government and the opposition Unitary Platform, there is the Kingdom of Norway, the United Nations system (the UNDP as fund administrator) and the United States as another very important player, because transfers from an account in France, Portugal or Switzerland need to be authorized by OFAC.

According to Reyna, there is an idea that funds should not be disbursed upon dialogues with the Venezuelan government, because this could benefit the Maduro administration in an election year, “but in this context, one wonders: Have they forgotten about human rights?”

“I insist—Reyna concluded—that we must at least be moving in parallel avenues at different times, we must understand that this is very complex, and that it is not true that progress in one side, which can be so important for the Venezuelan population, especially for vulnerable people, means that we forget about other things that are essential. One of them is the scrutiny of human rights. We have several mechanisms: the ICC, the Independent Fact-Finding Mission on Venezuela, the High Commissioner’s office and the Inter-American System. But also national and international civil society organizations. There is relentless work to ensure that the people in Venezuela with humanitarian needs get help.”

## FRANÇOIS VALÉRIAN

Transparency International France

Kristen Sample thanked Feliciano Reyna for reminding us of the dimensions of the humanitarian demand, what the response has been so far and what needs to be mobilized to address this emergency.

Returning to the issue of the money trail, Sample asks what lessons can be drawn from the different international experiences in terms of advocacy in countries receiving money from corruption for the protection, recovery and return of these assets through mechanisms such as the Social Fund, which are also independent of third parties? The moderator invites François Valérian—with extensive experience in strategic litigation and advocacy for reforms within the French legal framework—to describe the cases of Equatorial Guinea and Gabon.

“As you know—began Valérian—I am from France, a recipient country of money stolen in the countries of origin (which does not mean that there are no corrupt people in France). Our goal, with that stolen money, is to have the assets acquired in France with corrupt money confiscated and the funds returned to the people of origin,” he explained, and listed the ongoing actions to achieve these objectives:

- Finding the people who acquired the assets (it is always the same assets: mansions, villas, luxury cars, gold...) and the registration of the final beneficiaries.
- Finding the ownership record behind real estate companies buying property, homes, etc.
- Records open to civil society, which is very useful.

These public access records were very useful in France for the 2022 action against Russian kleptocrats who had acquired villas on the French Riviera, said Valérian, and he showed his concern that this public access has now been questioned in Europe, “because you have to prove that these assets were acquired with stolen money and, in order to prove it, you have to compare what the asset cost in the target country with the income declared by the person who made the purchase in their country. The discrepancy between the declared income and the amount of the purchase makes it possible to name the persons in France who facilitate these investments,” he explained. Bankers, notaries, real estate agents.

The determination of the match between the money declared in the country of origin and the amount of goods purchased in the target country has to be done by the persons facilitating the sales of goods. If there is a banker who cannot explain the origin of his money or there is no match between what he earns and the money he has, the French authorities, i.e. the agency in charge of fighting against financial crime in France, must be notified.

“Many bankers, real estate brokers, and others want to preserve their clients and keep silent,” said Valérian. In reality, the fight in France is not only against kleptocrats, but against French people who help kleptocrats, and now we include them in the actions.”

What do you do when you find the ill-gotten assets and the people who acquired them? Ten years ago, with the case of the Vice President of Equatorial Guinea, we obtained in France the legal capacity to file actions for corruption cases against persons of interest, and this legal capacity gives us a strength that we lacked before, because in France there is no *amicus curiae* procedure, and we must have the legal capacity to file actions.

We were able to prove that there was a huge discrepancy between the declared income and the assets acquired in France by Teodorin Obiang, Vice President of Equatorial Guinea, son of the President. That income could not justify the purchase of a Lamborghini and a mansion on Avenue Foch in Paris. “We won the case against Teodorín Obiang, even in second instance he was sentenced to three years in prison, to refund 30 million euros, and the confiscation of about 150 million in assets.”

Valérian explained that there were two problems in this case:

- When the money is confiscated in the target country, the idea is not to use it to cover a small part of France’s budget deficit. The stolen money must be returned to its country of origin. Thus, we got a French law that was passed two years ago, which sets out that the money must remain in a special account until it can be returned to the people from whom it was stolen.
- You have to be very careful because you don’t want the money to be returned to the people who stole it. It is a very clear risk when there has been no change of government in that country.

For example, explains Valérian, the Gabonese government has filed a complaint to recover the confiscated assets, i.e. it is claiming to be a victim of the theft, even though the same family is still in power. It is a very big scandal when the corrupt pretend to be victims. The French courts rejected Gabon’s petition in the first instance, but in the second instance the Court of Appeal ruled that the criminal court would decide whether the Gabonese government was entitled to financial compensation, and that we could not prevent it from being a civil party in the criminal proceedings.

“The stakes are high, because if the State claiming to have been robbed receives financial compensation, that could take precedence over restitution to the population. This question of the civil party status of the State of origin is a challenge for us in France in the coming years,” he explained.

Another similar case is Equatorial Guinea, with a very particular asset belonging to Todorin Obiang, i.e. a mansion on Foch Avenue in Paris. Three thousand square meters, valued at more than 100 million euros, equivalent to two thirds of the 150 million euro confiscated. Shortly after the beginning of the proceedings for the ill-gotten gains more than 10 years ago, Teodorin Obiang sold the mansion to the Republic of Equatorial Guinea, led by his father. And Equatorial Guinea set up its embassy there.

The French justice ordered the confiscation of the mansion and other assets, while the government of Equatorial Guinea ordered the restitution of the mansion. However, contrary to what happened with the other properties and the Lamborghini, the confiscation was not yet carried out by the French government for fear of breaking diplomatic relations.

In conclusion, according to Valérian, the issue of victims is central, the restitution process must take into account these victims and the local civil society of the country of origin. "The real victims, not the pretend victims presented by the lawyers of corrupt governments using the notion of civil society to better protect abusive powers".

"We observe money flows in various regions of the world from the South to North America, also from Africa and the Middle East to Europe and from Asia to Australia, money flows that bring back the colonial economy, and that is what they want to counteract."

The moderator of the panel, Kristen Sample, acknowledged that François Valérian made very important points, and added: "At the same time there is strategic litigation. We must work on a series of reforms to the legal framework to help prevent this type of exploitation of the rule of law of a country like France through the registration of beneficial owners, the protection of whistleblowers. These are fundamental reforms to strengthen the recipient countries."

## TUTU ALICANTE

EG Justice

EG Justice is the world's leading NGO devoted to human rights, rule of law, transparency and civil society in Equatorial Guinea, and Alicante is a strong critic of the abuse of power, corruption and impunity that prevails in his country. In his remarks, Alicante shared some key examples of his experiences in asset recovery processes in the United States.

For Tutu Alicante, the focus on victims is essential in discussions about corruption. He says that in both Equatorial Guinea and Venezuela one can no longer talk about corruption. "In Venezuela, a nurse earns \$5 per month, the same as in Equatorial Guinea; that means that all our families have taken a sick relative to a hospital and they have died for lack of care.



To a certain extent, says Alicante, when we talk about this type of situation we are talking about a phenomenon that transcends corruption. “In these cases, the word corruption falls short, because we are facing systems with a transnational kleptocracy so deeply rooted, that it goes beyond what we normally see as corruption in Spain, France or even Mexico.”

Tutu Alicante refers to a situation of a complete capture of the State by high-ranking members of the government, who after dismantling or utilizing the institutions of the State, take over the resources, the revenues of a country for their own benefit. They invest all that money in the USA, France, Switzerland using international banking mechanisms in countries supposedly under the rule of law.

In France, says Alicante, property valued at approximately 120 million euros has been confiscated and remains to be repatriated for the benefit of the Equatoguinean people. Teodorin [Teodoro Nguema Obiang Mangue] was sanctioned by the United Kingdom, for misappropriating millions of dollars that, according to London, he spent on luxury mansions and yachts, private jets, high-end cars, and a \$275,000 glove worn by Michael Jackson. “Imagine that in a country where a 75-year-old man was sitting alone yesterday eating out of the garbage.”

In Switzerland, they also confiscated two yachts valued together at USD 250 million, and 18 cars from the president and vice-president (father and son). In Brazil, there are 16 watches valued at more than USD 21 million, in South Africa, another yacht and two mansions, and so on.

