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Volume 5
Fostering Development through
Opportunity, Inclusion, and Equity

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Fostering Development through Opportunity, Inclusion, and Equity

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Private Civil Actions
A Tool for a Citizen-Led Battle against Corruption

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The fight against corruption relies heavily on the threat of prosecution under criminal laws. To succeed, this approach requires political will and commitment, concerted action by state institutions, and an independent, noncorrupt judiciary. However, the fight against corruption could be expanded and invigorated by providing ordinary citizens and legal entities a clear legal framework for the pursuit of private civil actions against corruption. This chapter proposes a three-point conceptual framework for how civil actions could serve as an additional weapon in the anticorruption arsenal by providing for specific remedial and recovery measures, empowering victims of corruption, and engendering social transformation around cases on which media and civil society can focus. The chapter advocates for the development of regional conventions under which signatory states would expand their obligations under the United Nations Convention Against Corruption by further committing to establishing and implementing a legal framework for private actions against corruption that include features similar to those in the Council of Europe Civil Law Convention on Corruption.

The chapter begins with an outline of the traditional criminal law approach to corruption, which has increasingly paid attention to victims' rights. The chapter then describes the rise of civil actions against corruption, highlighting the objectives of such actions and their advantages when compared to a traditional criminal law approach. The international law basis of private legal civil actions against corruption is explained and difficulties in domestic implementation are discussed. The three-point conceptual framework for using civil actions against corruption is discussed in detail, illustrated by the French Biens Mal Acquis cases, and analyzed in terms of access to justice for the poor. The chapter concludes with general thoughts on how civil actions foster development through opportunity, inclusion, and equity.

The author wishes to acknowledge and express appreciation for the substantial support in the preparation of this chapter by Simon N. M. Young, professor of law and director of the Centre for Comparative and Public Law, Faculty of Law, University of Hong Kong. His support included advice on the chapter structure and arguments, editing, and the contribution of the text concerning the Biens Mal Acquis cases. The author also wishes to express appreciation for editorial and drafting assistance in the preparation of this chapter by Alison Rende, 2013 Loyola University Chicago PROLAW LL.M candidate, and Bandini Chhichhia, 2012 PROLAW LL.M graduate.
The fight against corruption is normally carried out in the context of a country's criminal justice system. State legislation defines corrupt behavior and assigns penalties for convicted violators. State institutions are the central actors in the detection and investigation of criminal activity, the apprehension of suspected violators, and the prosecution and enforcement of court-ordered penalties and punishment. The general public's role is largely a passive one, even when members of the public have suffered harm from the corrupt acts that are the subject of prosecution.

In recent years, the plight of victims of crime has received greater attention. Several countries have established schemes that provide for the compensation of victims of certain violent crimes, including acts of terrorism.\(^1\) Others have extended the concept of compensating victims to other types of crime. For instance, in the United States, the Mandatory Victim Restitution Act of 1996 authorizes courts to order those convicted of any offense committed by fraud or deceit as a result of which an identifiable victim or victims have suffered physical injury or pecuniary loss to provide restitution to the victims.\(^2\) Enactment of this law was a victory for the victims' rights movement, which succeeded in making the needs and concerns of victims the subject of national concern and focus.\(^3\)

Other examples are Italian and U.S. laws that provide for victim compensation for harm suffered as a result of racketeering and extortion. Italian law allows victims to become parties of interest in relevant criminal proceedings with eventual compensation being made from a dedicated solidarity fund.\(^4\) The U.S. Racketeer Influenced and Corrupt Organizations (RICO) Act allows victims to use civil actions to seek damages for harm suffered from racketeering and corrupt acts.\(^5\) Although the U.S. Foreign Corrupt Practices Act (FCPA) does not provide for a private right of action, U.S. and foreign plaintiffs are using the U.S. courts for private actions based on the same factual settings as those on which FCPA actions are or can be based.\(^6\) These examples are part of the broader trend toward the recognition of the rights and needs of victims.

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4. Legge 44 (Feb. 23, 1999); Gazzette Ufficiale 51 (Mar. 3, 1999).
5. See Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. secs. 1961–1968 (1982 & Supp. IV 1986); 18 U.S.C. sec. 1964(c) ("Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee").
of crime as reflected in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.\(^7\)

Each of these schemes is dependent on the initiation and outcome of criminal proceedings. The benefits and protections available to victims hinge on a state’s success in detecting, investigating, and prosecuting corrupt activity. If the state fails to act, or where prosecution fails, justice may not be obtained.

