Summary version

Reparation for victims of corruption in COLOMBIA

Aproaches to concepts, legal roadmaps and valuating methodologies

TRANSPARENCIA POR COLOMBIA
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REPARATION FOR VICTIMS OF CORRUPTION IN COLOMBIA

APROACHES TO CONCEPTS, LEGAL ROADMAPS AND VALUATING METHODOLOGIES SUMMARY VERSION[1]

Presentation

Corruption in Colombia has been shown to operate through various sophisticated methods, actions and practices at different levels. This network operation involves a variety of agents that intervene not only in acts, but also in processes of large-scale macro corruption, in the midst of which the victims and the damages that corruption has generated have become invisible. In fact, in Colombia, criminal law has been entrusted with the possibility of combating corruption by prioritizing the punishment of the perpetrators or corrupting agents. However, the dynamics of the retributive penal system and, in general, of the Colombian criminal policy, have yielded limited results when faced with the magnitude of the problem, increasing the citizenry's perception of impunity and of justice denied.

In this context, Transparencia por Colombia and the Vortex Foundation ("Fundación Vortex") have taken on the task of investigating possible legal scenarios and roadmaps to give greater visibility to the victims of corruption and to achieve comprehensive reparation for damages caused. It is assumed that, after several decades of anti-corruption efforts, progress in this area risks falling on sterile soil and without much practical impact if this approach is not addressed. In order to progress in this pursuit, it is necessary to collaborate with public institutions that have the tools and the experience in demanding reparations for damages caused by acts of corruption.

Thus, between the months of September and December 2019, Transparencia por Colombia (TPC) and the Colombian Inspector General's Office (PGN for its initials in Spanish) signed an agreement aimed at "joining efforts to strengthen the capacities of the Inspector General's Office in the fight against corruption, based on designing methodological and legal tools that allow the institution to promote the inclusion of an approach to repair for damages caused by acts of corruption, emphasizing the incorporation of means to ensure transparency and access to public information".

Document Structure

The publication "*Reparation of the Victims of Corruption in Colombia*", consists of three parts in which, in addition to gathering the experiences of the work carried out by the PGN, it complements the experiences of the Vortex Foundation in analyzing macro corruption networks. The first part refers to the work carried out by TPC, in conjunction with the PGN, in order to design a roadmap of actions' proposal for the controlling institution, which would help to promote the

[1] This is a summary of the document originally prepared by Transparencia por Colombia in the framework of Agreement No. 179-177 of 2019 signed by the National Procurator General's Office and Transparencia por Colombia, whose purpose was "To join efforts between the Procurator General's Office and Transparencia por Colombia in strengthening capacities at the Procurator General's Office in the fight against corruption, based on designing methodological and legal tools that allow the Institution to promote the inclusion of an approach to repairing damages caused by acts of corruption, with emphasis on the incorporation of means to guarantee transparency and access to public information. The content of this publication is the exclusive responsibility of "Corporación Transparencia por Colombia" and should in no way be considered to reflect the position of donors and cooperators.

comprehensive repair of damages caused by corruption. The roadmap proposal has three chapters: i) "*Understanding the problem: What is meant when referring to reparations for damages caused by acts of corruption?*"; ii) *The PGN's experience in the case of the "Ruta del Sol II-Odebrecht" contract*, and iii) "*The processes that must be established at the PGN to meet the expectations and the needs for comprehensive reparations for victims of corruption: The Action Roadmap*".

The second part of the publication presents the analysis made by the Vortex Foundation on macro-corruption networks and the need to make the victims of corruption visible and to identify various categories of damages. It also presents a proposal for approaches and methods to compensate damages caused by corruption. The third part includes the analysis also made by the Vortex Foundation, on the case of corruption within the healthcare sector – the "hemophilia cartel"- in the Province of Córdoba. This part includes a review of international and domestic literature on the negative effects of corruption in operating the healthcare systems. It also presents the guidelines to be considered for comprehensive reparation of individual, collective, and social damages derived from corruption in the healthcare sector.

PART I

ACTION ROADMAP FOR PROCURATOR GENERAL'S OFFICE IN THE AREA REPAIRING DAMAGES CAUSED BY CORRUPTION

The Action Roadmap for the Inspector General's Office (PGN) is framed within the logic of an organizational management process map scheme where there is i) an entrance that contains the needs and expectations of a "client"; ii) a series of strategic, operative/missionary and support processes to fulfill those needs and expectations; and iii) an exit point with the fulfillment of the needs and expectations of the "client". In this case, the "client" refers to the victims of corruption. Therefore, their needs and expectations will be the right to full reparation for the damages caused by incurring in acts of corruption.

1. Understanding the problem: What is meant when referring to reparations for damages caused by acts of corruption?"

1.1. On corruption

In Colombia there is, to date, no positive definition of corruption in the law. The various conducts that are considered *acts of corruption* have become criminal offences, most of which fall under the category of "crimes against public administration". The legal subject, which is protected by the legal system in these cases, is the probity and honesty of performing State activities by public servants; the equality of citizens when facing the administration; the legality and impartiality of public servants; the principle of the legality of State activity; rectitude in performing public service; and the State's patrimony, as stipulated in Article 209 of the Colombia's Political Constitution. Therefore, the victim of these crimes, the passive subject, is usually the State.

The Colombian Constitutional Court in Ruling C-944 dated 2012, made an approach to the definition of the concept of corruption and highlighted that the way to detect this phenomenon was to analyze the effect of four basic components of the State: *the political component* from the point of view of the trust among those governed in respect of the State, from *the economic point of view* undermining public resources that in principle should benefit the entire conglomerate, from *the administrative point of view* in the understanding that public goods are intended for the patrimony of individuals and finally from *the legal perspective*.

In Colombia, the National Government has been working on a -public policy- CONPES document on anti-corruption public policy, after the issuance of CONPES 167 document dated 2013, called "National Strategy for Integral Anti-Corruption Public Policy", which defines five strategies aimed at preventing, investigating and punishing corruption: i) Improving access to and the quality of public information to prevent corruption; ii) Improving public management tools to prevent corruption; iii) Increasing the impact of social control in fighting corruption; iv) Promoting integrity and a culture of legality among the State and society; and v) Reducing impunity in acts of corruption. This CONPES document does not mention reparation or making visible the category of victims of corruption.

It is important to note that there is a clear diversity of views and definitions of this phenomenon, which depends on the perspective taken. For example, when it is defined in terms of acts in which an offending agent illegitimately influences a receiving agent from outside the State by illicit means, we are dealing with cases of "simple corruption," in which the occurrence is understood to be casual and sporadic and is determined by individual, one-way acts. Simple corruption has been the classic conception of the phenomenon-indeed, one that has been coined by classic Western criminal law, which has addressed the problem using a case-by-case approach. This was corroborated in an interview with officials from the Office of the Delegated Inspector General for Criminal Matters.[2]

However, when corruption becomes more complex, it can acquire broader criteria for analysis. In cases of "systemic corruption," "administrative failures of the state" are evidenced, as is especially the case in public contracting. This can also lead to scenarios of "state capture" - simple and advanced - and "institutional co-optation", deeper stages of illegality, which can lead to cases of "co-opted reconfiguration of the state". These variants of corruption transcend the commission of mere unidirectional and individual acts, leading to the conception of genuine criminal networks, from within and from outside the State, in alliance with players outside the State.

The Vortex Foundation (2018, p. 54) defines "macro-corruption" as the "*systematic, planned, and coordinated participation of multiple, distinctly powerful agents in the political, economic, and social structure – whether public or private, individuals or organizations such as private companies with oligopolistic power, whether legal ones, or illegal or grey/opaque ones - to manipulate rules and procedures - such as public procurement processes - and to perform multiple illegal or at least illegitimate acts with the semblance of legality, depending on whether they are analyzed as components of a comprehensive illegal process - such as money laundering, front companies, placement of offshore financial resources. This process is developed with the intent of obtaining relatively lasting profits and not merely short-term ones*" (p. 54). In other words, unlike the classic concept of "simple corruption,"

[2] Interview conducted on 8 November 2019.

macro-corruption involves a multidirectional process from the outside in and from the inside out of the State, in the manner of a "kleptocratic corporate system".

Certainly, in a given society and/or in a given context, all of these stages of corruption can coexist. In any case, Vortex (2018) considers that the shortcomings of market forces prevailing in societies such as the one in Colombia, together with an exclusionary social structure and a weak system of representation, deliberation and political participation, favor the commission of large-scale corruption acts perpetrated by powerful groups, which oscillate between legality, illegality, and opaque/ gray actors. Corruption in this case includes practices that appear to be legal, but are illegitimate, in respect of the social welfare function headed by public authorities and institutions.

In short, the concept of corruption addressed in this publication has a broad meaning that goes beyond criminal law, encompassing the complexity of acts and interrelations on different scales and among different State agents and individuals. Nevertheless, corruption is considered to be a crime if it has the following characteristics: i) it affects precious collective rights, such as public assets and administrative morality, and, on many occasions, access to public services or their efficient and timely delivery, or it affects free competition; ii) it affects a heterogeneous set of victims, since the damages caused are at the individual, collective, and social levels; iii) it is perpetrated by various corrupting agents (perpetrators), both public and private, and at different levels of participation or profits.

1.2. On compensation for damages

The concept of damages is understood from the perspective of the *wrongful damages* generated by acts of corruption; in other words, the damages must be covered by wrongful status in order to be repaired by compensation. In Colombia's legal system, damages are understood as unlawful, not because there is a breach of a positive norm, but because the person who suffers it was not obliged to endure it[3], an understanding that exceeds the possibilities of classic criminal law.

When an act of corruption is committed, the pecuniary and/or non-pecuniary damages that it generates must be determined, depending on the victim. If the damages are solely pecuniary, compensation should be sought as a consequence of the injury. However, if the damage is also extra-patrimonial in nature, comprehensive reparations must be sought. However, awarding economic damages is complex, since the victim or injured party seeking compensation must prove the existence of the damages and its amount. [4]

In relation to the *patrimonial damages*, the emergent damages "include the expenses, expenditures or patrimonial losses derived from the damage. Its compensation requires the evidence of the disbursement and the date of issuance; as well as the form it takes, because it may be a single expense such as the one corresponding to the funeral or it may be continuous disbursement such as those presented by having to pay for medicines, treatments and therapies".[5] As for the lost income, the compensation for damages is conditioned to the victim's burden of proof in demonstrating the lost

[3] BUSTAMANTE , Alvaro. "La responsabilidad extracontractual del Estado". Colombia: Editorial Leyer, 2003. p. 221.
[4] HERNÁNDEZ, Aida, "Indemnización y compensación de perjuicios en la responsabilidad patrimonial del Estado". (2018) Working document provided by the author to the Transparencia por Colombia team.
[5] Ibíd.

income he or she used to receive as a result of performing a productive activity, working formally or informally.[6]

In respect of extra-patrimonial damages - for which a full reparation will be demanded -, the Colombian Council of State has reiterated that there are three types of immaterial damages, which are recognized in Colombia: i) moral damages, ii) the relevant affectation or violation of goods or of rights conventionally and constitutionally protected, and iii) damages in health -physiological or biological injury -, derived from a physical or psychophysical injury.[7]

The generation of damages caused by acts of corruption must activate the Jurisdiction of State authorities in promoting and guaranteeing comprehensive compensations. For this roadmap to be activated as of the PGN, it must be borne in mind that, on many occasions, acts of corruption also involve human rights violations. For this reason, it is proposed that a human rights-based approach be included in the analysis of damages caused by corruption. Under this approach, individuals - and groups - are recognized as subjects of rights, and the State's actions are considered in respect of the relationship between subjects of rights (rights-holders) and subjects responsible for guaranteeing such rights (duty-bearers).