“The international community needs to know who these people are, who are being harmed when Teodorin or another kleptocrat buys 50 Lamborghinis,” warns Alicante. “One of the things I advocate for, in the role of catching kleptocrats, is precisely the importance of strategic litigation, which is a process where we combine communication with lobbying; civil society training as necessary; and litigation, which is the really legal work. All of this, putting the focus on the victim, not as someone whose name we present in a case and when we speak to the press, but as someone who is an essential part of and in the entire process; someone who goes to these meetings and speaks with their own voice.”

In short, Alicante thinks that a major media campaign is needed. In the case of Equatorial Guinea there is no free or independent press. The people only hear what the government wants them to know. Thus, it is important to make society aware of the enormous personal and collective damage that corruption does to all of us. A media campaign is needed inside and outside the country.

Tutu Alicante believes that civil society must be involved domestically, and if it cannot be done within the country, then it must be done outside the country. And, he said, “we also have to manage expectations, these processes can be long, expensive, and can lead to strategic lawsuits against citizen or public participation.”

Another case: the government of Equatorial Guinea (Obiang) donated three million dollars to UNESCO to create a prize in its name. “We spent four years trying to get

UNESCO not to accept that money. In other words, the resources and time that we should have been working for political prisoners or other people, we spent trying to persuade a diplomat not to accept dirty money. We, in France, were sued by Equatorial Guinea for slander because we said that Obiang is a dictator, so you need to have a budget to hire a lawyer to defend you from these frivolous lawsuits.”

You also have to look at the enablers, lawyers, bankers, real estate brokers, “because there are a lot of people helping these kleptocrats, and they are the ones benefiting from kleptocracy. There are a lot of people getting rich helping these kleptocrats. We have to see where we can hold all these people accountable,” he warns.

Lastly, it is always very important to follow the money, and once that money is recovered there is still the job of returning it to the country of origin and finding the solution, “because how do you get the money to benefit society in a place where the de facto government is still composed of the same individuals who stole it from the national treasury in the first place.”

## KARINA CARVALHO

Executive director, Transparency International Portugal

“You started by saying you had nothing to teach us, but it wasn’t true,” Kristen Sample told Tutu Alicante and gave the floor to Karina Carvalho, who spoke about the Portuguese legal framework and shared some lessons from proceedings related to Angola, and recommendations for Venezuela.

“For us in Portugal, it is important to return the money to the victims of corruption and to stop the flow of illicit money into our country. Thus, we protect Portugal’s economy and the European economy, and prevent money laundering through banks, the purchase of real estate, the acquisition of golden visas and other scandals. With all this, we also protect the rule of law and democracy.”

With this statement, Karina Carvalho, a psychologist who has devoted an important part of her career to corporate responsibility, ethics, corporate governance and entrepreneurship for companies in NGOs in Portugal and Angola, kicked off her presentation.

Carvalho expressed concern that we tend to forget that corruption has an impact on democracies and the rule of law. “In Portugal we are always hearing about corruption scandals and many of them involve kleptocrats from other countries. People start to distrust political institutions and politicians, and this makes populism grow and weakens democracies.”

Economically, says Carvalho, Portugal is a small country, very dependent on EU funds and foreign investments, and that is why the country has open doors for anyone willing to invest, be it through real estate, or purchases of banks, as was the case of the daughter of President Dos Santos [Angola]. “If you think about the economic crisis in the

country, it was because of Banco Espírito Santo (BES), the largest bank in Portugal, which collapsed, and we Portuguese are still paying for that.”

One good thing is that the Prosecutor’s Office has said that Portugal can recover assets, based on international cooperation established in cases, such as Angola. “In 2020, the number of frozen assets recovered was significant because of the Luanda Leaks case. So, if there was a big case related to money laundering or illicit flows, at least the Portuguese authorities will be able to recover more money based on the information coming out about these cases,” Carvalho explained. “The Luanda Leaks is a big corruption scandal very relevant to discuss asset recovery, compensation of victims and everything else I said before.”

Under international agreements between the government of Portugal and Angola, Portuguese authorities can see bank accounts in euros, and Isabel Dos Santos’ shares in those companies, but there is no information related to Isabel Dos Santos’ criminal charges, so the lack of information is also a key element.

“In Portugal, it is very difficult to find which cases involve Dos Santos. It is not always easy to get into strategic litigation, so it is necessary to investigate, to find ways to access data, because otherwise it is impossible to litigate with impact,” she added. “There have been cases against auditing firms for leniency, but so far no significant action has been initiated because of the Luanda Leaks case, because there is no oversight by the authorities. As the Central Bank of Portugal did nothing, they went to parliament and said: ‘our job is to identify the flows, not to handle them.’”

No one paid attention to the “enablers,” explained Carvalho, the lawyers who assisted Isabel Dos Santos in her dealings, who are now opening law firms and back to their jobs. “And it’s sad to say that Portugal is still somehow a laundering haven.”

Gold visas, on the other hand, allow funds to enter with an unknown origin. And also, Carvalho explains, Russian kleptocrats are granted nationality in Portugal, under a specific regime. “And it’s not that the government doesn’t care about regulations, because we are an EU country, but we need the money, and that’s the general thinking behind this. We need the foreign investments, so we relax everything so we don’t lose the money we need to survive, but then you see the problems we have.”

With respect to victims, Carvalho noted that, in Portugal, they can appear as a party in criminal proceedings, and it is possible for civil society to participate in certain criminal cases and to be a party in civil cases. In criminal cases, they can produce evidence and request certain measures, or petition for an investigation to be opened. “In the end, we are assisting the prosecutor or assisting the court, finding the truth. But, for example, for an NGO like Transparency International Portugal is not so straightforward, because it does not represent the victims and sometimes that is a bit tricky.”

Transparency International can participate in civil proceedings to recover assets, “I think it has never been attempted, but we are willing to try,” she admitted. “We have the legitimacy to initiate class actions in civil courts to prevent the loss of assets only if they belong to the State of Portugal. When we sometimes hear that they say ‘you in Portugal

are not doing anything to assist in the recovery of assets,' you have to understand that we are talking about a financial wrongdoing coming from another country to Portugal, and if we could prove money laundering, or if there are corruption charges in the country of origin, everything would be easier. If not, it is more difficult."

Another thing, says Carvalho, is civil litigation. You can go to court and file a civil suit to privately trace the assets, but it is very difficult. "In criminal litigation we rely on the prosecutor to trace the assets, but in civil litigation you have to say "this is money coming from illicit funds and these assets need to be frozen. But it is more difficult, and that is why we need access to information."

In general, asset recovery is under civil law, explains Carvalho, and has to follow very brief requirements, but it needs to be recognized as illegal conduct, and sometimes it is difficult to prove that someone is guilty of misconduct, prove the connection between the conduct and the relevant damage, and prove the damage caused.

On the common obstacles in the different stages of asset recovery, based on the experience of dealing with the Luanda Leaks case, is that, first of all, people do not start an asset investigation because they are told to do so, but because something prompted it, like The Luanda Leaks, or another case coming from investigative journalism.

The other thing, Carvalho adds, are the enablers, as lawyers are protected by professional secrecy. For example, prosecutors cannot obtain information from lawyers. Also, law firms in Portugal are now acting as consulting firms, and they are different things.

In relation to the freezing of assets, a judge needs to validate the request made by the prosecutor, and determine whether such asset should be frozen.

Not all countries of origin of illicit flows are cooperative, as in the case of Equatorial Guinea, where information is not easily accessible. "We need conviction in asset forfeiture, as it takes a long time. There are cases where the return of assets can take more than 10 years, and this is where you have to determine who the real victims are, and that is not so straightforward."

So, what should we do? Carvalho asks. "I totally agree with litigation, every time we can and everywhere, going after the enablers, using sanctions. For example, use the OECD Privacy Framework, because there are companies in the world that are doing business with the people who stole the money. We have a network of CSOs and we can exchange information and do legal work together, promote investigative journalism, obtain public support in reporting on corruption and human rights, and the latter is where we have to be more specific. The money was stolen and the people here lost their homes or do not have access to sanitation. We have to understand why they are the victims."