The Rise of Private Civil Actions against Corruption

Fortunately, securing justice for the victims of corruption need not begin and end with the vigor of state authorities in fighting corruption or the state’s success or failure in prosecuting individual cases of corruption. Victims have an alternative in which they become the moving parties, in which they become the protagonists in the fight against specific instances of corruption. They can do this by undertaking private civil actions against corrupt persons. These civil actions may be closely linked to relevant criminal proceedings, especially with regard to certain procedural issues and the collection of evidence, but they are independent of such criminal proceedings.

The objectives of civil actions are different from those pursued in criminal actions. The latter are aimed at retribution and deterrence. Plaintiffs in civil actions are seeking to secure remedies that will relieve them or compensate them for harm they have suffered as a result of corruption.

Transparency International’s 2013 Global Corruption Report: Education highlights a number of advantages that civil actions may have in the fight against corruption.\(^8\) The first and most obvious is that having a right to initiate private civil actions against the corrupt makes each person and each legal entity in a given jurisdiction a potential “prosecutor” in her or his own right. This multiplies the points of detection and control of corruption, thus supplementing the scarce resources and reach of official justice institutions. Legal actions by individual victims, be they natural persons or legal entities, send an important warning message to the corrupt and a message of hope and empowerment to the general public.

As a complement to the criminal justice system, private civil actions create a more perilous playing field for those who engage in corrupt practices. The implication for legal reformers is that providing a clear legal framework for private actions of large numbers of well-informed private individuals and legal entities looking after their own interests presents tactical and strategic advantages in the fight against corruption.

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In addition, the remedies available in civil proceedings serve victims’ interests better than criminal proceedings might. Although a conviction may provide a sense of vindication, unless the particular jurisdiction provides for mandatory compensation for victims, a mere conviction leaves the victims’ situation largely unchanged.

It is an advantage when a private party may initiate a civil action even when the state authorities decide not to press criminal charges. The ability of private citizens and legal entities to decide independently whether to initiate private actions limits the circumstances in which a jurisdiction’s executive and justice institutions can politically afford to remain inactive.

In jurisdictions where the burden of proof required to succeed in a civil proceeding is lower than that required in a criminal proceeding, civil actions may offer a procedural advantage. Formulations of the standard of proof in civil cases such as “a preponderance of the evidence,” “more likely than not,” or a “reasonable possibility” are far less burdensome than standards such as “beyond reasonable doubt,” which is common in criminal proceedings. But this procedural advantage is not available in all legal systems. Under German law, for example, a “beyond reasonable doubt” standard is applied in civil and criminal proceedings.9

Other procedural advantages may be available in civil proceedings in some jurisdictions. Certain jurisdictions’ procedural rules provide for a shifting of the burden of proof to the defendant once the claimant has made a prima facie case. A wide range of remedies are normally available to civil claimants, and these can be chosen to fit the circumstances of particular claimants’ needs. Procedures may be available to allow the claimant to name defendants in a particular suit who would be considered too remote from a criminal law standpoint to be prosecuted.

Finally, although petty corruption that plagues the poor is likely to be considered too insignificant and too diffuse to be effectively dealt with by criminal prosecutors, the poor would still have access to civil actions to seek redress. In this way, the civil action becomes an inclusive mechanism to realize equality and fairness in society.

These advantages are so clear that one commentator called on the World Bank and other donors to provide support directed at developing the conditions for the pursuit of civil remedies against corrupt officials. That commentator described such remedies as a powerful weapon against corruption and pointed out that for businesses, the prospect of recovery of damages would provide a strong incentive to pursue a civil action.10 The recent proliferation


of private legal actions by corporate victims of corruption seems to support that assertion.

Other commentators are in agreement. The rise in the use of private legal actions against corruption has been explained by what Simon Young refers to as "the empowering effect of suing, the political significance of these lawsuits." Commenting on her native Nigeria, Abiola Makinwa stated that "the civil law provides a window of opportunity. Creating an environment where the private and public law present a coherent response to the offenders and to the transactions involved in the corruption exchange will push the frontiers of the fight against international corruption."  