1.3. On "victims of corruption"

Given the complexity of corruption as a phenomenon, which generates an array of possible victims depending on the specific case, the proposal is that **any person - or group - that has suffered - or claims to have suffered - from an act of corruption be considered a victim**.

Therefore, victims may include individuals, groups, communities, private and public enterprises, and public institutions, among others.[8] These victims represent the so - called "client" of the management process map that would be activated by the PGN's course of action and whose "expectations and needs" consist of fulfilling their right to full reparation.

Taking developments in international human rights law as a reference, victims of corruption have the following rights[9]: fair, efficient, and timely access to justice; access to relevant information for the purpose of remediation (reparation); appropriate and effective legal assistance throughout the process; exemption from procedural and general litigation costs; access to a victims' fund, when possible; access to appropriate diplomatic or consular mechanisms, when required; the right to be treated with special consideration and care to avoid re-victimization (suing without harm).

In this way, any person who suffers damages from corruption will be considered a victim and will have a series of rights, in which integral reparation is, in itself, a right, that must be guaranteed by the State. Therefore, within the process map of the PGN's Actions Roadmap to promote comprehensive reparation for damages, the "client" is a qualified actor because he or she is a “client” who is the subject of rights.

[6] Ibíd.
[7] State Council, Section Three, File Number 26251, C.P.: Jaime Orlando Santofimio. Jurisprudential Unification Ruling.
[8] It is also possible that an individual or juridical person may be simultaneously a victim and a perpetrator (corrupting agent), as in the case of state-owned companies or companies with state capital participation.
[9] See policy paper http://icip.gencat.cat/web/.content/continguts/publicacions/policypapers/2019/Policy_Paper_19_EN.pdf

In the case of Colombia, perhaps the most representative example of the notion of victim can be found in the text of Law 1448 dated 2011, i.e. the Law of Victims and Land Restitution, in its Article 3, which recognizes various categories of victims of corruption because, as mentioned, the damages generated cover not only an individual dimension, but also a collective and social dimension[10].

Nevertheless, according to contentious-administrative jurisprudence, damages must be personal and certain. The personal aspect refers to the ownership of the legally protected asset, whose reparation is sought, which has been commonly referred to as "standing to sue". The damages must be personal because only the person who has the status of damaged party can be repaired for the harmful act.[11]

1.4. Comprehensive reparation approaches

In order to speak of a course of action to promote the approach of comprehensive compensation for the damages caused by acts of corruption, it is necessary to define the concept of "reparation". Within the management process map, reparation constitutes the universe of "expectations and needs of the client - victim who is the subject of rights. In Colombian civil law (Civil Code, Article 2347), "every person is responsible not only for his or her own actions for the purpose of compensating for damages, but also for the actions of those who were under his or her care. In other words, whoever causes damages must indemnify them.

In the case of victims of corruption, reparations for damages must be comprehensive in nature and must include both a patrimonial and an extra- patrimonial component. This concept of comprehensive reparations has been widely used in transitional justice scenarios and in international human rights law, where it has been recognized that comprehensiveness implies i) restitution, ii) compensation, iii) rehabilitation, iv) satisfaction, and v) guarantees of non-repetition.

In the case of the Inter-American Human Rights System, and specifically the jurisprudence of the Inter-American Court of Human Rights (IACHR), the traditional approach to reparation has been directed at individual victims. However, this approach has gradually changed. In the case of Atala Riffo and Girls vs. Chile, the IACHR stipulated that "(...) some of the reparations should have a transformative vocation of that situation, in such a way that they have a not only restorative but also corrective effect toward structural changes that dismantle those stereotypes and practices that perpetuate [discrimination] (...).[12]

Thus, "the compensations that the Court is often obliged to order correspond more to reparations for structural violations of rights and not necessarily to reparations for individual cases, thus extending the idea of reparations to new fields of action".[13] Taking this approach as a reference, compensation for damages generated by corruption are addressed from the perspective of reparations for structural violations.

[10] Under this understanding, it is specified that the collective dimension of the damages caused by corruption corresponds to the so-called "collective interests/rights," while the social dimension of such damages is related to the "diffuse interests/rights".
[11] Ibíd.
[12] IHR Court, Atala Riffo y Niñas vs. Chile Case. Fund, par. 267.
[13] Nash, C. 2014, p. 108.

In the case of damages caused by acts of corruption, all levels of individual, collective, and social victims must be identified, as well as, the type of legal and judicial repertoire available to them, for access to justice. Not all actions of a judicial nature have a compensatory vocation; not all are designed to make amends for past events; not all are suitable for making amends to collective subjects; not all take into account the victims, but rather focus on the corrupting agents (i.e. perpetrators), as is the case with criminal action.[14]

1.5. The right of access to information

The right of access to public information has been recognized by several human rights protection instruments and national laws. Within the framework of the Inter-American Human Rights System (ISHR), this is the one that allows all persons to access information held under the control of the State, unless there are limitations allowed by the Convention.[15]

In the case of Colombia, Article 74 of the Constitution states that "*all persons have the right to access public documents except in cases established by law*". Statutory Law 1712 dated 2014, which created the Law of Transparency and the Right of Access to National Public Information, regulates the guarantee of compliance with this fundamental right.

Since the right of access to information is the general rule and the limitations are the exception, the subjects obliged to comply with the law must back the denial of access to information by justifying through a legal provision that the restriction is necessary and proportionate. This, in the terms of the ISHR, implies that the grounds for limiting the right of access to information can only be contemplated when a legitimate goal must be protected, which, because of its importance, must prevail over the social need to enjoy the right of access to information.[16]

As part of the Actions' Roadmap of the PGN, the suggestion is that the following considerations on the right of access to information be taken into account i) denial of the right to access to information is a cause of corruption, since the lack of transparency and the lack of knowledge of relevant public information on certain matters or public contracts creates the conditions for corrupt agents to hide facts and data that, if they were to be known in time, could have prevented the consummation of corrupt acts; ii) denial of the right to access information is, in turn, a generating cause of violations of other human rights; iii) denial of the right of access to information to both individuals and institutions with investigative powers, such as the Procurator's Office, is an obstacle in the investigation and in the comprehensive compensation of victims of corruption, since the availability of relevant information is a requirement without which no evidence may be presented to the judicial and administrative authorities with jurisdiction that could lead to sanctions or to specific measures of a remedial nature; iv) the right to access information constitutes a guarantee of non-repetition of acts of corruption, since it dissuades corrupt agents from incurring in this type of behavior by promoting concrete actions to ensure transparency and accountability.

[14] This was corroborated by the prosecutors of Procurator General's Office in Criminal Matters, during a group interview granted on November 8, 2019 to the TPC team.
[15] IHR Court, Claude Reyes and others *vs.* Chile Case, Ruling, Fund, Reparation and Costs (2006), par. 77.
[16] IHR Court, Palamara Iribarne *vs*. Chile Case (2005), par. 85.

1.6. Management Process Map Entry: Client's Needs and Expectations of those who are Victims of Corruption

In order to guarantee reparation for corruption victims, the processes developed by the PGN must have a "reparative effect" which consists of:

i) Establishing **specific actions** aimed at the population that is victim of acts of corruption, beyond the ordinary actions of the State.

ii) Prioritizing criteria to be included, as well as, particular characteristics and elements that respond to the **specific needs** of the victims of corruption.

iii) Recognizing **economic damages** (i.e. consequential damages and lost profits) and **extra-patrimonial damages** to victims of corruption.

iv) Recognizing the individual, collective, and social **dimensions** of damages and, consequently, of the different types of victims of corruption.

v) Taking action to help eliminate the corruption schemes that contributed to victimization, on the understanding that, by transforming those conditions, repetition of the events will be avoided and the foundations will be laid for a culture of transparency, access to public information, and citizen's trust in institutions (**guarantees of non-repetition**).

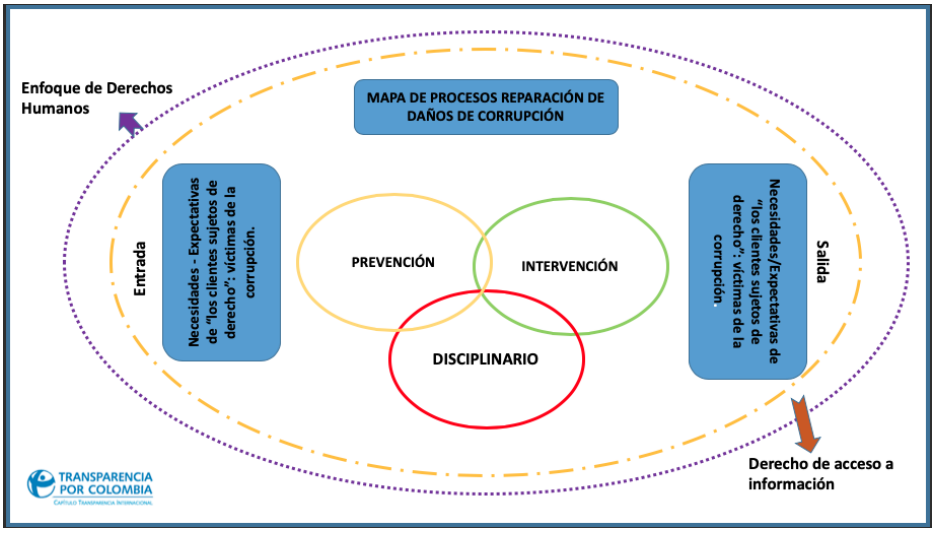
vi) Considering the **right to access to information** as part of the actions to prevent and to guarantee the non-repetition of acts of corruption, and as a catalyst for the investigative process that pursues integral compensations.

vii) Promoting the right to know the **truth** about acts of corruption as part of the right to integral compensations.

viii) Advocating the **punishment** of those responsible for corruption (perpetrators/corrupting agents) by all available means, including disciplinary, criminal, fiscal, civil, and administrative, and even those non-institutional means, since the right to **justice** is also part of the right to integral reparations.