When we talk about corruption we usually refer to damage in general, for example, strategic litigation works very well in environmental cases, because you can easily identify the victims, engage with the diaspora and small communities, and maybe this is a good idea for Venezuela. "There are many Portuguese nationals in Venezuela and this could be a good opportunity to discuss the situation of Venezuelans in Portugal, to find a way

for them to leave the country because of corruption and bad conditions, and lastly, we must demand accountability, not only to our governments but to institutes, for example the World Bank, because these institutions were giving money to kleptocrats, as is the case of Equatorial Guinea or Angola, and also to the European Commission.”

Carvalho reflects that there are projects underway with Equatorial Guinea, but the European Commission does not want to talk about corruption or asset recovery, or returning stolen assets. “They say you must promote Human Rights, but is it possible to promote Human Rights in a country where there are no political and civil rights?”

Panel moderator Kristen Sample highlighted Carvalho’s point about the need to advance an agenda that is not just about altruism for recipient countries: “It is not just about democratic solidarity, it is also about protecting their own systems, their own society. Funds in political campaigns, investments that distort the real estate markets,” she said.

## TANIA GARCÍA SEDANO

Asociación Pro Derechos Humanos, Spain

A PhD in Law, Tania García Solano provides in her presentation a review of the tools in the legal framework available to Spain for the recovery of assets, as a recipient country of money or assets resulting from corrupt activities.

I would like to emphasize, García Sedano begins, “that for a long time the criminal process and the efforts of criminal policy have revolved around the punitive element, the criminal act. The object of the criminal process was the crime, its objective, the imposition of penalties, punishment, and nothing more. But the growing number of criminal acts linked to transnational and organized economic crime has elicited special attention to this phenomenon, which is closely linked to corruption in the public and private sectors.”

On the other hand, she said, there is an obligation and the need to include a “victim-centered” approach. The direct and indirect victims of organized economic crime, which is linked to corruption, must be compensated. The recovery of assets must target the return of assets from crimes committed in the State of origin.

This is the idea behind García Sedano’s remarks in the panel on how to solve the problem of assets in host countries, in this case specifically from the legal point of view in Spain.

This concept is one of the great and innovative contributions introduced by the United Nations Convention against Corruption, especially in its 5th chapter, which considers the return of assets derived from corruption as an essential element and principle, and therefore compels the States Parties to the Convention to provide each other with the broadest cooperation and assistance.

The design and development of public policies in this area can produce diverse and interconnected effects, such as repairing the individual and social damage caused by this type of crime and, on the other hand, it encourages a general purpose of prevention as it dissuades and deconstructs the imaginary of the benefits of crime. It also prevents

assets from being used to feed back into criminal activity, perpetuating a spiral of crimes, he explained.

These public policies aimed at asset recovery also reduce the incentives for those who commit these crimes in relation to the special prevention in criminal law, through a focus on reducing the illicit market, boosting confidence in the State and in institutions, raising awareness in civil society, establishing us as key stakeholders and strengthening the democratic state. And based on all this, Sedano emphasizes, we need criminal investigations tailored to each specific case in the social, economic and organizational context in which it takes place. The objective of the criminal process is the investigation of the crime.

“It is essential,” she says, “to include the financial perspective, and to this end, as established in the United Nations convention against corruption, we need to take into account international judicial cooperation as a key aspect.”

What are the current and past assets linked to certain criminal acts, what actions have been taken by other member states of the convention, where are they, what rights do they exercise over them? These are all essential questions.

According to García Sedano, transparency is an effective anti-corruption measure. “It is essential to have and pay special attention to the configuration of the criminal liability of corporations.” And she recalled that in 2015 Spain expanded the catalog of offenses attributable to corporations.

Lastly, the regulation of confiscation and forfeiture in the Spanish legal system was analyzed.

## AGATINO CAMARDA

CiFAR

With experience in international relations and a focus on the Middle East and North Africa, founder of CiFAR, a human rights activist, specializing in anti-corruption, migration and asset recovery, Agatino Camarda focused his remarks on the topic of asset return through third parties, with examples and best practices.

In this regard, Camarda noted that indirect asset returns are often used when the situation in the countries of asset restitution is problematic or there is a risk of further looting; that countries can actively participate; that funds are often earmarked for specific projects; and that they have enhanced monitoring and safeguard mechanisms.

There are, according to Camarda, several mechanisms for returns, which multilateral organizations (World Bank, UN agencies) are temporary based on institutional agreements, established for the purpose of disbursing funds, support from international and multilateral organizations. He spoke of a “new and special mechanisms for the purpose of return (e.g., a foundation)”, and through civil society/non-governmental organizations.

Regarding new/special mechanisms, he referred to agreements with temporary institutions (e.g., foundations) established for the purpose of disbursing funds, and may be supported by various international organizations outside the regular government framework.

As an example he mentioned BOTA Foundation, Kazakhstan in 2014, for the return of USD 150 million, and the creation of a special foundation through three governments and under the oversight of the World Bank and CSOs.

Multilateral organizations play different roles. Overseeing the return of funds (Abacha I). As a party in the establishment of a special mechanism (Kazakhstan) or as a recipient of funds for newly created or existing programs (Abacha II) as in Nigeria, where the World Bank participated in 2016–2022 to recover USD 220 million in Switzerland. “The most important thing,” he said, “was the involvement of civil society as an overseer.”

In relation to NGOs, this may include the contracting of one or more non-governmental or civil society organizations, either operating internationally or based in the recipient country. Such is the recent case with Kenya, where assets have been returned but not used.

Third-party return has some advantages, because it can enhance transparency and oversight in the process by involving an independent third-party. They can also reduce the risk of misappropriation. External parties can bring additional capacity to the process. And there is more scope to include independent oversight by civil society.

What are the challenges then? Camarda asks. Conditionality, i.e., conditions such as sovereignty, and this needs to be discussed carefully. It can also mean greater administrative and financial losses, high costs, many administrative expenses, because audits and reports have to be implemented.

Then, we need to define the criteria to be applied in the selection process of independent organizations. In some cases, negotiations are behind closed doors, and this is a risk.

Lastly, sustainability issues must be taken into account, as these types of structures are usually “built” for the purpose of return on assets, with ad-hoc projects.

Regarding whether or not an indirect return is advisable, Camarda calls for a cost-benefit analysis. An evaluation of the rule of law in the receiving country should be made, and political obstacles should be taken into account.

Regarding the choice of the type of organization that will participate in the mechanism, there are minimum requirements of transparency, integrity and accountability that are in the international regulations:

- Global Forum on Asset Recovery (2017)
- The African Union (2021)
- Principles of responsible return of civil society (2021). Minimum requirements for transparent return of assets have been established.

We are talking about timely publication of the schedule, modalities and stakeholders involved. Independently audited public reports and periodic reports on the programs. Systems that allow the public to track assets from receipt to disbursement. Public agreements.

Open contracting, publication of bid results, publicly available conflict of interest policies. Contractual obligations to exclude and have a process in place to exclude perpetrators from direct and indirect benefits. Independent oversight and whistleblower mechanisms. Independent investigations involving sending and receiving states, and paused disbursements during investigations.

Civil society participation has proven successful in negotiating, monitoring and distributing recovered assets because they are best placed to represent and amplify the voices of victims of corruption in the country of origin and ensure reparations

To this end, it is necessary to involve CSOs from the start of the negotiations. There must be a collective definition of roles (oversight, fund management, decision on the use of funds); participation of representatives of the local population and victims of corruption. There should be a training process if necessary, and transparency, accountability and integrity requirements for CSOs.





# PANEL 6

## TRANSPARENCY, THE RIGHT TO PRIVACY AND THE FIGHT AGAINST GRAND CORRUPTION.

**MARÍA FERNANDA SOJO**

Investigation Unit - Transparencia Venezuela

**MAIRA MARTINI**

Transparency International Secretariat

**CARLOS CORDERO**

From Access Info

**JOAQUÍN GIL**

Journalist of the investigative team of the newspaper El País.