Expanding the Legal Basis for Private Legal Civil Actions

Although there is new interest in private civil actions against corruption, the legal basis of such actions is well rooted in existing law. Most civil and common law systems provide the basic legal framework for bringing such actions. The starting point is the nearly universal feature in legal systems under which everyone is responsible for harm caused by his or her intentional acts. In civil code jurisdictions, the basic provisions of civil responsibility are relevant. In common law jurisdictions, tort and equity principles can be invoked, and damages and other remedies can be crafted to fit individual cases. Jurisdictions apply these doctrinal frameworks and deal with remedies quite differently, but the basis for initiating private actions is generally available for actions seeking such remedies as restitution, compensation for damages, and court-mandated remedial actions such as injunctions.

Mariani points out that under Italian, French, and German law, the basic civil responsibility provisions of the civil code support such actions seeking such remedies. The right to pursue such suits and seek damages or injunctive or other kinds of relief is also well established.

Political support has deepened and the legal framework for private civil actions has been expanded by the adoption of two international conventions. The first is the 1999 Council of Europe Civil Law Convention on Corruption (the Civil Law Convention). The report accompanying the Civil Law Convention explains that when fighting against corruption,

civil law is directly linked to criminal law and administrative law. If an offence such as corruption is prohibited under criminal law, a

claim for damages can be made which is based on the commission of the criminal act. Victims might find it easier to safeguard their interests under civil law than to use criminal law. Similarly, if an administration does not exercise sufficiently its supervisory responsibilities, a claim for damages may be made.15

The Civil Law Convention was the first attempt to define common international rules in the field of civil law and corruption. Article 1 of the Civil Law Convention requires state parties to provide in their domestic law “for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.”16

The Civil Law Convention provides for measures to be taken at national levels, provisions promoting international cooperation, and, significantly, monitoring of implementation. The parties are obligated under the Civil Law Convention to undertake to incorporate the convention’s principles and rules into their domestic law, taking into account their own particular circumstances.

The Civil Law Convention covers a wide range of issues, including compensation for damage, which may cover material damage, loss of profits, and nonpecuniary loss; liability (including state liability for acts of corruption committed by public officials); contributory negligence (by the plaintiff); reduction or disallowance of compensation, depending on the circumstances; validity of contracts; protection of employees who report corruption; court orders to preserve the assets necessary for the execution of the final judgment and the maintenance of the status quo pending resolution of the points at issue; and international cooperation.

The core provisions of the Civil Law Convention are found in Articles 3 and 5.17 Article 3 defines the core obligation that the parties ensure that victims of corruption have the right to initiate their own legal proceedings. Article 5 defines the right of victims to claim compensation. The actual language is as follows:

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16 See supra note 14, at art. 1. As of May 20, 2013, the following states were signatories to the convention: Albania, Andorra, Armenia,* Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic,* Denmark,* Estonia, Finland, France, Georgia,* Germany,* Greece, Hungary, Iceland,* Ireland,* Italy,* Latvia, Lithuania, Luxembourg, Malta,* Moldova, Montenegro, Netherlands, Norway, Poland, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, FYR Macedonia, Turkey, Ukraine, United Kingdom* (*not ratified). Council of Europe members that had not signed or ratified the convention include Liechtenstein, Monaco, Portugal, Russian Federation, San Marino, and Switzerland. In addition to Belarus, non-Council of Europe member states Canada, the Holy See, Japan, Mexico, and the United States participated in the elaboration of the convention
17 Supra note 13, at arts. 3 and 5.
Private Civil Actions

Article 3: Compensation for damage

Each Party shall provide in its internal law for persons who have suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage.

Article 5: State responsibility

Each Party shall provide in its internal law for appropriate procedures for persons who have suffered damage as a result of an act of corruption by its public officials in the exercise of their functions to claim for compensation from the State or, in the case of a non-state Party, from that Party’s appropriate authorities.

Another important feature of the Civil Law Convention is that the parties have defined a mechanism for monitoring implementation of the convention. Under the Civil Law Convention, the European Union’s Group of States against Corruption (GRECO) is charged with monitoring commitments entered into under the Civil Law Convention by the state parties. Reviews of implementation and related aspects of corruption in the contracting states are undertaken periodically, and the results are made public.