The following chart reflects the proposed route at the PGN:

Chart No. 1. The process map of the PGN's Actions Roadmap in repairing damages due to corruption



Produced by TPC (2020)

2. Learning from the "Ruta del Sol II-Odebrecht" Case

PGN has promoted perhaps one of the most relevant milestones in the fight against corruption in the country by intervening as one of the plaintiffs in a popular action law suit to protect the collective rights of public assets, administrative morality and the efficient and continuous provision of public services, in the infrastructure sector case of the "Ruta del Sol II" contract, which was part of the corruption network discovered and initiated in U.S. courts against the Brazilian multinational company Odebrecht.

In 2019, the TPC team, thanks to the management of the "Procuraduría Delegada para la Defensa del Patrimonio Público, la Transparencia y la Integridad (Delegated Inspector General for the Defense of Public Patrimony, Transparency and Integrity), had the opportunity to collect information not only in documents but also through interviews with officials at the PGN, on the actions carried out by the Institution in anti-corruption matters and, especially, in terms of intervening in the case of the "Ruta del Sol II" contract.

During interviews with the inspectors in charge of the PGN intervention strategy in the "Ruta del Sol II" case, it became clear that there was a "before and after" in respect of the Odebrecht company corruption scandals.[17] When the PGN first assigned the "Ruta del Sol II" case to an inspector, Odebrecht's corruption scandal had not yet erupted in the U.S. courts as it became evident through the plea bargaining mechanism. At that time, the claims made by the concessionaire against Colombia's National Infrastructure Agency, ANI, were that they had to be compensated for events exempting them from responsibility and balancing the contract burdens.[18] They even had an injunction in their favor, which meant "a semblance of good standing".[19] ANI itself argued that there were events that made them exempt from liability, and the discussion was about the amount due.[20]

[17] Interview conducted on November 6, 2019.
[18] Ibíd.
[19] Ibíd.
[20] Ibíd.

However, once the Odebrecht scandal erupted at the international level, PGN was quickly able to advance the investigation of corruption in the "Ruta del Sol" Contract, which also resulted in learning quickly due to the volume of information provided by the United States authorities. Unanimously, the judicial officials interviewed by TPC considered that if the Odebrecht scandal had not erupted in the United States, Colombia would have never been able to conclude there was corruption in the "Ruta del Sol II" contract.[21] Thus, the PGN filed the popular action law suit in record time because at that time there was no additional evidence different from that which had been publicly obtained and referred to by the U.S. in its chapter on Colombia.[22]

For the PGN the main position was clear and reiterated during the popular action law suit: the first objective was the continuity in the provision of the service, since it was a first protective element of the public patrimony. [23] In other words, the project could not be stopped, as this would be the worst effect on society. Therefore, the Administrative Court was asked to issue orders to repair the public patrimony, by ordering the corresponding precautionary measures.[24]

With respect to arbitration, there were two possible legal scenarios: attempting the nullity of the contract outside the arbitration process, or taking it to arbitration.[25] The latter was chosen as a decision of trust in Colombian arbitration, since it is clear that this mechanism is governed by the autonomy of the will. [26] Thus, in the event that an agreement between the National Government and the concessionaire had been presented, the PGN's claim of nullity could have been weakened.[27] In the case of arbitration, the arbitration agreement is not within the jurisdiction of the PGN, since it is the result of a private agreement.

From the interviews conducted with PGN officials, it became clear that the purpose of arbitration is not to solve problems of corruption or necessarily to defend public patrimony and that, therefore, there are debates that must be conducted by traditional institutions.[28] Therefore, popular action law suit is presented as a much more suitable mechanism to make possible not only the protection of collective rights, but also scenarios of reparation for the victims of corruption. A Popular action law suit is not punitive; it is declarative; it is restorative, reparative, and preventive.[29]

One of the most relevant aspects of the "Ruta del Sol II" case is that the PGN asked the National Government for efficiency in the implementation of improvement actions and more controls over private individuals or firms.[30] On that occasion, institutions agreed to the compliance proposal through an "inter-institutional committee"[31], in the framework of which, for example, Invias committed to

[21] Ibíd. This was also corroborated by the criminal prosecutors interviewed on November 8, 2019.
[22] Interview with the administrative attorney II, held on November 6, 2019.
[23] Interviews held on November 6 and 8, 2019 with the administrative attorney II in charge of the case, and the delegated attorney for administrative conciliation, respectively.
[24] Ibíd.
[25] Ibíd.
[26] Ibíd.
[27] Ibíd.
[28] Ibíd.
[29] Interview with the delegated attorney for administrative conciliation, held on November 8, 2019.
[30] Ibíd.
[31] Ibíd.

provide resources for road maintenance, ANI to structure the project through CONPES and the superintendencies to increase controls.[32]

For its part, the Popular action law suit in the "Ruta del Sol II" case as part of comprehensive reparation also had restitutive implications, understood as the concept of returning things to their previous condition. This point refers to the bidding processes that were carried out *a posteriori*, since from the point of view of the proponents, the institutions "did what they had not done and should have done from the beginning"[33]; even hearings for the discussion on the terms and conditions draft papers was held at the very PGN headquarters, as a sign of trust towards the parties and a guarantee of non-repetition.

Another relevant aspect is the role of the financial sector. According to the interviews, the banks that participated in this project did not have the required due diligence, since they overlooked the debt capacity of the concessionaires and granted them loans at twice their own capacity.[34] Similarly, minority shareholders also have a qualified due diligence burden, free from blame. In this regard, the Administrative Court set a standard of compliance that should be taken as a reference in future cases.[35]

One of the greatest difficulties that the PGN had to face during the "Ruta del Sol II" case was to collect evidence about the damages and the lack of capacity of the Institution in the area of rulings: "the key evidence are the rulings themselves and in this type of infrastructure cases, the international firms have sufficient purchasing power to get those rulings; the PGN does not have the resources to compete with that, since, for example, the Directorate of Special Investigations has only one engineer for all the cases".[36] According to a judicial official interviewed, there are two very strong barriers to the issuances of damages: i) access to information, ii) limitations on the information provided to the PGN, since there is not enough capacity to process and to analyze it and then contribute it to the process effectively.[37] These limitations become even more relevant when one considers that all appeals against popular action law suits are related to the evidence gathered.

In the publication there is a description of the "Ruta del Sol II" case as a successful experience, particularly regarding the experience of permanently approaching the media through a pedagogical lens. In fact, in judicial cases where high-impact corruption cases are analyzed and investigated, the task of providing information to the media is extremely relevant, because if the media receive distorted or inaccurate -non technical- signals, they will be read and perceived by society as a whole. In this case, the PGN worked with journalists to raise awareness of the technical aspects so that they could register the importance of promoting the care of public heritage.[38]

In summary, the PGN intervention as party to the Popular action law suit and as party to the Court of Arbitration allows the Colombian State to have a guarantor of the legality and a defender of the public's patrimony, sending a message to society with a repairing component, as a guarantee of non-repetition, by being able to demonstrate on the part of the judicial authorities that "the State cannot remain

[32] Ibíd.
[33] Ibíd.
[34] Ibíd.
[35] Ibíd.
[36] Interview with the administrative attorney II, held on November 6, 2019.
[37] Interview with the administrative attorney II, held on November 6, 2019.
[38] Interview with the delegated attorney for administrative conciliation, held on November 8, 2019.

prostrated in respect of the corrupt and that they cannot be paid what they want"[39]. Ultimately, it is a successful case of defense of the institutions in general, including the judicial sector, which also had a role in defining the case and in the adoption of mathematical formulas that could generate precedents for the future.

3. The processes that must be developed at the PGN to meet the expectations and the needs of victims of corruption for comprehensive reparation: The Action Roadmap.

The complexity of an institution like the PGN, with more than 57 legal duties to date, with powers to preventively monitor the actions of public officials, discipline them and intervene in judicial and administrative proceedings on behalf of society, means understanding in detail the internal processes that have been created and that they are constantly changing, with the passage of each administration.

It should be pointed out that, when we speak of a course of action or roadmap to promote the compensation for damages caused by corruption, we are starting from an act of corruption that has already taken place; in other words, prevention has failed. When prevention fails, those responsible for the situation must be identified and proceedings initiated in challenging their actions and omissions: disciplinary, fiscal, and criminal, and direct reparations for legal damages, as well as, for the comprehensive compensation for damage caused.

3.1. Inputs obtained through interviews on repairing corruption at the PGN

The following are some of the most relevant conclusions and information obtained during the interviews.

- In order to design an action roadmap, the PGN's Planning Office must be part of the process, especially in terms of documenting the management process map of the institution's quality management system and such must be reflected in the Function's Manual where responsibilities of officials involved are stipulated, and where the controls as well as measurements of each process are also stipulated. According to the recommendations of the Planning Office, organizational policies could be an ideal field of action for the purpose of repairing damages caused by corruption, since they provide a broad margin of maneuver that is permanently tied to the Institutional Strategic Plan. It is necessary to guarantee the interoperability of information among the different units, which will generate higher levels of internal and external communication.
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- In criminal proceedings, the Inspector General's Office (PNG) has the vocation of representing indeterminate victims in criminal proceedings. That is to say, at the request of victims who are not represented in court, it can intervene. The Public Ministry does not have a vocation for specific victims.

- The problem of reparation is not being discussed in criminal processes; reparation has ended up being an incidental aspect after the conviction, for example, an incident of integral

[39] Ibíd.

compensation, which is governed by the civil procedural code. In this case, the quantification of damages would only occur once the criminal responsibility of the accused has been declared, which is totally a limitation for purposes of effective reparation since, in terms of timeliness, it is possible that by that time the accused will have become insolvent.[40]

- A structural difficulty was identified in order for the criminal jurisdiction to consider comprehensive compensation for acts of corruption, since, according to information collected from the delegated Procurator General staffer for criminal affairs, Law 906 eliminated a series of procedural opportunities that did exist during the time Law 600 was in force.[41] In summary, Law 600 was more flexible, while Law 906 is more restricted.

- With regard to the tools available to judicial officials involved in corruption investigations, it was noted that the PGN does not have risk-based matrices for interventions in judicial courts. In other words, there are no pre-established criteria for analyzing the effects of taking one or the other route through the judicial system, such as the effects and impacts of requesting a procedural nullification.