**ROMINA COLMAN**

Investigative Journalist, OCCRP



Watch panel 6 here: <https://bit.ly/3P77tO1>

Venezuelan corruption is transnational, it does not occur only in Venezuelan territory and institutions. It has an effect on other financial and judicial systems worldwide and does not go unnoticed. There are law firms devoted to erase indications and evidences in websites, internet search engines and social media; the European Union court reinterprets the rules of transparency of the final beneficiaries of companies or corporations, and decides in favor of the right to the deprivation of information.

There are protections that limit the right to information, the possibility of independent investigation and citizen oversight. The dynamic tension between the necessary transparency of public management and the right to privacy has been used to protect agents on corruption cases. There are costs and/or risks of requesting data on property owners and companies/businesses/firms, undermining academic, citizen and journalistic research efforts. Enablers in action: Where is the line between rights and how can we move forward?

To discuss these issues were María Fernanda Sojo, Investigation Unit of Transparencia Venezuela; Maira Martini, Research and Policy Expert, Corrupt Money Flows Transparency International Secretary; Joaquín Gil, El País; Carlos Cordero, president of Access Info, Romina Colman, investigative journalist at OCCRP.

## MARÍA FERNANDA SOJO

Investigation Unit - Transparencia Venezuela.

A journalist from the Investigation Unit of Transparencia Venezuela, Sojo approached the subject from the point of view of the difficulties facing investigators working in the media and civil society organizations in Venezuela to conduct their work, given the limited access to public information.

“In Venezuela, there is no access to accounts or management reports of any government agency, at least since 2016. This is a major obstacle for the much needed social oversight, which is one of the main pillars in the fight against corruption,” she said.

“In Venezuela, we cannot get interviews with official spokespersons nor do we get responses from agencies to valid and necessary questions. Every time an investigation is initiated, requests for information are sent to different government bodies and, despite the deadline provided for in Venezuelan law, no answers are obtained after more than a month,” Sojo added.

Over the years, however, Venezuelan investigators have resorted to other strategies to gain access to public information and continue their work. In this connection, for example, a great resource is the records on beneficial ownership of companies located in third countries.

It has repeatedly become evident that many people involved in major corruption cases in Venezuela and worldwide have used anonymous companies to launder huge amounts of dirty money, funds obtained by collecting bribes for the awarding of public contracts, overpricing in government purchases, fictitious imports, among other mechanisms. Hence the need to determine the real owners of the companies as an essential step to track politically exposed persons and detect possible money laundering operations.

In addition to access to these records, investigators have also found it helpful to have access to platforms that compile multiple databases that are fed with official information from various countries, such as the databases created by the Organized Crime and Corruption Reporting Project (OCCRP).

Transnational collaborative journalism and the use of public databases from different countries have allowed investigators to cross-reference information and uncover major cases of alleged corruption or other wrongdoings.

But the hurdles do not stop. Once investigators manage to gather evidence and expose wrongdoings, new challenges arise, such as the November 2022 decision of the Court of Justice of the European Union, CJEU, that rolled back public access to beneficial ownership records or the threats against investigators to erase any digital traces of their work.

In recent decades, several companies have emerged with a global presence in charge of “electronic reputation management,” a term used to refer to the elimination of any negative information in digital media about certain individuals or corporations. Using different tactics and under the protection of questioned international regulations, these companies have ended up collaborating with the elimination of valuable content linked to matters of public interest on the internet.

Although there are several companies devoted to erase people’s digital traces and help “clean” their reputation, there is one that is of special interest given the number of clients worldwide, including a significant number of Venezuelans, and the different mechanisms it uses to delete information or make it unavailable to online search engines: Eliminalia, a company that openly offers to “delete your past and help you in your future.”

A leak of nearly 50,000 internal Eliminalia documents received by Forbidden Stories, an international consortium of investigative journalists, revealed that the firm has had 1,500 clients from 54 countries on five continents. Of the total, at least 35 clients have been Venezuelans or foreigners with links to Venezuela,<sup>1</sup> who are usually involved in some investigation on wrongdoings with the state-owned oil company PDVSA, Brazilian construction company Odebrecht, PDVAL expired food, preferential foreign exchange from CADIVI, among others.

Today in this panel we will delve more deeply into each of these topics.

<sup>1</sup> Armando.info. 2023. “Con Eliminalia sacas las manchas más rebeldes de tus negocios con Pdvsa” (With Eliminalia, you can remove the most stubborn stains from your business with PDVSA.) Available at: <https://armando.info/con-eliminalia-sacas-las-manchas-mas-rebeldes-de-tus-negocios-con-pdvsa/>

## MAIRA MARTINI

Transparency International Secretariat

A specialist in corrupt money flow and member of Transparency International, specialized in public policies, Maira Martini told how, from the Transparency International Secretariat in Berlin, they began to pay special attention to the importance of beneficial owners (real owners of companies) since the publication of the Panama Papers in 2016. A case that exposed, thanks to the document leak from Panamanian law firm Mossack Fonseca, how relevant public figures held a number of companies in tax havens and how many properties were used for money laundering, among other crimes.

However, other journalistic investigations with great findings were made possible with the use of public records on beneficial ownership. It came as a great surprise when the European Union court, in November 2022, made the decision on limiting the use to these public records. "Three businessmen went to court refusing to make their data public. They were questioning the rules for establishing the records of these companies. There is public access, there are privacy rights, so the court decided there was a loophole. Nobody assessed what the risks were."

The European Court decided to put on a scale that there were no sufficient grounds to warrant the right to information, they recognized the public interest, but that was not enough, Martini explained. "It can be demonstrated that there was a legitimate interest, and in that case the information could be accessed. We did have a legitimate interest, but this time it didn't work."

Martini says that beyond the European Union, this issue has proven to have an impact. "Financial centers are looking at how to advance their transparency frameworks. In Switzerland, Australia, South Africa, they are trying to improve, and these decisions also have an impact. At Transparency International we will try to mitigate the impact of that decision. We need to broaden the debate on the benefits of access to this information."

The role of companies in society must be taken into account. "Having a company does not give anyone the right to remain anonymous. A company has to make transactions easier. No one is saying that companies should be used to hide or deceive. The rights of an entity should not be the same as those that apply to a person, to an individual," she concluded.

## CARLOS CORDERO

From Access Info

An expert in development projects from the Open University of Spain, with experience in projects for controlling access to information, corporate responsibility and transparency, and founder of Access Info, Carlos Cordero warns that, to solve the problems of grand corruption, it is not enough to look at the countries, people and entities of the countries where it originates, but also to look at the countries where there is complicity, countries that are believed to have a rule of law and oversight, and rules guaranteeing the rule of law.

“Many times we have mechanisms that enable this situation, that attract investment,” he says. An investment of illicit origin to buy companies, land, yachts. This can be clearly seen, according to Cordero, in the case “of the Russian oligarchs,” but he explains, “we have oligarchs from all over the world, in all colors, all languages, all religions, ideologies.”

They go, he says, “to where they can use the money, and where they can enjoy that quality of life peacefully, and with guaranteeing laws, of apparent rule of law, with a legal perspective that not always guarantees rights.” Against this backdrop, Cordero says, we need to analyze the European, North American and other contexts. These are countries with consolidated—or at least perceptible—democracies, with a democratic tradition and democratic principles.

Regarding the enablers, Cordero stated that it is impossible to do all that alone. We have been studying this type of practices for a long time in investigations on tax havens, aggressive tax planning or tax avoidance strategies, practices that are not illegal, but unethical. In these cases, there are usually tax loopholes in the regulations, where there are firms that facilitate these tax loopholes, prepare these practices, organize them, manage them, propose them and take care of everything for you. You don’t have to move from where you are, and you can control everything from there.” This is how it works, explains Cordero: these enablers create a strategy and a plan based on legal structures in order to guarantee security, opacity and illicit or immoral profit.

The judgment of the European Court on the final beneficiaries of corruption does not have a rights approach, or of protection of guarantee of rights. “It is about granting a privilege from power, and it fails to consider that the information about final beneficiaries is of public interest, and therefore it is a right to access to information.