The GRECO system is worth studying in some detail because it may provide a model of how to ensure monitoring and reporting on the implementation of other current or future international conventions or similar arrangements dealing with the control of corruption. For instance, certain GRECO reports highlight the lack of follow-up implementation by specific states, whereas others provide specific information on modifications to the domestic legal framework of others. At present, the Civil Law Convention is limited in application to certain European countries, but it serves as a clear and inspirational example of how far states can go to promote and facilitate civil actions as a tool to fight corruption.

The second and more significant convention that provides for private civil actions against corruption is the UN Convention Against Corruption (UNCAC), to which over 165 states are party. UNCAC is the most comprehensive international convention on corruption and covers a wide range of matters. Using language that closely tracks the Civil Law Convention, UNCAC requires that state parties ensure that measures are taken to facilitate private civil actions. The actual language is as follows:

Article 35: Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of

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18 GRECO Statute, Annexed to Council of Europe Committee of Ministers, Resolution (99)5 Establishing the Group of States against Corruption (GRECO, adopted May 1, 1999).
corruption have the right to initiate legal proceedings against those
responsible for that damage in order to obtain compensation.20

The travaux préparatoires that accompanied UNCAC included two inter-
pretative notes relevant to Article 35. The notes explain:

(a) The expression “entities or persons” is deemed to include
States as well as legal and natural persons;

(b) This article is intended to establish the principle that States
parties should ensure that they have mechanisms permitting per-
sons or entities suffering damage to initiate legal proceedings, in
appropriate circumstances, against those who commit acts of cor-
ruption (for example, where the acts have a legitimate relationship
to the State party where the proceedings are to be brought). While
article 35 does not restrict the right of each State party to determine
the circumstances under which it will make its courts available in
such cases, it is also not intended to require or endorse the particular
choice made by a State party in doing so.21

These notes highlight the relative complexity of implementing the basic
Article 35 obligation. Note b refers to the establishment of the principle that
state parties should ensure that they have mechanisms permitting persons or
entities suffering damage to initiate legal proceedings, in appropriate circum-
stances, against those who commit acts of corruption. The clear message is
that each state party must determine for itself the detailed manner and the
detailed legal framework in which it will give substance to this principle in
domestic law.

The degree of complexity and the variety of approaches available in im-
plementing the right to private civil action principle in given jurisdictions can
be appreciated by comparing the issues involved in this area in different ju-
risdictions. Olaf Meyer collected a rich set of national commentaries in this
regard, which includes jurisdictions as different from one another as Bulgaria
and Nigeria.22 In Key Issues of Civil Law in Corruption Cases in Bulgaria, Chris-
tian Takoff writes:

The criminal circumstance of “bribery” cannot be proved in civil law
proceedings; they have to be suspended until the criminal law court
has rendered its decision. The law does not provide for presump-
tions helping to prove corruption. It is only the giving and obtaining
of the bribe that is proven in criminal law courts.23

20 Note the distinction between art. 35, which discusses civil actions by entities or natural per-
sons, and art. 53(a), which provides that states can initiate civil actions in connection with
asset-recovery proceedings.


23 Id., at 200.
The removal of bribery from the list of possible corrupt behavior that can be proved in a civil proceeding will affect the way in which the EU Convention or Article 35 of UNCAC can be implemented in Bulgaria. Corrections of this problem need to be dealt with through careful refinement of both criminal and civil law. Dalton’s examination of the difficulties in dealing with cultural heterogeneity in making distinctions between bribery and legitimate gift giving hint at the complexities of adjusting national legal systems to the expectations reflected in these international instruments.24

Conceptual Framework for Implementation of UNCAC Article 35 and the Civil Law Convention

Given the relatively new interest in private civil actions and the critical importance of the main, criminal, aspects of UNCAC, it is not surprising that implementation of UNCAC Article 35 has not been assigned a higher priority by the state parties in their review and follow-up framework. This does not mean, however, that the basic obligation in Article 35 is any less binding than the convention’s other obligations.

The realization of the potential that the civil actions envisioned in Article 35 have in the battle against corruption may require additional work at the regional level aimed at developing the details of reform and building understanding of how to use this new area of law in practice.

One way to organize such an initiative would be for state parties to develop civil action-focused regional conventions. Negotiation of such conventions would provide the needed attention to the detailed changes that Article 35 reforms require, and would provide an opportunity for the involvement of the public at large and the building of a coalition of nonstate actors with an interest in the outcome. Such a coalition could include legal professionals, business leaders, civil society, academics, the media, and members of the public, including the poor. Ideally, each such regional convention would reflect the core purpose by formulating something akin to “The (Region) Convention on the Establishment of Arrangements Favoring Private Civil Actions against Corruption.” In the greater European area, where a detailed regional convention already exists, state party interaction in the regional convention’s review mechanism would be strengthened by building the kind of formalized coalition of nonstate actors and the direct involvement of that coalition in the review process.