- The existence of an Elite Anti-Corruption Group created by the Inspector General's Office (PNG) and a Royalties Group led by the Planning office are a significant progress that offers opportunities for articulation between agencies and different professions. It would be extremely useful for the PNG to design a matrix of intervention risks in a broad sense. Likewise, the need for the PGN's Anti-Corruption Elite Group to establish, as soon as possible, communication channels with judicial prosecutors and other officials who can contribute relevant conceptual and analytical elements to the study of corruption cases was highlighted, since it is perceived that this group is still closed and dependent on senior officials at the institution.

- At the National Directorate of Special Investigations, recent work was mentioned in a document to establish objective criteria for prioritizing requests made to this agency, which would be approved in due course by a resolution of the Procurator General. For example, the sum amount being litigated in the case, the degree to which public resources were affected, and the impact, relevance or connotation of the case would be among those criteria.[42]

- On several occasions during the information gathering process, the need to hire, within the institution's staff, interdisciplinary teams made up of professionals different from lawyers with technical skills in financial, accounting, environmental and engineering matters, who may have the possibility to generate reliable and solid documents and expert reports, as well as, to challenge expert reports issued by the defendants in the proceedings, was mentioned. In this way, it would be possible to progressively reduce the asymmetry in the framework of a process, between the capacities of the State through the PGN, and the capacities of non-state actors, especially businessmen with purchasing power, who can underwrite hiring of teams of lawyers and professionals who are experts in various fields. Ideally, these interdisciplinary teams should

[40] Ibíd.
[41] Ibíd.
[42] Interview conducted on October 30, 2019.

be assigned to each delegated prosecutor's office that in practice carries out the investigation of corruption cases, and they should be permanent -not *ad hoc*-.

3.2. Immediate steps at the organizational level within the PGN towards an Action Roadmap

It is clear that some actions cannot be executed in the short term, since they require huge organizational and, above all, budgetary efforts. Therefore, these are actions that must be taken into account in the medium term and they must be considered within the strategic planning exercises carried out by the Procurator General, the Planning Office team and the rest of the decision-making team at the Institution. For the time being, the PGN's course of action should take into consideration the following immediate steps at the organizational level:

- The map of processes to respond to the needs and expectations of victims of corruption must include the simultaneous participation of the three mission areas at the PGN: prevention, intervention, and disciplinary. While each must fulfill a series of legal functions, there must be a channel of communication and coordination among the three.

- The PGN's **prevention mission pillar** is the appropriate scenario to gradually transform and prevent structural failures within the Colombian legal, administrative and judicial system. Prevention involves attitudinal and cultural changes. The place of prevention within the organizational processes roadmap to compensate damages cannot be at the beginning, since the act of corruption must have to have been already committed; therefore it must rather be at the end, as part of the guarantees of non-repetition and as part of the transformative approach to the comprehensive reparation of damages caused by corruption..

- The **missionary pillar of intervention** is the appropriate scenario for the PGN to defend the rights and interests of the victims of corruption, as was the case in the Popular action law suit of "Ruta del Sol II-Odebrecht", including reparative actions by judicial order. Even though the possibility of reparations is complex in the criminal justice system, in this case the PGN can play the role of making visible the indeterminate victims who are also part of the universe of victims of corruption. Evidence gathering is the most difficult challenge for the PGN, since it will require the appropriate personnel and technical tools.

- The **disciplinary mission pillar** is the appropriate setting for punishing those responsible for acts of corruption, as part of the right to justice for victims of corruption, which is, in turn, part of comprehensive reparation for damages. Also, disciplinary sanctions have a preventive component for the future, since they send a dissuasive message to society as a whole, an aspect that should be considered a guarantee of non-repetition.

- An anti-corruption team should be consolidated and formalized within the Institution, comprised of professionals from different disciplines and they should be permanently designated. To date, the issue is present in several offices, but it is mostly headed by the delegate for the Defense of Public Patrimony, Transparency and Integrity, the so-called Elite Anti-Corruption Group and the Delegated Procurator for Administrative Conciliation. This team should be given priority every time it requests technical support from the National Directorate

of Special Investigations. In the case of Odebrecht, this agency was fundamental in supporting, with financial expertise, the cost appraisal exercise.

- This team must draft an internal set of regulations that define, at a minimum, its duties clearly, its members, a technical PNG secretariat, frequency of meeting sessions and frequency in submitting management reports to the Inspector General. Among the duties to be performed immediately, the team must i) define a unified theoretical and conceptual framework for concepts such as corruption, reparations, victims of corruption, a human rights-based approach, and access to information; ii) develop protocols and matrices to assist in the objective analysis of corruption cases; and iii) define minimum and objective criteria for prioritizing cases; iv) develop a scorecard with objectives, goals, and compliance indicators; v) develop a matrix for analyzing and monitoring corruption cases handled within the entity, in order to ensure the interoperability of data among the different delegates and public officials with judicial functions.

- Formalize the previous point through an administrative act that preferably has the legal force of a Directive issued by the Inspector General.

- The documents produced by this team must be incorporated into the PGN management system under a process management approach, so that they can be audited in the future.

- Enter into inter-institutional/inter-administrative agreements to exchange information with institutions where relevant information on the fight against corruption is stored or which may be relevant for the analysis of cases, such as the UIAF, ANI, the secretariats of education and health at the territorial level, among others. These agreements generate concrete obligations with the heads of such institutions and allow them to facilitate and to guarantee access to information.

- Enter into agreements with other institutions, such as the National Agency of Legal Defense of the State -ANDJE-, to integrate solid, technical and permanent interdisciplinary investigative teams. The “Ruta del Sol II-Odebrecht” case demonstrated that this type of joint collaboration is possible, since a technical and theoretical document on the rights to be compensated, an input that was provided during the class action law suit process and which served as an grounds for the Court ruling in favor of the plaintiffs’ claims.

- In terms of access to information, eliminate the security barriers that exist within the PGN itself; sometimes judicial officials who are in charge of investigating cases of corruption cannot access, or have incomplete access to, third-party databases, since the PGN platform itself has restricted access. To date, there is a team working with the IDB to improve this situation, since corruption, being a generally hidden problem, must be unveiled and the appropriate tools are needed for this to happen.

3.3. Minimum parameters for the analysis of the PGN's corruption cases

The following steps should be considered in respect of the minimum activities to be performed in analyzing corruption cases in order to implement an approach at the PGN of compensating damages caused:

- The analysis of corruption cases must begin by identifying and characterizing the act of corruption: types of corrupting agents (public officials, non-State actors, juridical and natural persons); illegal, legal, and opaque behaviors and practices; the sector in which the acts are committed (infrastructure, health, public contracting, the judicial branch, etc.), and whether the act corresponds to a structural practice.

- Establishing the specific obligations of the State in such an event, in its duty as guarantor, to identify the actions taken or the omissions made that did not permit effectively preventing the commission of the act of corruption.

- Victims of the act of corruption: determine the damages caused in its individual, collective, and social dimensions (individuals, groups, communities, businesses, public entities, workers, etc.).

- Once the victims of a corruption case and the damages caused have been identified, priority should be given to those whose most relevant legal interests have been violated, in accordance with the mandate of the PGN: i.e. public assets, efficient, continuous, quality public service provision, administrative morality, human rights.

- In drafting the prioritization exercise, analyze the case under a human rights-based approach: affected legal subjects, perpetrators, violated right(s) (their scope and content), and identify the degree to which public patrimony has been affected.

- The investigative work and the action taken in pursuit of comprehensive reparations must always bear in mind the guarantee of the right of access to information, as a vehicle in obtaining figures, data, and elements of judgment so that the PGN can be a relevant actor for the victims of corruption.

- Assessing the causal link between the corrupt act and the damages caused.

- Identifying the judicial and administrative means to demand comprehensive compensation for all victims and to punish those responsible, as part of the reparations.

- Assessing the responsibility of the State for damages caused.

Conclusion

The PGN is an institution that has been strengthened organizationally in recent years, partly by its own resources and largely by the contribution of key players such as the Inter-American Development Bank,

who has bet on the aim of modernizing the Institution and, especially, on reinforcing the so-called Comprehensive Prevention System, SIP.

The publication presents a proposal to strengthen the capacities of the PGN with regard to repairing damages caused by corruption, taking into account the three mission pillars of the institution, namely, prevention, intervention and disciplinary pillars. The proposal is based on outlining an ordinary organizational process map, in order to illustrate that the victims of corruption are the main subject – the "client" in the language of organizational management systems - who demand, expect, and need for the PGN to be able to promote adequate reparations for the damages caused that they suffered as a result of the commission of acts of corruption. These expectations and needs make up what is known in an ordinary process roadmap as the "input" to the map.

The execution of a series of processes based on the three mission pillars at the PGN will entail the actions that the institution takes - and must take - in order to meet those expectations and needs of the victims of corruption, and thus provide an "exit" for these demands for compensation.

The identification of the progress made in the “Ruta del Sol II-Odebrecht case”, the opportunities for improvement, and the opinions expressed by some of the officials interviewed were a fundamental input in formulating a series of recommendations that are expected to be taken into account as an initial road map, for a gradual and progressive effort to strengthen the PGN as a leading player in the national fight against corruption.

PART II

INTEGRAL REPARATION DUE TO CORRUPTION IN THE CONTEXT OF MACRO-CORRUPTION NETWORKS, INSTITUTIONAL COOPTATION, AND "GRAND CORRUPTION" IN COLOMBIA [43]

Although corruption is a problem positioned on the current public policy agenda of most countries, it is only recently that the complexity and true scope resulting from the institutional co-optation and manipulation derived from the acts carried out by corruption networks that are ever more complex and extensive has now been understood.

In Colombia, cases of macro-corruption and institutional co-optation have been observed, for example, in win-win agreements established during the first decade of this century in the context of the so-called "parapolitics" (Garay-Salamanca, Salcedo-Albarán, & Beltrán, 2010; López, 2010), or in situations identified and reconstructed during the transitional justice jurisdiction known as "Justice and Peace" (Garay & Salcedo-Albaran, 2012). These agreements usually took shape at the local level when manipulating the hiring process and in the subsequent undue allocation of budgets; budgets that should have been aimed at guaranteeing access to basic social services in municipalities. They distorted

[43] This is a summary of the document originally prepared by the Vortex Foundation, within the framework of Agreement No. This is a summary of the document originally prepared by the Vortex Foundation within the framework of Agreement No. 179-177 of 2019 between the Procurator General’s Office and the Transparencia por Colombia, whose purpose was "To join efforts between the Procurator General’s Office and the Transparencia por Colombia to strengthen the capacities of the Procurator General’s Office in the fight against corruption, based on the design of methodological and legal tools that allow the entity to promote the inclusion of an approach to repair damages caused by acts of corruption, emphasizing the incorporation of mechanisms to guarantee transparency and access to public information”.

the spirit of decentralization as a means that sought to democratize the functioning of public institutions (Garay-Salamanca & Salcedo-Albarán, 2010). At the national level, these same agreements translated, for example, into mutual co-optation among the national intelligence agency and paramilitary blocks, and into the manipulation of legislatures with the subsequent promotion of public policy agendas aimed at favoring partial, exclusionary, and illegal interests (Garay-Salamanca L. , Salcedo-Albarán, De León, & Guerrero, 2008; Garay & Salcedo-Albaran, 2012). Similarly, the phenomenon of "Elenopolitics", based on mutual cooperation agreements with civil society organizations at the local level, has also had permanent institutional effects in large regions of Colombia (Garay-Salamanca, Salcedo-Albarán, & Duarte, 2017).