This underlying logic of the European Court’s ruling, which considers more relevant the protection of information on the ultimate beneficiaries, arguing for the protection of personal data as opposed to the citizens’ right to know, “has a very negative influence on the fight against grand corruption, but also shields of opacity on tax avoidance practices, and therefore creates a favorable context for increased tax erosion, where complex corporate structures are opaque, resulting in lost tax resources,” warned Cordero.

“It also impacts the issue of illegal fishing and environmental crimes, the flag of convenience ships, by promoting opacity as to the ownership of those behind environmental crimes. It affects us in terms of erosion of confidence in the rule of law, and from the economic point of view of fair competitiveness in the market. From our standpoint, this ruling does not have an approach of protection of rights, although from the academic and journalistic point of view, we accept the privilege of ability to investigate and access to information. We will see how this interpretation of recognition of legitimate interest is applied to civil society, journalists and academic researchers in each country.

Cordero made it clear that the solution is to return to a rights-based logic, and the right of access to information is not a privilege, it is not a concession of power, it is to make people understand that this information—unless it effectively affects and collides with another human right—should be public because it facilitates the exercise of other rights, and because improves soundness and robustness of the rule of law and democracy.

## JOAQUÍN GIL

Journalist of the investigative team of the newspaper El País.

With a master's degree in journalism from the Universidad Autónoma de Madrid and a member of the investigative team of El País, Joaquín Gil has been investigating corruption cases in Spain for the past eight years, and his presentation was based on his experience in investigative journalism.

"In the framework of these investigations we discovered that there was a small BPA bank in Andorra, which was intervened in March 2015 for an alleged money laundering crime," Gil recounts. "This bank held the fortunes of international corruption, and there was Venezuela, there were the looters of PDVSA. We learned who Nervis Villalobos was, who Javier Alvarado was, who the cousins of all these former Chavista deputy ministers were, and a series of data, information, about something that resembled a Netflix movie."

Venezuela's corruption, Gil explained, has all the ingredients of corruption: money laundering, beauty queens, politics, suicides, lawyers engaged in cleaning images and laundering money, front men, purchase of properties all over the world.

They used a small bank in Andorra to channel the funds looted from Pdvsa, he explained.

"The looting of PDVSA prompted a number of former Chavista vice-ministers to use a small bank to keep the commissions they charged to businessmen bidding for contracts from PDVSA and its subsidiaries," explained the El País journalist.

According to the investigations, these officials charged the businessmen a 15% kickback in a basic corruption scheme that consists of disguising financial operations "with services for reports that did not exist." That money was collected in Andorra, "which was part of the planning, one of the tentacles of this offshore scheme, which also extended to Panama and Switzerland." Andorra, says Gil, was shielded by banking secrecy until 2017.

Gil points out cases highlighting the huge number of front men, multiple companies in Panama, but the question remains as to who designed the entire framework. "The corrupt know how to steal, they know how to award contracts and they know how to call their cousins and relatives, but they do not know how to lay out the entire financial scheme with tentacles in Switzerland, in Panama. BPA and Andorra received money from gentlemen who could not justify the origin of said funds."

The investigative team of El País found information about Eliminalia, a company from Barcelona, Spain, devoted to cleaning the image and reputation of corrupt people in 54 countries. They used tricks and disinformation techniques. They had a network of fake websites with which they published good-standing information about people being questioned in the media. They tricked the search engine algorithms and managed to push negative information to the bottom of the search results. "And since none of us gets past the second or third page of Google search results, that information didn't exist."

Deleting information is another Eliminalia technique. Through fraudulent requests for information, the company would contact the media outlet that had posted certain reports that affected its clients and notify them that they had violated an intellectual property copyright law. In 100% of the cases analyzed by the research team this was a lie: what they did was to publish that same news item on another website they had created, set the clock back and asked them to remove the news item published in the other media. “This is undoubtedly an intimidation technique to halt investigations,” he added.

Eliminalia had 400 clients in Latin America, says Gil. “From ordinary people who wanted to exercise their right to be forgotten to corrupt people and criminals who wanted to polish up their reputation. These types of companies are real enemies of information and the right to information and investigative work,” Gil concludes.

## ROMINA COLMAN

Investigative Journalist, OCCRP

“Things always happen when we are distracted; the closing of records, restricting access to information, deleting information from platforms, changes in procurement laws, they publish it when we are busy with other things, just like the important issues, which are always published in the Official Gazette on holidays.” There are 291 minors with significant stakes in companies in Luxembourg: Why keep these records closed? Transparency hurts and governments are not willing to suffer.”

This was the opening remark by Romina Colman, a graduate in communication sciences with a master’s degree in data and society. The data editor for Latin America of the Organized Crime and Corruption Reporting Project (OCCRP) focused her speech on the experience of this organization in building databases to overcome the limitations of access to information, some of which were already described.

Colman is aware that technical languages mean that journalists have to serve as intermediaries to bring this information to the public: “We have to be creative in searching for data. The systems are not designed to be actively used by all of us. The Panama Registry, for example, has changed for the worse after the Panama Papers. We are making great efforts as journalists and civil society.”

She also said, however, that access to Venezuela’s trade registry information has been greatly limited in recent years, and that OCCRP “makes great efforts to have public information from Venezuela in Aleph, the organization’s data platform.” He also spoke of a system called Funes, developed by Ojo Público in Peru, which detects wrongdoings in public procurement.

“How can we report all this so that people can see that there is corruption here? Because if physical money is not visible, it does not exist for citizens,” Colman asks, “because corruption is not visible, but these things do matter.” Colman added that civil

society and journalism should reflect on how to ensure that issues such as beneficial owners, public registries, offshore companies and tax havens are told in a way that corruption is clearly visible for people.

“If you don’t see the bags, if you don’t see the money, if you don’t see who it affects, if you don’t talk about the victims, for the people in general there is no corruption,” she concluded.

A common thought among the participants in this panel was how to overcome the frustration that journalists and organizations feel when investigations build strong cases but are not taken seriously by justice systems. This does not have electoral repercussions and this frustration is increasingly felt because there is less information. Not only how to investigate but also how to communicate is one of the great challenges of investigative journalism, how to talk to public officials so that they understand the social damage caused by corruption.

“Someone said that quality information is going to be like drinking water,” said Joaquín Gil, in the final stretch of the panel. “How to avoid disinformation campaigns? How to make people not make decisions based on the information that their friends send them via WhatsApp?”, referring to the serious problem that disinformation in regular and social media, an issue that some communication scholars have dubbed infoxication.

“Social media cannot be suppressed, only dictatorships do that, but what we can do is take care of the water sources,” said Carlos Cordero. “Sometimes I have been asked for an opinion, but the information available is very poor. It is necessary to cross-check, to ensure that the information is reliable. People must be warned that they are being given false information with the purpose of misinforming.”





# PANEL 7

## STRATEGIC LITIGATION AND THE PROBLEMS ARISING FROM LITIGATING IN DIFFERENT JURISDICTIONS.

### MERCEDES DE FREITAS

Executive Director, Transparencia Venezuela

### VLADIMIR ARAS

Federal Prosecutor of the Court of Appeals in Brasilia

### CARLOS CASTRESANA

First Prosecutor of the CICIG. Prosecutor at Spain's Audit Court

### YESENIA VALDEZ

Of the Foundation for Justice and the Democratic Rule of Law. Mexico

### JOSÉ UGAZ

Member of the Anti-Corruption Task Force



Watch panel 7 here: <https://bit.ly/42EgeSD>

The prosecution of criminal cases with presence and activity in different countries has a series of obstacles when it comes to investigating and prosecuting in court. There are differences in the classification of the crimes; in the interest or capacity of the country prosecuting the case; the million-dollar resources of the alleged criminals; the legal guarantees, tax havens, tax benefits in receiving countries. Today, many persons of interest in Venezuelan corruption cases live in appealing cities in the USA, Spain, Italy, UK, in spite of the risks of being sanctioned. The panel featured Vladimir Aras, Federal Prosecutor of the Court of Appeals in Brasilia; Carlos Castresana, Academic and Prosecutor of Spain; Yesenia Valdez, Mexico's Foundation for Justice, and José Ugaz, Criminal Lawyer, member of the Anti-Corruption Working Group, moderated by Mercedes De Freitas, Executive Director of Transparencia Venezuela, who discussed these and other issues that threaten the progress of the cases.