The idea of using regional conventions as a tool to strengthen implementation of a global norm has been applied in the human rights arena, where the Universal Declaration of Human Rights was implemented by various regions in the form of similar and improved instruments: the African (Banjul) Charter


Strengthening of regional mechanisms, their attendant processes, and the successful implementation of the reforms that they engender can add value in the fight against corruption by strengthening the remedial/recovery purposes of UNCAC, enhancing the empowerment of victims of corruption by engendering social transformation around real cases on which media and civil society can focus.

**Strengthening the Remedial and Recovery Purposes of UNCAC**

All civil actions, by their nature, are driven by litigants' hope to secure a right, to recover property, to avoid or minimize ongoing or imminent harm, or to recover full or partial loss occasioned by the actions or inactions of public or private parties. Private civil actions against the corrupt are no different in this respect. They have the same remedial and recovery purposes as other kinds of civil actions.

Extending this observation to the area under discussion, each civil action against corruption in a jurisdiction covered by UNCAC or the Civil Law Convention can be viewed as supporting the remedial and recovery purposes of those conventions. The challenge is to ensure that such actions can be maintained in the courts of the state parties. In many jurisdictions, this will require some legal reform and accommodation.

Given the low priority that implementation of Article 35 has been assigned under the UNCAC review process, a parallel initiative that concentrates solely on Article 35 implementation could hasten the reforms that state parties need to accomplish in this area. If state parties were to follow the suggestion in this chapter that they enter into negotiation of regional conventions that concentrate solely on civil actions against corruption, the regional negotiation processes would provide "faction-forcing events" that bring into focus the details of needed reforms. The Civil Law Convention would provide an excellent starting point for such negotiations because it identifies many of the details that national reforms need to take into account to make civil actions against corruption an effective tool. Involvement of top academic, business, civil society, and legal personalities in the drafting process would provide each country involved with a base of expertise that could be drawn upon for required follow-up.

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Reform for Empowerment

The process described above would provide the impetus for the follow-up work at the national level required to ensure that civil actions against corruption become well supported under the law and well-known in society as a whole. Empowerment of the victims of corruption would come in a variety of forms, as illustrated in the following hypothetical scenarios:

- Private sector businesses and private entrepreneurs would be able to use civil actions to claim compensation for losses suffered as a result of corruption such as bribery in connection with the award of publicly procured contracts, or possibly to have such contracts annulled, whether or not criminal charges in connection with the same acts of corruption have been filed.

- Adjacent landowners would be able to seek court orders to halt works for which building permits have been corruptly procured or where the authorities turn a blind eye to construction without such permits in return for an illegal payment or gratuity.

- Parents whose children have been denied school admission for lack of a private payment to a school official could seek court orders to compel admission.

- The very poor and helpless, who suffer disproportionately from the effects of corruption, would now have a means of seeking redress. Mothers who walk many kilometers to seek care for a child at a public hospital and are forced to pay medical staff as a condition of treatment could file suits to recover those illicit charges or for the damages suffered as a result of being denied admission.

- Small vendors prevented from operating in certain areas by police in the pay of more established shop owners would be able to seek compensation for being denied the opportunity to compete or to compel the police to desist with their evictions.

- Civil society organizations such as legal aid societies and anticorruption groups could direct their efforts nationally by supporting litigation efforts in the form of training and capacity building, funding direct actions, providing assistance to litigants, or filing amicus curae briefs in courts.

Although success in such actions would certainly be important, the sense of empowerment would be experienced to some degree just by bringing such cases to the courts and bearing public witness in the presence of the defendants they plan to prove corrupt. It would also be empowering for observers of such processes to see ordinary people taking a public stand and seeking justice.

The vision of such an awakened and empowered populace is not likely to become a reality unless some of the barriers to success in civil actions against
corruption are addressed. These include the cost of civil litigation, jurisdiction over small-value claims, gathering of evidence, proof of the corrupt act, the possibility of retribution against the claimant, acts of the claimant that may have contributed to the corrupt acts complained of, and the measure of damages or design of effective remedial measures. Each country will differ in its approaches, and the obstacles and challenges to access to justice will need to be crafted based on the realities on the ground.