1. The tendency to omit damages' compensation and to omit including the victims of acts of corruption

Like any act that threatens social order and welfare, acts of corruption can generate individual, collective, and social victims. However, omitting to include victims of corruption in those crimes has been a common tendency, even in the transnational justice jurisdictions, given that the victims are not considered to be really victims, despite the fact that they are common and in many cases indispensable in those mass victimization processes. In this sense, "the prevailing assumption seems to be that truth commissions, human rights trials, and reparations programs are primarily, though not exclusively, aimed at violations of civil and political rights involving personal integrity or freedom, rather than at violations of economic and social rights, including large-scale corruption and plundering crimes" (Carranza, 2008, pág. 310).

An act of corruption, by definition, generates damages to society as a whole, as a result of the misuse of public resources; this means that, regardless of the magnitude of the public resources abused, and even as a result of the payment of small-scale (petty) bribes, an act of corruption leads to social damages. However, the gravity and magnitude of individual, collective, and social damages caused by acts of macro-corruption are always greater than those generated by acts of corruption on a small scale, as a result of the structural effects caused to the institutional framework of a State.

2. Victims of corruption and their compensation

In the note prepared by the United Nations Secretariat [i.e. the (Open-ended Intergovernmental Working Group on Asset Recovery, 2016)] as a result of the conference of the Member States of the United Nations Convention against Corruption, good practices of those Member States are gathered to define and to identify victims of corruption as well as the respective parameters for compensation.

With regard to the definition of victims of corruption, most States do not have an explicit definition of victims; on the contrary, they have general provisions in their national legislation on victims of crime and damages, which usually come from civil and criminal law. In respect of compensation for damages, Article 35 of the United Nations Convention against Corruption establishes that each State Party shall take such measures, as may be necessary, in accordance with the principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation (United Nations, 2004).

The Secretariat's document reiterates that, while most States that have compensation mechanisms comply with the requirements of the Convention, at the international level there is very little knowledge of how victims are defined, identified and compensated in practice. Among the cases identified are the following categories of victims: (i) a company, (ii) a shareholder, (iii) a bidding Contractor, (iv) a foreign state, and (v) the corporation, incorporating the concept of social damages.

Just as there are no parameters in terms of the definition, identification, and reparation of victims of corruption, States have different approaches in respect of which individuals are entitled to invoke reparations for illegal conduct. Thus, two groups of States have been identified:

- States with more restrictive approaches: The United States stands out, since its constitution stipulates the burden of proof on the plaintiff in federal court to establish that such plaintiff did suffered a concrete and particular damage that can be traced and repaired by a court ruling; delegitimizing any general, ideological or professional interest as sufficient for private plaintiffs to argue. Countries such as Germany and Nigeria are identified as sharing that same approach, asking the plaintiff to demonstrate direct damage, and they do not allow private groups to sue on behalf of collective public interests. Similarly, China strictly restricts access to the courts of plaintiffs arguing public interest and they require that the plaintiff have a direct interest, and in the case of Singapore, the courts confer this right only on plaintiffs who can prove an actual impairment of a private right resulting in some "special damage" to the plaintiff (Stephenson, 2018, pág. 43).

- States with more open approaches, such as Spain and South Africa. For example, in Spain the law gives the right to invoke reparation to all Spanish citizens in matters involving the public interest, and plaintiffs do not need to demonstrate direct damage to initiate a public interest claim. The South African approach, in turn, is far broader in allowing this right to all citizens in public matters, whether a particular damage or special interest is demonstrated. Other countries such as Colombia have adopted similar approaches, since any citizen can file a lawsuit even if he or she has no personal interest in the case, while in Venezuela a plaintiff can file a lawsuit not only for a personal right or interest, but also for a public or collective right or interest (Stephenson, 2018).

As far as the legal procedure for compensation is concerned, the approach most commonly used by States, according to the Secretariat's note, includes the right of individual victims to initiate legal proceedings, including natural and juridical persons from foreign States. Some States allow for class actions or collective (or diffuse) interest actions by organizations or subsequently by the Attorney General. Commonly, collective interest proceedings are usually civil in nature, in which one or more persons institute a legal action on behalf of a group (or collective set) and in case the corrupt act has affected the state, the compensation action is brought by the Attorney General or Procurator General on its behalf (United Nations Secretariat, Open-ended Intergovernmental Working Group on Asset Recovery, 2016).

As stated in the section on legal processes of the United Nations Secretariat document (2016), the three main legal avenues for seeking compensation are: i) A civil cause within the criminal process; ii) civil proceedings; and iii) administrative proceedings.

In as far as compensation for damages, the note prepared by the United Nations Secretariat (Open-ended Intergovernmental Working Group on Asset Recovery, 2016) indicates that to determine the damages it is necessary to place the victim as close as possible to the position he or she would have been in, had the corrupt act that caused the damage not occurred, and its quantification is normally left at the discretion of the courts. In some States this principle of restorative justice has limits of maximum compensation that are stipulated by law. Some States provide additional in-kind compensation, such as the issuance of a public apology or a statement to help restore the victim's reputation, or other such means as the publication of the conviction and the publication of the case in a newspaper.

To quantify the gains from corruption, the OECD and the World Bank point out that there are different types of benefits resulting from this practice and that their quantification is subject to different methods, depending on the legal framework (OECD/ The World Bank, 2012). Within these categories, there are: (i) benefits from contracts obtained through bribes, (ii) authorizations, permits or licenses to operate, (iii) avoided expenses or losses, and (iv) Fast tracking delays, and (v) benefits from implementing lax internal controls and inaccurate or incomplete books or records.

3. Integral compensation for damages caused by acts of corruption

Integral reparation is particularly difficult in the case of damages caused by acts of corruption because, unlike most illicit acts defined in criminal codes, acts of corruption are characterized by the fact that their consequences are spatially and temporally distant; in other words, individual, collective, and social damages resulting from an act of corruption are usually spatially and temporally distant from the corrupting and affecting agent who performed the victimizing act (Salcedo-Albaran, Zuleta, de Leon, & Rubio, 2008).

In addition, given that the acts of corruption that are analyzed for purposes of reparations will typically be cases of macro-corruption, institutional cooptation, or "grand corruption," then the use of juridical persons in being the culprits that commit the affecting or victimizing acts is foreseen and for them to become common intervening parties. Such an intervention by State run, Mixed State/Private run, or by private companies managing public funds shall require a detailed analysis in terms of roles & responsibility. In order to identify the victims of an act of corruption, it is necessary to expand the spatial-temporal scope of analysis by considering the following scenarios:

- Individual or collective damages directly and immediately caused by the failure to provide public services in the short term: These damages caused may vary from (i) a relatively mild severity in terms of immediate delays in the completion of an infrastructure work or in terms of low quality in providing home utility services and/or welfare social security services, (b) increasing to a relatively medium severity in terms of greater pecuniary damages for the failure to comply with infrastructure works or the suspension in providing healthcare services, to (c) a high severity because of fatalities resulting from either of these two prior situations.

- Social damages caused in the medium term by failures in providing public utility services: the patrimonial damages caused to a company will be reflected in social damages in the medium and long term as a result of (a) the patrimonial loss - with the fall of the value of its shares in the capital market - and the brand's good will of the state-owned company. Additionally, even

more serious macroeconomic effects must be considered, such as the potential increase in the price of public debt with the decrease in the country risk rating. In this case, the damages caused are of a social nature because they would be assumed by society in general.

Two instances for compensation are proposed:

- The social damages caused by the company: When the correct use or yield of the public resources that nourish the operation of the company are negatively affected, these scenarios constitute social damages; that is, damages to the society that as a whole has provided the resources. For this reason, such social damages, caused to the company, must be repaired with the resources extinguished from the corrupting agents who benefited from the acts of corruption. It is indispensable that the reparation of social damages caused by acts of corruption that affected the company not be remedied by reallocating the public budget, because in this case, the reparation of such damages would be the responsibility of society as a whole and would constitute a revictimization. It is essential to recognize the simultaneous character of the company as affected and as a victim.

- Individual and collective damages caused to company's users: It is necessary for the company that was the scene of corruption to identify and to repair its individual and collective users who were affected by the suspension or incorrect provision of priority goods and services. Given its primarily patrimonial nature, this reparation must be carried out at the expense of the reparation received from the corrupting agents and beneficiaries of corruption, thus resorting to asset forfeiture of the patrimony of the corrupting agents and the beneficiaries of corruption[44], to ensure the necessary resources to proceed with the compensation. This sequencing of the instances of reparation, then, follow the fact that it is first necessary for the company to secure the resources to then proceed with individual and collective compensations, especially in the absence of institutional bodies that are responsible for guaranteeing or verifying integral reparation.

4. Considerations about extra-patrimonial damages

In the case of social damages, an approximate amount of social damages can be calculated, defined as the difference between the expected optimal social rate of return - expressed, for example, in potential increase in GDP or average income of society as a whole - and the current sub-optimal social rate of return, which was reached as a result of corruption. This difference could also be adjusted with sector-specific indicators of expected social return - according to international standards - for example, to identify macro - economic and macro - social damages derived from acts of corruption against state - run or mixed - state-run enterprises in priority sectors such as healthcare, education and basic sanitation.

[44] In the case of a typical illegal contract of Petrobras, it has been calculated that the value of the emerging damage and lost profits is equivalent to more than 15% of the total value of the contract, and that the value of the bribes represents less than 4% of the value of the contract, so that full reparation would require that about 11% of the value of the contract be charged to the assets of the corrupting contractors. To this extent, when it comes to a large set of contracts, it is very likely that it will be necessary to resort to extinguishing the dominance of assets and patrimonies of the corrupting agents.