## MERCEDES DE FREITAS

Executive Director, Transparencia Venezuela

"In Venezuela, certain laws are secret," said Mercedes de Freitas to kick off the debate.

"Opacity and misinformation in Venezuela are the norm. Transparency is non-existing, laws are secret," she said. "How are we going to follow the law if we don't know it? The Budget Law has not been published since 2015. When I say that there is no transparency in Venezuela, it is because there is NONE. There is no information on public spending since 2010. Bringing action, prosecution, serving justice in cases of Grand Corruption is extremely difficult. Neither the Comptroller's Office nor the Supreme Court enforce the legal and constitutional obligations to publish."

De Freitas noted that certain media and Transparencia Venezuela have fact-checking teams, to try to overcome the limitations of disinformation ("to little avail, because the magnitude of disinformation is brutal"), which is a tool that guarantees success for the corrupt. Opacity is promoted and legally guaranteed by the upper echelons of government power. Transparencia Venezuela published in 2014 a book that is internally called the "Red Book," summarizing the 64 legal reforms that been then approved and legalized opacity. "Since then, the situation has worsened, with the creation of prior censorship bodies."

The upshot of disinformation, said De Freitas, is that prosecution cases that have been undertaken abroad have faced difficulties, because the prosecutors and police investigation units do not have information from Venezuela, not only because of the efforts made by private parties to erase their past, e.g. through Eliminalia, TeBorramos.com, but also because cases have been closed in Argentina, Spain, Mexico, Ecuador under the pretext that they have no response to the requests made to the Venezuelan government.

The Venezuelan Prosecutor's Office has not only been complicit in the non-prosecution and non-investigation of cases, but by denying requests for information under the anti-corruption conventions and human rights violations included in all international cooperation agreements, it ensures that the corrupt are also safe outside the country.

There are judges who close cases because they are complicated, or with trivial observations, e.g. that money laundering is not corruption, explained De Freitas. It is common for people accused of corruption to use the procedural guarantees of other countries to legitimize their freedom and the enjoyment of their assets. "And it is not because there are countries with very strong guarantees, but because borders create security for the corrupt. The legislation is different from one country to another, the classification of crimes is different, court proceedings are different and that also makes prosecution difficult."

One landmark case is that of Hugo Carvajal (Venezuelan national in Spain) whose extradition was requested by the USA. The extradition was approved, and then he escaped. They found him one year later. It has been a year and a half since and extradition has not been possible, because he has very skilled lawyers who have filed more than 15 appeals, and his lawyer said in an interview that she still has 15 more appeals to file. "In our view, that is a mockery of justice and we are sure that "Pollo" Carvajal would have a lot to say in locating assets stolen from Venezuela."

The cases of Grand Corruption not only occur or cause damage in a single country. Justice systems have to stick to prosecuting the damage occurred in their territory, but there are bits and pieces of cases scattered throughout the countries, and when you see the magnitude of all, there are elements that simply lie outside those jurisdictions. "These are issues that need to be discussed further," said De Freitas.

Freitas also referred to the financial enablers that are being investigated by Transparencia Venezuela. "Out of 70 cases we have analyzed from the 147 we have recorded, there are 156 financial enablers, and of them, 123 are banks that allow the transfers of billions of dollars, and nothing happens." De Freitas mentioned also the complicated world of financial operations with cryptocurrencies and bonds approved by the government in the context of the exchange control, which—being government-endorsed instruments—seem legal in the eyes of any country, but they are not.

"I wanted to put all this in context—said De Freitas to conclude—because I am going to ask the panelists, especially the prosecutors, the organizations or criminal lawyers, how they see these international cases amid this complex reality of such powerful people, who handle a lot of money and can hire the largest law firms and the largest auditing firms in the world."

## VLADIMIR ARAS

Federal Prosecutor of the Court of Appeals in Brasilia

Brazilian prosecutor who has been close to the Lava Jato investigation, Vladimir Aras spoke about the complications of investigating transnational corruption cases, such as the location of evidence, and the inefficiency or lack of transparency of the justice systems in Brazil.

“The location of evidence is a very serious problem for prosecutors in Brazil, because there is no community system of rights in that country, no system of mutual recognition, as there is in Europe,” he noted.

His first transnational investigation was 20 years ago, with the U.S. prosecutor’s office, for a case of money laundering and financial crimes with a bank in the state of Paraná that was involved in a corruption scheme. “We had coordination problems with prosecutors from neighboring countries; it was easier to talk with U.S. prosecutors than with prosecutors from closer countries. Years later, in the Lava Jato case, it was not possible to obtain information from prosecutors in Venezuela.”

Although there are systems for meetings of prosecutors under the model of the Ibero-American Association of Public Prosecutors’ Offices, there are still problems such as the delay or lack of responses to our requests.

The question would be why litigate in different jurisdictions. Aras believes that there are some issues to consider, such as the inefficiency of justice. Sometimes, he explains, national systems in the region do not work as they should, proceedings take a long time, the work of the police, prosecutors and judges is painfully slow. Other times the lack of autonomy and independence of prosecutors and judges prevails: “If consider the inefficiency and lack of independence of the justice systems, there is no hope of using national systems to fight corruption.

“A few years ago,” Aras points out, “Brazil was in a position to do so, but not now, due to the changes in our anti-corruption regulatory framework. There is an administrative improbity law in Brazil, which was reformed—or “deformed”—two years ago, and now it does not work as it used to.”

There are also concerns about the independence of the Brazilian Public Prosecutor’s Office, which raises important questions, says Aras. Problems are common in many regions of the world, such as judicial corruption, which involves police and oversight agencies and prosecutors, judicial malfeasance and lack of democracy. The problem of democracy is an ever-present issue when we talk about litigation in various jurisdictions.

Aras noted that double incrimination is a frequent issue, and that many times prosecutors of one country cannot investigate the facts in another nation, “because our legislation protects only our public administration, not the public assets of other nations. That is why the OECD convention of 1997 allows us to investigate active corruption of foreign public officials.”

When we have a file on passive bribery, it is not possible to investigate foreign officials in Brazil who have solicited bribes to award a contract. Article 16 of the United Nations Convention cites the power of the States to adapt their national legislations to accuse persons involved in passive bribery, but it is not an obligation for the States, as are the obligations of the OECD of 1997, or as are the obligations on money laundering under the Vienna Convention of 1988 on drug trafficking or other important crimes already catalogued as international crimes. The latter, according to Aras, open the possibility of the application of the principle of universal jurisdiction on the question of extraterritoriality of a country's criminal law. Brazilian law allows prosecutors to initiate such investigations, but it is not an obligation.

It is also true that there are economic, political or victim interest issues. In Brazil, prosecutors are sometimes not interested in dealing with these cases, and sometimes there is no budget for prosecutors from one country to initiate investigations in another country.

Another issue to consider is the protected legal right. It is true that corruption is a serious problem that violates the rights of the poorest people, there are victims, but in Brazilian criminal law the victim is the government. We have to change this vision in order to determine how corruption impacts ESCRs.

Lastly, another relevant point in transnational cases is the double criminal prosecution, warned Aras. Countries that have a closed system such as Brazil. When we have requests for extradition of Brazilians involved in corruption, money laundering or terrorism in other countries, we are not allowed to extradite our citizens. These are important obstacles to consider.

## CARLOS CASTRESANA

First Prosecutor of the CICIG. Prosecutor at Spain's Audit Court

Renowned in Latin America for his extensive career, and because he was the first Prosecutor of the International Commission against Impunity in Guatemala (CICIG), Castresana warned that "Grand Corruption is a transnational crime. Corruption today is not only the deviant behavior of officials who, as individuals, become richer through bribes or embezzlement of public funds. It is institutional, organized corruption, involving public servants, political parties, governments and the private sector, large corporations."

In short, according to Castresana, Grand Corruption involves appropriating funds in a territory, and in order to put them in safekeeping, they must be taken out and placed in a tax haven. In order to enjoy them later, they have to be laundered and reintroduced into the legal markets with no record of the illicit origin of those funds.