The beginning point for dealing with such issues could be the negotiation of the regional conventions. Creative provisions that fit a region could be crafted for all such issues that will inform the domestic reforms and the practice that grows up in this area. The conventions could include provisions that require or encourage the establishment of domestic provisions needed for the authorization of class action procedures for multiple claimants relating to the corrupt behavior. They could also provide guidance on protection for claimants, speedy procedures to prevent the occurrence of irreparable harm, and the exclusion of contributory causation for payments extorted or paid by a claimant under duress, such as under threat of denial of a public service.

In regions with high percentages of poor people in their populations or where gender equality is an issue, other provisions might be considered for inclusion in the regional conventions. These include the establishment of a duty by the signatories to minimize the cost of litigation such as through the establishment of reduced filing fees for the poor, especially for small matters, and the duty of states to establish and maintain dedicated courts in locations to which poorer litigants have access, including the establishment of mobile courts with simplified procedures, including enforcement procedures, for small-value matters. The inclusion of a requirement that signatory states ensure the availability of legal aid for the poor would send a strong message on access to justice and provide an enabling environment for the poor that would have implications beyond the area of corruption. Provisions requiring that signatory states allow litigants, especially poor litigants, to use local languages and a requirement that signatory states specifically provide for standing to sue for women and public interest groups would further inform and influence the national implementation processes that would follow.

Involvement of women and representatives from poor and rural communities and the NGOs that work in these communities in the preparation of the regional conventions would help the framers develop pro gender and pro poor features in the final texts. This process alone would be an empowering experience.

Civil Actions as a Source of Social Transformation

Irrespective of their outcomes, civil actions against corruption have the potential to serve as powerful motivators for social change. Like a mass protest, a graphic scene of ordinary people lined up to file their writ in the courthouse, all seeking to recover the years of systemic bribes they have had to pay daily in exchange for basic public services, would grip the imagination of the world.
and generate strong political and moral pressure on those in power to transform their societies. It is the side effects of these suits that matter. They can bring international media attention to a particular case that highlights an injustice. They can galvanize civil society to focus on a common cause. They can generate local debate and demands for action.

In other words, civil actions can have a strong symbolic significance. They can represent a public frustrated with the political process rising up to challenge the status quo, not by anarchy or disorder, but by using law and the courts. They can affirm the value of and strengthen the rule of law and shame those in power.

An instructive example of the symbolic significance that actions of this kind can have is the ongoing French Biens Mal Acquis cases involving the alleged corruption-linked assets of the ruling families of several African nations. These cases were initiated not by French authorities but by the persistent efforts of African citizens working together with public interest groups, including Transparency International (TI) France and Sherpa. When the French prosecutors refused to act in 2008, TI France and a citizen from Gabon obtained standing to file a civil party petition to trigger a judicial process, potentially leading to criminal proceedings. Their complaint was ultimately found to be admissible by the Cour de Cassation, noting that the alleged offense of money laundering in France of assets obtained through corrupt practices would be of such a nature as to cause a direct and personal loss to TI France, given the specific nature of its mission. This decision led to the search of mansions; the seizing of assets, including several luxury cars; and the issuing of an international arrest warrant for Teodoro Nguema Obiang, the son of the president of Equatorial Guinea, in 2012. Although the proceedings are pending, the symbolic significance of this action is great because it shows how the civil process in France was used by ordinary individuals and NGOs to generate international attention and concern regarding allegations of kleptocracy. It also distressed African leaders enough that they protested diplomatically and brought a case against France in the International Court of Justice.

A major consideration in such litigation is that although the actual litigants were not poor citizens of the countries from which assets had been

29 Gregory Ngbwa Mintsa of Gabon was awarded a Transparency International Integrity Award in 2010 for helping to bring the case against the five African presidents. See Transparency International website, http://www.transparency.org/getinvolved/awardwinner/gregory Ngbwa Mintsa.
30 Decision of the Cour de Cassation, Criminal Chamber (Nov. 9, 2010).
31 For reports in international media, see Angelique Chrisafis, France Has Finally Got Tough on Corruption by Seizing a Dictator’s Paris Mansion, The Guardian (Aug. 6, 2012); Lisa Bryant, Equatorial Guinea in Spotlight with Controversial UNESCO Award, Voice of America (July 16, 2012).
32 See Equatorial Guinea Takes France to ICJ over Obiang Corruption Raids, RFI (Sept. 28, 2012).
stolen, the litigants represented the poor of those countries. The successes of such litigation can be considered as part of the campaign to bring Article 35 to the national level. The victories that such cases represent can be communicated to all citizens of the countries involved, along with the message that their representatives are preparing the ground for all citizens to be able to pursue the corrupt at every level. This is a powerful and transforming message.