In addition to the basic patrimonial and extra patrimonial damages, other important social damages may also be generated, such as the loss of public confidence and the erosion of institutional quality (Anderson & Tverdova, 2003; Cho & Kirwin, 2007), whose quantification is difficult in practice. For this reason, unlike the basic pecuniary damages, the choice is made to calculate the extra-pecuniary damages administratively in a qualitative way, generally by ranges of economic penalties according to the valuation of the seriousness of the macro-social impacts. That is to say, although models that quantify the cost of losing confidence can be considered, unlike the parameterization of patrimonial damages, the extra-patrimonial damages, especially of social nature, cannot be parameterized quantitatively with an objective and unique empirical support, but according to the qualitative valuation of the graveness of damages caused, and whose valuation is performed administratively by ranges of severity.

5. Conclusions

Comprehensive reparations for damages caused by acts of corruption are an indispensable condition for the progressive recognition of the true negative impact of practices that currently receive lax treatment in most jurisdictions. Therefore, it is essential that the following minimum elements be rigorously identified in the acts of corruption that are the object of analysis and potential comprehensive reparations in order to guarantee potential compensations: i) the damages caused (whether patrimonial/extra-patrimonial and/or macroeconomic and/or macro-social), ii) those affecting culprits (whether natural and/or juridical persons), and iii) those affected parties (state run/mixed- state/private run enterprises that manage public funds and natural persons and/ or a collective set of people).

Without a minimal identification of parties, there is a risk of generating, in the best of scenarios, serious social and moral impunity in the form of undue reparations or insufficient identification of those responsible for and beneficiaries of corruption, as well as, individuals, groups, and areas of society affected by it.

PART III

CASE STUDY OF INTEGRAL REPARATION FOR DAMAGES CAUSED BY CORRUPTION: IMPERSONATION OF HEMOPHILIA PATIENTS IN CORDOBA, COLOMBIA[45]

1. Introduction

Although the negative effects or damages generated by corruption are recognized, the legislative and institutional developments to compensate them are scarce, incipient and dissimilar to each other. There is currently no recognized or multilaterally promoted methodology in quantifying the damages

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caused by corruption, much less for repairing it; there are only isolated experiences that can hardly be considered systematic or institutionalized in one jurisdiction.

Thus, in this section the Vortex Foundation proposes some theoretical and methodological principles to promote the goal of comprehensive compensation for damages caused by acts of corruption in Colombia. To this end, the so-called "Hemophilia Cartel", constituted by public officials of the Province of Córdoba's government, health care institutions of the province, and local political leaders, is analyzed as a case study.

2. Forms and costs of corruption in the healthcare sector

The European Union identifies six forms of corruption that affect the proper functioning of the healthcare sector: i) bribery in the provision of medical services, ii) corruption in the procurement process, iii) improper marketing, iv) wrongful use of high-level positions, v) unjustified requests for reimbursement, and vi) fraud and misappropriation of medicines and medical devices. For its part, Transparency International (2019) identifies six common forms of corruption in this sector: i) absenteeism of public employees, ii) informal payment for services by patients, iii) embezzlement and theft of money, medicines and medical equipment as well as supplies, iv) provision of services such as unnecessary procedures, overcharges, provision of services that are inferior in coverage and quality, and claims for reimbursement for false treatment, [46] v) favoritism or preferential treatment of patients, and vi) manipulation of outcomes, including fraudulent invoices for goods or services, creation of "ghost" patients, or reimbursement for treatments that are more expensive than those provided.

In Colombia, according to the Health Superintendent, the embezzlement of funds from the healthcare sector occurs through sophisticated agreements, operations and schemes among the players involved within the system (Revista Semana, 2019). According to the Superintendence, more than 40 modalities have been identified to embezzle funds from the healthcare sector, among which the following stand out: i) transfers from EPS to IPS for amounts greater than those due[47], ii) billing services for phantom patients [48] and for non-existent services[49], iii) improper payments or wrongful transfers to individuals, and iv) embezzlement of funds to sponsor beauty contests or soccer teams.

Similarly, the Inspector General of the Nation, Fernando Carrillo Flórez, denounced in 2019 that healthcare funds were being used to finance campaigns and political parties, thru the nearly seven "cartels" that had been discovered within the healthcare sector, such as the Hemophilia cartel analyzed in this document, the Down syndrome cartel, the HIV/AIDS cartel, and the dental fund cartel, among others (Procuraduría General de la Nación. Boletin 507, 2019).

Among the peculiarities that make the healthcare sector vulnerable are i) the combination of public and private healthcare providers, and a high number and categories of people involved, such as patients, providers, insurers, administrators and policy makers, ii) the globalized nature of healthcare

[46] In extreme cases, doctors may charge patients for unnecessary or bogus surgery, placebos sold as medication, or diagnostic tests not performed.
[47] An example of this case was detected in the Province of Cordoba, where a hospital billed $1.2 billion to an EPS, when the monthly average was $149 million (Revista Semana, 2019).
[48] Dead patients, none existing ones, or identified with false IDs to collect for care that is also non-existent (Revista Semana, 2019).
[49] As with hemophilia, AIDS or diaper cartels (Revista Semana, 2019).

products' supply chain, which increases the number of points within the system that are susceptible to corruption, iii) the high amounts of public and private spending[50] involved, and iv) the asymmetry in information among the different agents in the system, which negatively impacts decision-making in the sector (Mackey, Vianb , & Kohlerc, 2018).

Transparencia por Colombia (2019) In its Citizen Monitor report highlighted that in the healthcare sector, the total number of corruption cases registered implied a sum total of $3.2 billion in committed resources, and that the provinces with the highest percentage of corruption cases registered in the healthcare sector were Sucre and Córdoba, with 14% each.

In terms of the official quantification of the effects or costs of corruption in the healthcare sector in Colombia, the Attorney General's Office of the Nation announced in February 2018 that embezzlement in the sector amounted to one trillion pesos throughout the country (RCN Radio, 2019). Then, in August 2018 this information was ratified by the Procurator General of the Nation (El Heraldo, 2019). Considering that the amount allocated to the healthcare sector in 2018 was $24.6 billion (Ministerio de Salud y Protección Social, 2018), the costs of corruption in the healthcare system are estimated to be equivalent to 4.16% of the Nation's General Budget allocated to the healthcare sector. However, in an interview in December 2018, the then Minister of Health stated that, although it is known that corruption has seriously affected the healthcare system, he was not able to measure the amount or the dimension of this affectation (La opinión, 2018).

3. "El Cartel de la hemofilia" (the Hemophilia Cartel)

The exact total amounts of embezzlement resulting from the macro-corruption and institutional co-optation scheme in the healthcare sector in the Province of Córdoba, and in particular from the so-called Hemophilia cartel were not contrasted in this study due to the lack of access to criminal files against those charged. However, the media have reported that in the "Hemophilia Cartel" approximately Col Pesos $40 billion were diverted for the treatment of 120 patients who were supplanted and who, therefore, never received the medicines or treatments billed.

The fraud began in 2013 when the service provider institution "Unidos por su Bienestar" billed the government of the Province of Córdoba more than Col P $17 billion for specialized medications in the treatment of 47 hemophilia patients. The drug, called factor VIII/Von Willebrand, which is not covered by the Mandatory Health Plan (i.e. the "POS"), required prior authorization from a medical committee to be given to patients. However, in 2014 the number of patients increased to 81 and an another IPS, "San José de la Sabana" medical facility was established, which charged approximately Col P $18 billion for the same concept. According to fiscal, disciplinary and criminal investigations, invoices, laboratory tests and other supporting evidence for treatments provided by the IPS were found to be fraudulent; in addition, the requirement of prior approval by the corresponding medical committee for non-POS drugs was not met (Sarralde, 2016).

After evidencing the fraudulent documents and invoices provided, the Comptroller General's Office of the Republic reported the irregularities found in the administration of Córdoba. Immediately after these audits, several sworn statements from patients were presented at the notary offices in Córdoba

[50] Including high administration costs and increased international assistance in developing health programs.

assuring that they had received the treatments for hemophilia. However, the Comptroller's Office still suspects that eight statements made on May 17, 2016 are perjury, which were processed at the Notary Public's office by Luz Muskus García, who is the mother of former governor Alejandro Lyon Muskus (Sarralde, 2016).

In 2016, former Governor Alejandro Lyons criminally denounced the IPS involved and officials of the Health Secretariat who worked between 2013 and 2015. Then, in January 2017, the Technical Investigative Body (i.e. the "CTI") of the Attorney General's Office arrested (i) former Secretary of Health of Córdoba, Alfredo Aruachán Narváez, for having received Col P $50 billion for participating in this cartel, (ii) Edwin Preciado, former Secretary of Health of Córdoba, (iii) Alexis Gaines, former Reference of Public Health of Córdoba, (iv) Alfredo Ceballos, former Director of Epidemiology of Córdoba, and (v) Juan David Náder and Marcela Suárez, medical auditors (W Radio, 2017).

After investigating some of the healthcare institutions involved, the Comptroller General's Office found that, for example, the IPS "*Unidos por su Bienestar*", legally represented by nurse Éder Antonio Pérez Árdila, began activities in 2012 with a capital of Col P $900 million, and that one year later it registered revenues of almost Col P $40 billion, mainly because of treating fake hemophilia patients. This same IPS was sequestrated twice between 2015 and 2016, and in 2016 it changed its name to IPS "*Comunidad Sana*" (Healthy Community). When the Comptroller General's Office confronted the institution about the testing of fake hemophilia patients, the IPS substantiated the alleged veracity of its activities with a certification from Clínica Santa Lucía del Sinú. However, the clinic was represented by the same legal representative of the IPS medical facility, nurse Éder Antonio Pérez Ardila, according to records of the Chamber of Commerce in the city of Montería (Sarralde, 2016).[51]

In September 2017, one of the largest contractors during the Lyons administration, Guillermo José Pérez, provided information as a witness during the investigation of the "Hemophilia Cartel". According to Guillermo José Pérez, former Governor Lyons was the architect of this corruption scheme in Córdoba and, therefore, was the main beneficiary. In fact, according to Guillermo José Pérez, the former Governor Lyons received 30% of each contract agreement, while the Secretary of Health received 3% under the orders of Sami Spath Storino, who was close to Lyons (Noticias Caracol, 2018). Guillermo José Pérez also reported that he gave employees of private institutions economic incentives in the form of bribes to recruit patients who appeared to suffer from hemophilia. In addition, he said that the money resulting from the macro-corruption scheme benefited regional politicians such as Sara Piedrahita Lyons, cousin of former governor Lyons, who in 2014 was the congresswoman with the highest number of votes, even without any political experience (El Espectador, 2019). According to Perez, Sara Piedrahita Lyons allegedly received approximately Col P $11 billion from the macro-corruption scheme (Noticias Caracol, 2018). In turn, Perez pointed to Daniel Cabrales for allegedly receiving some Col P $90 million to extend the "Hemophilia Cartel" scheme to other provinces, taking advantage of his influence in Congress by offering improper commissions to officials in other regions (Noticias Caracol, 2018).