"Once this entire process has been completed, the corrupt go to live in Western Europe, the United States or in developed countries of the first world. That is where they can obtain the greatest gains from these illicit benefits and where they can enjoy them," explains Castresana, and adds: "Our doom is that prosecution of these organized and

systematic criminal conducts of corruption is transnational, because the source of the evidence to build a case is not in our country, we have to find it abroad, hence the importance of cooperation.”

But cooperation, according to the expert, sometimes finds bureaucratic obstacles, sometimes merely administrative, sometimes political resistance, or resistance due to other corruption processes. “The interest of justice, which is what we judges and prosecutors pursue, collides in cases of Grand Corruption with the interest, which is also legitimate for governments, of maintaining the best possible political and diplomatic relations in the international community. It is reasonable for a government to offer some resistance to certain transnational corruption investigations that might complicate their relations. These two interests must be made compatible,” he explains.

Castresana warned, however, that we must be careful when pursuing transnationally certain jurisdictions that are not respectful of human rights. I have found that States, especially in the Americas, send false information, often in order to get rid of an adversary. And this is where civil society comes in.

“What is strategic litigation?” Castresana defines it as “the activity of civil society, of non-governmental organizations that, based on the principle of opportunity, have the ability to choose or build a litigation case by saying ‘we are going to file a lawsuit in this country, against these people, for these specific conducts.’”

And he clarified that this principle of opportunity does not apply to prosecutors, but it does not mean that we should design—especially in complex cases—a prosecution strategy to focus on an investigation and subsequent indictment, with chances of success. “It does not seem sensible to spend efforts on impossible cases.”

The recurring obstacles in these cases include: the resistance of the States, because the criminal prosecution of certain individuals damages political relations, and legal, formal, bureaucratic obstacles, etc. “We, Brazil and Venezuela, should have a bi-national, regional agreement and, barring that, there is a global framework for these tasks, i.e. the Merida Convention of 2003, the United Nations Convention Against Corruption and, ultimately, the principle of reciprocity.”

Another problem, Castresana explained, is that when cooperation has to go through the Ministry of Justice and the Ministry of Internal Relations, the process is halted. An unsuccessful transnational case was the prosecution of Silvio Berlusconi for tax fraud. But with all the “setbacks,” one becomes an old hound and starts to think about how to overcome difficulties.

One successful case, recalls Castresana, was that of Guatemala in 2007, in which they were trying to dismantle the criminal networks of the state apparatus during the administration of President Alfonso Portillo, seen as the paradigm of impunity. “We prosecuted him in Guatemala for corruption cases, and then we went to New York, to the District Attorney’s Office of the Southern District of Manhattan. This prosecutor’s office is the true international prosecutor’s office, it has jurisdiction in almost any corruption case in the world, because whenever an economic transaction has used a

correspondent bank in the Southern District of Manhattan, they recognize their own jurisdiction and prosecute the crime.”

Criminal prosecution strategies are needed, he insists. “When he was tried in Guatemala, he was acquitted. But he was extradited to the United States, pleaded guilty, negotiated with the prosecution, did five years in prison and was forced to pay three million dollars. When international cooperation works, it can remove the political obstacles and immunities that stand in the way of criminal prosecution.”

Regarding tax havens, Castresana says that it is necessary to distinguish and not put them all in the same basket. There are some territories that simply offer low taxes and companies go there to establish their offices to secure profits and lower their tax expenses. These territories have nothing to do with countries characterized by the opacity of their financial systems.

“The blackest money in the world is still often sheltered where the pirates kept their treasures, in the Caribbean islands; so little has changed.” There would be no need to look for that money there if there were a dissuasive tax on these tax havens. You can have the money there, but if the money returns to Spain, it does so with a 40% tax.

As far as criminality is concerned, experience has taught us that you have to focus on the types of offenses for which you can obtain a conviction. “Don’t insist on prosecuting certain criminal conduct to the hilt if you can take the individual and seize the funds under tax fraud.” He explains: “Money laundering is an instrumental crime of the main crime, which is embezzlement, bribery, etc.”

The key, as magistrate Giovanni Falcone said in the 1980s, is to follow the money trail. Corruption investigations are meaningless if you are not ultimately able to seize the money coming from corruption. It is the hardest thing to do, but it is the only thing that yields sustainable results in the long run.

The simpler the causes, the greater the chances of conviction, Castresana noted. “The more information, the easier it is. Civil society gives me information and I transform it into evidence, that is my job,” he concluded.

## YESENIA VALDEZ

Of the Foundation for Justice and the Democratic Rule of Law. Mexico

An ally of Transparencia Venezuela in Mexico, Yesenia Valdez has been working on a corruption case linked to subsidized food. She spoke about this and other experiences.

One of his concerns is to get civil society involved. “Based on corruption crimes and their effects on the population, we must continue to discuss and undertake legal reforms that allow these crimes to continue to be analyzed by society.”

Corruption and money laundering are not just matters that concern lawyers, says Valdez, but should be debated, analyzed and dealt with by large technical teams. But in Mexico it is very difficult for prosecutors’ offices to have such teams, she points out.

“We have to rethink, as civil society, how to support the prosecutor’s office. We have to work jointly as civil society and authorities.”

In Mexico, there is no crime of corruption, but rather “crimes for acts of corruption.” They are included in Mexico’s Federal Criminal Code, in Title 10, Articles 212 to 224 and include: unlawful exercise of public service; abuse of authority; forced disappearance of persons (repealed); coalition of public services; unlawful use of powers; undue payment and receipt of remuneration; extortion; intimidation; abuse of functions; influence peddling; bribery of foreign public servants; embezzlement and illicit enrichment.

Interestingly, the long list of corruption offenses does not include money laundering or operations with funds of illicit origin (ORPI), as it is known in Mexico. This crime is in another section, in Article 400 bis.

Who investigates these and other crimes? The first block is investigated by the Special Prosecutor’s Office for Combating Corruption of the Prosecutor General’s Office. The second crime is investigated by the Special Prosecutor’s Office for Organized Crime of the Prosecutor General’s Office. It is important—Valdez points out—to consider this in order to understand the splitting of roles when corruption cases are prosecuted.

In Mexico, crimes are fragmented, it is not seen as a macro criminal phenomenon that allows us to analyze the crime, investigate and prosecute it. Each part of the crime is broken down and divided among prosecutors, which makes it impossible to investigate.

As for victims, says Valdez, any person in Mexico could file an action, but the problem comes when someone is determined as victim.” Article 4 of the General Victims Law sets out that victims are groups, communities or social organizations whose rights, interests or collective legal assets have been affected as a result of a crime or violation of rights.

In turn, Article 108 of the National Code of Criminal Procedures establishes that a victim of a crime is considered to be the passive subject who directly suffers the harm produced by the criminal conduct. “As can be seen, these are very broad concepts, which leave room for interpretation as to the nature of victims,” she comments.

A court ruling on the amparo measure under review 162/2022, issued in February 2023, speaks precisely of the character of victim. The amparo was denied and it established that, in cases of corruption, the person who files an action cannot be a victim because no legal right is affected. But there is a ruling by a district judge of the State of Aguascalientes, in which the amparo was granted and the Public Prosecutor’s Office was ordered to grant the character of victim to the whistleblower and let him intervene, to have access to the case file and all related matters.

Here, Valdez concludes, the strategic litigation begins. It is time to make use of the judgments published so far, to explain to the prosecutors, to make use of the current legal loopholes to continue building concepts and possibilities and answers to existing problems.



## JOSÉ UGAZ

Member of the Anti-Corruption Task Force

Former Peruvian prosecutor for the corruption case against Alberto Fujimori, former president of Peru and former president of Transparency International, José Ugaz closed the panel by raising the problems of litigating in different jurisdictions, based on the experience of the Nervis Villalobos case in Spain. “It is good to analyze frustrating cases in order to internalize the lessons learned,” he said.

A major corruption case was filed in Madrid’s Central Examining Court No. 3, presided by Judge María Tardón. Because of its magnitude, the judge decided to divide it into four parts, “which is extremely reasonable,” Ugaz argued.

The main protagonist in this case is a man named Nervis Villalobos, a well-known figure in Venezuela, an electrical engineer who went on to hold various government positions, including Vice Minister of Electrical Energy.