Providing individuals the opportunity to pursue the corrupt is in line with the access to justice concepts outlined by the UN special rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, who explained the concept of access to justice as it applies to the judicial protection for economic, social, and cultural (ESC) rights. In the event of a violation of an ESC right,

each individual has a right to access justice without discrimination of any kind and a right to due process, understood as the right to be treated fairly, efficiently and effectively throughout the justice chain. States have assumed obligations in this regard, by committing to respect, protect and fulfil [these] rights.33

Underpinning this right to access to justice is the principle of equality and nondiscrimination.34 In addition, a number of ancillary rights come into play under access to justice, such as the right to due process, the right to equality before the courts and tribunals, the right to a fair trial, the right to legal assistance, and the right to equality and equal protection of the law. More important, there is a specific right to an effective remedy that is “a key element of human rights protection and serves as a procedural means to ensure that individuals can enforce their rights and obtain redress.”35

The special rapporteur states that justiciability for ESC rights “entails more than improving access to judicial and adjudicatory mechanisms. It also implies that remedies must be effective, and legal and judicial outcomes must be just and equitable.”36 Depending on the nature of the violation in question, the right to an effective remedy may include reparation, restitution, compensation, rehabilitation, satisfaction, and guarantees of nonrepetition.

33 Magdalena Sepúlveda Carmona, Report of the Special Rapporteur on Extreme Poverty and Human Rights (2012), 27: The right to an effective remedy (e.g., Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2.3; Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention against Torture, arts. 13 and 14); the right to equality before the courts and tribunals (e.g., International Covenant on Civil and Political Rights, art. 14.1); the right to a fair trial (e.g., Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, arts. 14 and 15); the right to legal assistance (e.g., Universal Declaration of Human Rights, art. 11.1; International Covenant on Civil and Political Rights, art. 14.3(b)–(d)); and the right to equality and equal protection of the law (e.g., Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 26).

34 See Carmona, id., at 5.

35 Id., at 4.

36 Id.
A similar line of reasoning could be applied to the rights under both UNCAC and the Civil Law Convention. Specifically, the need to ensure access to justice for corruption cases is relevant for a number of reasons:

- First, given the serious nature of the damage suffered, prospective claimants will most likely be persons living in poverty (or in danger of falling into poverty) who have a higher propensity to come into contact with the justice system generally, and so positive benefits reaped in one area can act as preventative measures or deterrents for other areas of the law, such as criminal law.

- Second, development of jurisprudence on social and economic rights can contribute to overcoming deprivation and thus to poverty reduction.

- Third, fair and effective justice systems prevent violent behavior and unfair settlements and reduce violence and conflict within communities.

- Fourth, the inability to pursue justice remedies through existing systems increases vulnerability to poverty and perpetuates violations of rights.37

Thus, applying the right to access to justice to corruption cases ensures that a prospective claimant has the economic, social, and legal means to enforce his or her right and to obtain a satisfactory remedy under law.

Conclusion

Despite the increasing will of governments to tackle corruption through the criminal justice system, the will to be free from corruption must come from the people. As illustrated by the Biens Mal Acquis cases, private citizens need the support of civil society, the attention of the media, and the efforts of public interest lawyers. But it will be the people themselves, acting within their own cultures and traditions, who will set the course of fundamental shifts in societal values and practices.

The next stage in the fight against corruption can be bottom up and can use the civil action as an instrument for development. In accordance with international and regional conventions, governments should seek to promote and empower citizens with this new opportunity for action. Civil actions can provide public fora for the many battles that it will take for an empowered populace to challenge and overcome the status quo and to show that the people themselves can win the war on corruption. Civil actions serve to promote better governance and accountability in government. They also have the potential to change attitudes and values, and there lies the importance of this powerful new weapon in the fight against corruption.

37 Id., at 3–4.