[51] The legal representative of IPS "*Unidos por su Bienestar*" and of the Santa Lucía del Sinú Clinic, Éder Antonio Pérez Ardila, turned himself in to the authorities in April 2017, represented by the currently extradited lawyer, Leonardo Pinilla. After the hearing at which the arrest and indictment for the crimes of conspiracy to commit a crime and embezzlement were legalized, the judge in charge granted home detention to Éder Antonio Pérez Ardila for not considering him a risk to the process (Avendaño, 2017).

On October 3, 2017, the Attorney General's Office arrested the prosecutor in charge of the investigation of the "Hemophilia Cartel" case, Daniel Fernando Díaz Torres, of the Specialized Anti-Corruption Directorate, for allegedly having accepted or received promises of money to favor, among others, the former Secretary of Health of Córdoba, Alfredo Aruachán (El Tiempo, 2017).

Months later, Alejandro Lyons, complying with the right to timely plea bargain, testified from the United States that contractor Guillermo José Pérez paid him between 2013 and 2015 some Col P $4 billion in bribes to keep him as a channel for hemophilia treatment contracts (W Radio, 2018). Additionally, Lyons added that Senator Musa Besaile benefited from half of these bribes to finance the political campaign of his brother, former Cordoba Governor Edwin Besaile. In fact, the Attorney General's Office of the Nation said that Lyons and the Besaile brothers colluded bureaucratic quotas and bribe payments to manipulate the awarding of hemophilia treatment contracts and royalty-funded projects. As backing for the agreement, Lyons signed two blank bank notes to be paid to the bearer in the amount of Col P $2.2 billion and $1.9 billion (El Espectador, 2018; El Tiempo, 2018b).

According to the Comptroller General's Office of the Republic, Edwin Besaile not only received money for his campaign, but allegedly continued to pay for the fake hemophilia patients to the same IPS involved in the scheme (El Tiempo, 2017). For this reason, by the end of 2017 the Comptroller General's Office of the Republic (i.e. the "CGR") opened a process of fiscal responsibility against former governor Edwin Besaile for paying "another Col P $1.525 billion to an IPS questioned in the corruption case" (Serralde, 2017). This IPS, "San José de La Sabana S.A.S.", then became the object of investigation by the Second Delegate Procurator General for Administrative Oversight, since the payments authorized by Edwin Besaile to treat 14 false patients would have happened even after the provincial administration was alerted of the corruption scheme that was underway in respect of hemophilia treatments.

These facts became known because on April 19, 2016 an anonymous employee detailed the situation under a formal complaint to the CGR. However, despite the complaint, Col P $3.156 billion was again paid to IPS "*Unidos por su Bienestar*", whose legal representative was nurse Éder Antonio Pérez Ardila, under the same concept of treatments for hemophilia patients. On May 23, 2016 Besaile authorized a third payment of Col P $1.525 billion in favor of "IPS San José de la Sabana", with the express participation of the Secretary of Health of Córdoba, José Jaime Pareja, in charge of corroborating that the service had been properly provided (El Espectador, 2018).

On March 22, 2018, Besaile was charged for the crimes of embezzlement and conspiracy to commit a crime. Ruby Esther Durante Ramos, legal representative of IPS "San José de la Sabana S.A.S.", and Claudia Silva Ramos, general manager of IPS "San José de la Sabana S.A.S." were also linked to the proceeding. Also linked were Juan David Nader Chejne, Adalberto Carrascal Baron, Eberto Saenz Vega, Julio Hernandez Lopez, Marcela Suarez Luna, Cely Carriazo Diaz and Mayda Gomez Ochoa, medical auditors who were part of the Technical Scientific Committee that in 2014 authorized the care of false patients with hemophilia (El País, 2018).

This corruption scheme has resulted in the indictment of former governors Alejandro Lyons, from 2012 to 2015, and Edwin Besaile, from 2016 to when he was removed from office in 2018, for conspiracy to commit crimes and embezzlement.

Consequently, on May 11, 2017, the Superior Court of Bogotá summoned for charges related to acts of corruption during his administration (2012-2015), the former governor of Córdoba, Alejandro Lyons Muskus. Specifically, the citation related to the crimes of aggravated conspiracy to commit a crime, undue interest in the execution of contracts, execution of contracts breaching legal requirements, embezzlement, forgery in public documents and forgery in private documents. The former governor was granted the principle of timely plea bargain and was sentenced to five years, three months, and one day for his participation in several cases of corruption, including "the Hemophilia Cartel". According to the media, the cost of embezzlement from the province during his administration amounted to Col P $87 billion (El Espectador, 2018). Spath, accused by Guillermo José Pérez of having mobilized and delivered the bribes to former governor Lyons and others associated with the corruption scheme, was captured in November 2018, and sentenced to 27 months in prison for the crimes of conspiracy and bribery, and a fine of 66 minimum monthly wages, equivalent to Col P $54.45 million (Noticias Caracol, 2018).

However, Lyons was only ordered to pay a reparation of Col P $4 billion, an amount that, according to the media, was estimated by the Attorney General's Office based on the assets allegedly acquired by Lyons with the money resulting from this macro-corruption scheme (El Espectador, 2018) of the justice sector in Colombia (El Espectador, 2018).

4. Hemophilia: complications and epidemiology in Córdoba

In order to understand the individual damages derived from having deprived Hemophilia patients of their respective treatments, it is specified that Hemophilia is a disorder in the coagulation of blood tissue, of genetic origin, which is characterized by a recessive hereditary pattern associated with the X chromosome (Martínez-Sánchez, y otros, 2018; García-Chavez & Majluf-Cruz, 2013), which means that the disease is typically manifested in men. Hemophilia A (HA), also known as "Classic Hemophilia", consists of a quantum deficiency of Factor VIII, while Hemophilia B (HB), consists of a deficiency of Factor IX (FIX) (García-Chavez & Majluf-Cruz, 2013); both factors being determinants of the correct process of blood clotting.

95% of the clinical picture of the disease consists of *hemarthrosis*, or hemorrhages in the joints, deep muscular hematomas and cerebral hemorrhages (García-Chavez & Majluf-Cruz, 2013). However, hemophilic arthropathy is not the only complication associated with the disease, since mucocutaneous, urogenital, gastrointestinal, or neurovascular hemorrhages trigger serious or fatal complications. To avoid complications associated with HA or HB, prophylactic or on-demand treatment is indispensable. Prophylactic treatment, which consists of supplying the deficient factor, is indispensable to prevent the degenerative motor process.

In Colombia, 2,170 patients with HA or HB were reported in 2017, with a national prevalence of 4.4 cases per 100,000 inhabitants; however, the prevalence in the Province of Córdoba for the same year was 2.7. Additionally, discriminated by type of hemophilia, a prevalence of 4.8 for HA and 1.1 for HB was registered in 2017 in the same province. In addition, according to the attendance record of health care providers, no incidence of HA or HB patients in neonates was recorded in the Province of Córdoba, so the crude incidence per 100,000 live births was 0 (Fondo Colombiano de Enfermedades de Alto Costo, Cuenta de Alto Costo, 2018).

5. Failed compensation in respect of the "Hemophilia Cartel"

In addition to the 20 investigations of fiscal responsibility that the Comptroller General's Office of the Republic (CGR) is conducting against Alejandro Lyons, for Col P $107 billion (Noticias Caracol, 2019), the institution requested the opening of an incident of reparation within the framework of the criminal process for the crime of aggravated conspiracy to commit a crime, which is the charge for which he was convicted in April 2018 after the endorsement of a plea bargain agreement that Lyons established with the Attorney General's Office (El Tiempo, 2018). However, the Special Chamber of the First Instance of the Supreme Court of Justice did not proceed with opening such compensation hearings for several reasons.

On the one hand, in the plea bargain agreement with the Office of the Attorney General's Office of the Nation on October 3, 2017, Lyons agreed to declare himself criminally responsible for the charge of aggravated conspiracy; that is, the plea bargain agreement did not cover the acceptance of criminal responsibility for any crime of corruption or illicit enrichment. In addition, as the reporting judge pointed out, the Attorney General's Office of the Nation recorded in the preliminary agreement that Lyons did not increase his assets as a result of the conduct of the aggravated conspiracy; furthermore, although there may have been enrichment in the other crimes, they were "covered by a principle of plea bargain granted by the Attorney General's Office of the Nation, in the form of a suspension of the criminal action subject to the collaboration with justice that Mr. Lyons Muskus is effectively providing"[52].

On February 20, 2018, the Criminal Cassation Chamber of the Supreme Court of Justice verified and approved the plea bargain agreement, and issued a criminal judgment; furthermore, the attorney-in-fact for the Province of Córdoba and the attorney-in-fact for the CGR, recognized as victims in the process, "adhered" to the plea bargain agreement[53]. Then, on May 2, 2018, the attorney-in-fact of the CGR requested to promote an incident of integral reparation within the criminal process through which he declared himself criminally responsible for the crime of conspiracy to commit a crime. However, for the Supreme Court, the intervention of the CGR within the criminal process is limited to the proceedings for crimes against the public administration[54].

Additionally, the Supreme Court of Justice indicated that the reparation of damages caused was not contemplated as a condition or requirement to proceed in the plea bargain agreement established with the Attorney General's Office. In fact, "it was clearly stated in its text that (...) in the course of the proceedings of the principle of timely plea bargain in respect og punishable acts other than conspiracy to commit a crime, the compensation for the victims will be ensured" [55]. In fact, when the representative of the Province of Córdoba, constituted as a victim, expressed his disagreement with the impossibility of reparation, it was pointed out to him that: "with respect to the other punitive conducts that have been imputed to Mr. Lyons Muskus, Attorney General's Office is promoting another

[52] Supreme Court of Justice, Special Chamber of the First Instance, Judge Rapporteur Ariel Augusto Torres Rojas, AEP 0054-2019, Filing N.. 51341, Approved by Act No. 03 as of the 24 April 2019.
[53] Ibíd.
[54] Ibíd., p. 9.
[55] Ibíd., p. 10.

separate judicial action in which it can be affirmed that damage has been caused to the interests of the Province of Córdoba, due to the loss of public money"[56].

6. Comprehensive repair for damages caused due to the lack of treatment to hemophilia patients in Cordoba

The following is an analysis of elements of comprehensive compensation for damages caused by improper provision of health services:

6.1. Repair of damages caused by the improper provision of healthcare services

It has been pointed out that comprehensive reparations for damages caused in the context of running the healthcare sector, not exclusively associated with corruption, should include the following elements: (i) Provide healthcare services to the victim in order to rehabilitate him or her, and to overcome the illnesses, injuries, or psychological effects in order to compensate for the physical and moral damages caused, (ii) provide economic compensation to compensate the victim for the material damages caused, including emerging damages and lost profits, (iii) adopt symbolic measures to raise awareness among the population, transform the structure, management, and processes at the institution that caused the offense, in order to guarantee the non-repetition of the violation (Mejia Escobar, 2011).