“The case against Nervis Villalobos was initiated in Spain as a result of a request from Portugal’s Prosecutor’s Office, as part of the investigations for wrongdoings in Banco Espiritu Santo. A link was discovered with individuals named Luis and Luis Javier Díaz, who in turn are linked to Nervis Villalobos and to an alleged fraud against PDVSA, the oil company that has been the cash box most frequently used by corrupt Venezuelans to appropriate substantial funds from the Venezuelan State,” explained Ugaz.

The case against Villalobos and others in Madrid consists in the fact that a company owned by the Diaz brothers called Miami Equipment and Export Company, based in Miami, United States, which develops electrical projects, hired a consulting firm called Kingsway LDA, owned by Nervis Villalobos and his wife Milagros Torres, to provide consulting services in their area of expertise.

Next, Kingsway LDA, supposedly provided the requested service (which could not be verified by any document in the file, since we have not had access to it), for which this company, owned by Villalobos and his wife, charged a substantial fee of USD 9,447,000 (nine million four hundred and forty seven thousand dollars), for which the Miami company made seven payments in an account at Banco de Madrid for the total amount of USD 6,912,829 (six million nine hundred and twelve thousand eight hundred and twenty nine dollars) between October 26, 2011 and June 15, 2012. And no other movement appears in the account for services rendered or expenses derived from work performed that could link said company to real activities.

From Madrid, the money was transferred to an account held by the Villalobos-Torres couple at Banco de Madrid in the British Virgin Islands, from where a portion was then returned and used to buy a property owned by a Chinese couple in La Moraleja, one of the high-end neighborhoods in the city, continues Ugaz.

For the purchase of this mansion, 750,000 euros (seven hundred and fifty thousand euros) were paid with their own funds; 1,000,000 (one million) euros with a mortgage loan on the same house, on the day of the purchase; 235,000 (two hundred and thirty-

five thousand) euros of earnest money paid in checks, and 1,500,000 (one million five hundred thousand) euros for the cancellation of 2 mortgage loans that encumbered the property and that came from the account at Banco of Madrid. The total investment was 3,485,000 (three million four hundred and eighty five thousand) euros.

When investigations against the Diaz brothers, owners of Miami Equipment and Export Company, were launched in Portugal and the United States, Villalobos was approached and this investigation began.

In Spain, the police carried out the relevant investigations, and the results were incorporated into the proceedings opened in Madrid, but the case did not move forward, so a civil society organization interested in the case made several approaches to the Prosecutor's Office to assist, after which it tried to join the proceeding as a party through the Spanish procedural institution called "Acusación Popular" (Public Accusation).

"Resorting to this, which basically requires that the person wishing to join—natural or legal person —must be of Spanish nationality, the organization filed a request to be considered part of the process. However, this request did not prosper, since the judge set as a requirement to authorize its entry a 50,000 (fifty thousand) euro bond, which the organization could not afford."

On this point, highlighting the importance of the role that civil society organizations can play in corruption investigations, Ugaz recalls that, as the Special Prosecutor in Peru for the case of former President Fujimori, accused of corruption, among other crimes, it was thanks to journalists and civil organizations that provided valuable information that significant progress was made in the case.

Returning to the Villalobos case in Spain, months after this decision was made, which prevented the organization from joining the process, the judge decided to close the case on the grounds that there was no crime. Her reasoning was as follows: "First, in this case we are dealing with services actually rendered (regarding the alleged consultancy provided by Villalobos' company), because the corporate purpose of Miami Equipment coincides with the technical qualifications of Nervis Villalobos (electrical engineer who was director of Energy and Mines, deputy minister and president of Cadafe), and also with the activity of the contracting parties."

Then the judge argued that the way in which the payment for the house was made "does not seem to suggest an operation of suspected money laundering. This occurred—says Ugaz—despite the fact that there is evidence in the file that Kingsway LDA's account at Banco de Madrid did not show any other operation and only received the money for the alleged consultancy from Miami Equipment and Export Company."

In addition to this, which suggests that the account was opened expressly to channel the money, is the fact that part of the money came from a tax haven, and that there is no proof of the real existence of the consultancy, the content of which is unknown."

The magistrate adds an issue of crime descriptions, according to which, as the crime preceding money laundering occurred in the United States, where this criminal offense is called "transferring money through an unlicensed business," a term that does not exist

in the Spanish Criminal Code, then this conduct is not defined as a crime in Spain, and thus, it would be an administrative and not a criminal offense, and thus, “since there is no crime of money laundering, the case should be closed.”

Furthermore, says Ugaz, the judge in question argued that “the process under her charge was money laundering and not corruption,” ignoring the fact that, in general, corrupt practices involve various money laundering mechanisms and schemes. “We have just heard from a prosecutor with the experience of Carlos Castresana that money laundering is the final link in a corruption crime. To maintain, as was done here in the case of Nervis Villalobos, that in a money laundering case the corruption that originated the funds is not relevant, is an attempt to ignore reality.”

“What is the big lesson from this case?” asks Ugaz in closing. “We have learned that a real difficulty is that, if it is not a case with a severe impact on the jurisdiction prosecuting the case, which is not a jurisdiction where the original crime was committed, the authorities of that country tend to downplay it, it is not considered relevant, as long as it appears as a foreign problem.”

## FINAL THOUGHTS

---

We have a range of problems to overcome and, although there has been progress in the last three years in understanding the role of corruption in the violation of human rights, including those against humanity, there is still a long way to go to legally formalize this link and incorporate more strongly the need to strengthen anti-corruption structures as essential mechanisms in guaranteeing human rights.

One of these pending issues is the consideration of corruption victims beyond the individual, understanding the effects of corruption on collective and social victims.

The responsibility of the enablers of the schemes, structures and networks of grand corruption is an increasingly obvious and important issue, but they are still not being named. Both the operation of capturing public funds, as well as their legal legitimization and the laundering of illicit capital in these major cases require the hiring of companies, law firms and professionals with the capacity to create and maintain a complex legal, financial, administrative and tax structure, including the incorporation of companies in various countries: acquisition of companies or shares; opening bank accounts in multiple banks, with existing or new relationships, or the purchase of banks; links with various financial structures for the purchase of bonds, investments in stock exchanges; purchase or development of real estate, jewelry, airplanes, yachts, gold; investing in new businesses and a long etcetera, whose limit is the imagination of the advisors.

In addition to legal protection, with threats and attacks on anyone who jeopardizes the use and enjoyment of the laundering structure, the grand corruption network takes advantage of the right to privacy to erase its presence in all spaces where their public or private activities may be recorded. There are specialists who offer this “professional” service.

Monitoring and investigation by civil society and investigative journalism is another essential element in the fight against corruption and impunity. The lack of access to and transparency of public information and the ultimate beneficiaries of companies, firms, consortiums, media, etc., is an obstacle to independent work and a protection for the corrupt.

Transparency International, UNCAC, Coalition, Access Info and other organizations continue to demand the removal or reduction of limits to the right of access to information that should be public.

Citizen participation can help in the process of corruption cases. Civil society organizations, with their expertise, can help with translations, providing valuable information, but this idea must be packaged, because judges believe that this means more work, that it will complicate the process, when it actually may be the opposite.

The information provided by journalists and civil society is very useful and can be transformed into evidence, as long as the chain of evidence is maintained and possible witnesses are provided without affecting the protection of sources.

There is an urgent need for the funds that were frozen, confiscated, to be directed to the attention of the victims of corruption, to the vulnerable population, and to the investment of basic public services such as the electricity sector. The Social Fund, a product of the dialogue agreement between the government of Nicolas Maduro and the unitary platform, under the control of the United Nations, represents a great opportunity for the justice systems and the executive bodies of all countries to ensure that the funds serve the most pressing needs of Venezuelans. It is necessary to know where these assets are, how many assets are frozen in each case, how much we are talking about and the possibilities of feeding them into the Social Fund.

Remember that you can watch the entire event on our Youtube channel by clicking on:  
<http://bit.ly/Corrupcion-DDHH> and <https://bit.ly/43Hydt0>

Revised reports,  
June 2023