6.2. Damages derived from the lack of treatment to Hemophilia A and Hemophilia B patients in Córdoba

The statistical prevalence of the disease for the Province of Córdoba was 4.8 for HA and 1.1 for HB in 2017, so the provincial group of HA or HB patients is easily quantifiable and therefore it is possible to identify these patients at an individual level. In this way, the potential individual damages resulting from the deprivation of treatments due to patient impersonation are not only analyzable, but also verifiable.

When the IPS "*Unidos por su Bienestar*" charged the Governor's Office of the Province of Córdoba more than Col P $17 billion in 2013 for allegedly providing factor VIII/Von Willebrand to 47 hemophilia patients without the proper support and medical committee approval required for non-POS medications, an opportunity for irreparable individual harm was created not only for each of the 47 potentially supplanted patients, but for a high percentage of the collective of patients for the province. This potential damage is deepened to the extent that the corruption scheme was extended to the following year 2014, increasing the number of patients to 81 through the constitution of an additional IPS, "San José de la Sabana", which charged approximately Col P $18 billion for the same concept. In addition, these two acts of corruption are a component of the social damages to the State given that the amounts of public assets affected, specifically, Col P $ 17 billion in 2013 and $ 18 billion in 2014.

6.3. Comprehensive Reparation for Hemophilia A (HA) Patients who were victims of corruption in the province of Cordoba

[56] High Council of the Judiciary, SP., Filed 51341 dated 21 March 2018, page 122.

Based on the minimum elements that should be considered as part of integral compensation, the following reparations are proposed: i) at the individual level, to provide timely and quality health services; to compensate for emerging damages and lost profits; and to provide transformative reparation for the living conditions and projects of the patient who was victim; ii) at the collective level, patrimonial and symbolic reparation for the moral damages caused to the patients who were victims and their families; and iii) at the social level, reparation of public funds destined to the provision of healthcare services that were diverted.

Given the ample empirical evidence that supports the diagnosis and prognosis of HA, treatable with the provision of factor VIII, the following quantifying factors should be considered at the individual level:

- Variation (Δdm) which expresses the factor of increased irreversible damage in the functional quality of the patient's joints as a result of hemarthrosis, which translates into decreased motor function and, therefore, in the functional capacity of the individual in all aspects of his or her life.

- expressing the factor of increased risk of bleeding involving the central nervous system, airways, gastrointestinal, intrabdominal and ocular, non-traumatic.

- Both Δdm and Δrh are defined individually according to the level of severity of the disease of the patient who stopped treatment, namely: low, medium, or severe. To this extent, the patient can demand patrimonial and extra-patrimonial reparation of the specific damages caused, proportional to Δdi and Δrh.

On the other hand, considering that the epidemiological prevalence of the disease has been calculated in Colombia at a provincial level, and considering that a census of orphan diseases including HA and HB has been ordered, the size of the group of HA patients in the Province of Córdoba that has been potentially "harmed" by not receiving the proper treatment should also be considered as a quantifying factor. This collective set (TC), whose size is equivalent to the proportion of patients who stopped receiving treatment with respect to the size of the total number of existing patients, registered or estimated in the province, could be gathered in a provincial association, if it does not exist, to demand the patrimonial and extra patrimonial compensations of the respective damages caused. TC is a multiplier factor of collective reparation:

TamC = PvHA/PHA
PvHA = Number of HA patient victims
PvHA = Total estimated number of HA patients.

Finally, the patrimonial component of the social damage is perhaps the most evident, given the possibility of quantifying the affected public budget, which was initially intended to provide the required treatment for HA patients. To this extent, the affected subject is Colombian society as a whole, due to the violation of the transindividual and abstract rights of its citizens. To this extent, the Colombian State, which as mentioned above has been represented by the Comptroller General's Office

of the Republic and by the attorney-in-fact of the Province of Córdoba, may sue for patrimonial and extra patrimonial reparations of the damages caused in terms of the emerging damage and the lost profit updated by quantifying factors such as the inter-bank interest rate, previously used in social damages reparation analysis.

The elements of reparation and their respective quantifying factors can be expressed as follows:

Comprehensive repair = [Individual repair (Patrimonial + extra-patrimonial)]+[Collective repair (patrimonial + extra-patrimonial)]+[Social repair (Patrimonial + extra-patrimonial)]

Ri = Individual repair
Rc = Collective repair
Rs = Social repair
P = Patrimonial
ExP = Extra-patrimonial

Integral repair = [Ri(Patrimonial + extra-patrimonial)]+[Rc (Patrimonial + extra-patrimonial)]+ [Rs(Patrimonial + extra-patrimonial)]
Integral repair = [RiP + RiExp]+[RcP + RcExP]+[RsP + RsExP]

In this sense, considering that:

Ceo = Cost of rehabilitation for inattention to original illness HA
Ces = Cost of rehabilitation and care of illness and side effects derived from inattention to original illness HA
DaLc = Emerging damage + updated lost income from income not received due to the original untreated disease and the disease and side effects derived from the initial inattention.
Rt = Transformative repair for initial or previous conditions of vulnerability.
Δdm = Factor in increased irreversible damage to the functional quality of the patient's joints as a result of hemarthrosis
Δrh = Factor increasing the risk of bleeding in the central nervous system, airways, gastrointestinal, intrabdominal and ocular.

Thus, individual patrimonial reparation should include, at a minimum, the following elements:

$$RiP= [CEo + CEs + DaLc + Rt]*(1+\Delta dm)* (1+\Delta rh)$$

On the other hand, considering that:

Cit = Cost of research projects to increase knowledge about HA.
Coa = Cost of restructuring and optimizing the HA patient care system
PvHA = Number of HA patient victims
PvHA = Total estimated number of HA patients.
TamC = PvHA/PHA

Thus, collective patrimonial reparation should include at least the following elements:

RcP = Collective financial compensation = [Cit+Coa)*(1+(PvHA/PHA)]

Finally, considering that:

DeLc = Emerging damages + Lost profits caused to the State by the loss of funds, adjusted in present value by the interbank interest rate

So, the social patrimonial reparation would be:

RsP = DeLc*(Adjusted to present value by Interbank Rate)

Thus, the integral compensation for damages caused to HA patients by the lack of treatments as a result of corruption, could be expressed as:

$$Patrimonial\ reparation\ of\ HA\ patients = RiP + RcP + RsP$$

$$RpHa = [(\mathrm{CEo} + \mathrm{CEs} + \mathrm{DaLc} + \mathrm{Rt}) * (1 + \Delta dm)(1 + \Delta rh)] + \left[(Cit + Coa) * \left(1 + \left(\frac{PvHA}{PHA}\right)\right)\right] + [DeLC\,(\text{Adjusted to present value by Interbank Rate})]$$

This would be a basic reference taxonomy of the five types of individual, collective and social damages of corruption processes in the healthcare sector, consequent to the deviation and illegal appropriation of public resources for the required and legally stipulated attention in the official healthcare plans. However, it is essential to clarify who should be responsible for the reparation of these damages to (i) patient who are victims, (ii) groups of patients, relatives and third parties directly and indirectly affected, and (iii) the State for the misappropriation and misuse of public funds and for the need to care for the original disease, HA, and its derived secondary effects, such as hemarthrosis and derived hemorrhages.

The following table summarizes some minimum options that should be considered in processes of integral compensation for damages caused as a result of the incorrect provision of health services:

Options for Comprehensive Compensation for Damages Caused by Corruption in the Health Care System			
	Individual	Collective	Social
Patrimonial	- Rehabilitate the patient for the progression of the original disease, when possible. - To pay for at least one person dedicated to caring for the patient affected by the progression of the original disease and for the	- Finance special programs to guarantee optimal attention to the collective group. - Finance research programs to improve the understanding and care of the diseases that affect the collective group.	- Pay to the local, regional, and national government, the emerging damages and updated lost profits, resulting from the affected amounts originally oriented to finance the health care system.

	resulting diseases and side effects. - To rehabilitate the patient for the effects and secondary illnesses, derived from the lack of care or the absence of the treatment of the original illness. -Improve the living conditions of the victim and his/her family, guaranteeing greater security in their social care by the State or a private health provider, in order to consolidate the life project for their family. - To pay for the emerging damage and the lost profit of the income not received due to the original disease not being cared for and the disease and secondary effects derived from the initial inattention.		
Extra-patrimonial and moral	- Issuing personal letters with apologies. - Referring truth commission reports. - Naming streets and public places, in honor of the victim.	- To guarantee the updating of the census of potential patients that make up the group. - Celebrate acts of commemoration in honor of the group of patients affected. - Establish museums that highlight the affected collective set of people. - To name streets or public places where the victimizing events occurred.	- To issue public apologies to the local, regional, and national state. Guarantee the non-repetition of the events, through institutional or legislative arrangements, as appropriate, to ensure the proper monitoring, prevention, control, and punishment of acts of corruption

		- Disseminate information to prevent the recurrence of collective victimization.	affecting the health system.

Source: Fundación Vortex own production (2019)

6.4. Final reflection: the importance of asset forfeiture

Penalties are required that include pecuniary (patrimonial) and symbolic/moral (extra-moral) reparation. This integral and comprehensive reparation for all damages caused at an individual, collective, and social level will correspond to the State -and ultimately to society as a whole-, given the nature of the State as being the one who ultimately is responsible for guaranteeing the common good, and consequently the public and collective interests. However, this situation would lead to a "socialization" of reparation; that is, a situation in which society as a whole finances the integral compensation through the State's fiscal means, which, in turn, could be interpreted as a revictimization of society as a whole.

For this reason, it is essential to move toward a coherent jurisprudence in the framework of a new systemic conception of criminality in the broad sense (Garay, 2014; Salcedo-Albarán & Garay-Salamanca, 2016), that allows sanctioning responsible agents and third beneficiaries - public and private, natural and juridical persons - with the obligatory integral reparation of all the damages caused, against their patrimony, as a result of their decisive participation in the planning, implantation and development of a scheme of macro-corruption and institutional co-optation. To ensure sufficient effectiveness of the comprehensive jurisprudence, it is required, among others, to reinforce i) the regulation of asset forfeiture with possible preventive provisions such as temporary freezing of assets of those suspected agents charged and ii) the inter-institutional coordination (UIAF, DIAN, among others) for real time monitoring of transactions and movements of money and assets by suspected agents.