



**Observatoire ARGA**

**ARGA Atlas**

# **THE FABRICATION OF ARTIFICIAL CRIMINAL PROSECUTION AS A TOOL OF PRESSURE ON BUSINESS**

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## **Purpose of the document:**

To show how criminal-law mechanisms may be used not for the bona fide prosecution of crime, but as an instrument of corporate, proprietary, and negotiating pressure on business; to identify the legal features of artificial criminal prosecution; to explain the link between such practices and violations of fair trial standards, arbitrary detention, corruption risks, and the deterioration of the legal environment for business activity; and to propose a practical model of legal defense in such cases. The applicable international framework here is built from the right to a fair hearing and equality before courts under Article 14 ICCPR, the prohibition of arbitrary detention under Article 9 ICCPR, the standards governing the role of lawyers, the UN Guiding Principles on Business and Human Rights, the anti-corruption logic of UNCAC, and OECD standards on responsible business conduct. ([OHCHR](#))

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## **1. EXECUTIVE SUMMARY**

Artificial criminal prosecution in the business environment arises where criminal law is used not as a good-faith response to socially dangerous conduct, but as leverage to achieve an external objective: redistribution of assets, removal of a participant from a corporate conflict, coercion into a transaction, debt collection through fear of criminal liability, paralysis of managerial decision-making, pressure on a beneficial owner, or destruction of a negotiating position. In such a model, the criminal case formally exists, but its actual function shifts from justice to leverage. International standards do not use that colloquial phrase as such, but the combined guarantees of fair trial, protection against arbitrary detention, access to defense, and standards of proper public conduct make this practice a legal distortion rather than “just a harsh business climate.” ([OHCHR](#))

From the standpoint of international law, the problem is not limited to the fate of one defendant. Artificial criminal prosecution undermines several guarantees at once. It weakens the independence

and impartiality of criminal proceedings, calls into question the legality of detention, obstructs access to defense, creates fertile ground for corruption, and is incompatible with the duty of the state to ensure effective remedies. Article 14 ICCPR and General Comment No. 32 describe equality before courts and a fair trial as a key element of human rights protection and a procedural safeguard of the rule of law, while the Basic Principles on the Role of Lawyers require that lawyers be able to perform their professional duties without intimidation, hindrance, harassment, or improper interference. ([OHCHR](#))

For business, the consequences are especially destructive. Once a corporate or proprietary dispute is pushed into the criminal sphere, the effects spread far beyond the file itself: asset freezes, paralysis of operations, refusal by banks and counterparties, reputational harm, forced exit from the jurisdiction, collapse of investment plans, and the inability to negotiate on equal footing. The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct expressly cover human rights, disclosure, bribery and corruption, and access to remedy, while the UN Guiding Principles on Business and Human Rights are built around the “Protect, Respect and Remedy” framework. That means the use of state coercive machinery as commercial weaponry is not merely a criminal-law anomaly. It is also a problem of the business and human rights environment. ([OECD](#))

This report proceeds from the premise that artificial criminal prosecution in business must be examined as a composite legal structure. It is rarely identified through a single symptom. More often, one sees an accumulation of factors: a private-law core to the conflict, late criminalization after a business dispute, disproportionate procedural measures, weak individualization of the accusation, procedural violations, pressure on lawyers, the use of detention as a coercive instrument, and indications of corruption or administrative interest. Only through cumulative analysis does it become visible that the issue is not “strict enforcement,” but the deformation of justice into pressure. ([tbinternet.ohchr.org](#))

## **2. WHAT ARTIFICIAL CRIMINAL PROSECUTION MEANS IN THE BUSINESS ENVIRONMENT**

In business contexts, artificial criminal prosecution usually appears at the intersection of civil, corporate, and criminal law. Formally, the state claims to be responding to fraud, abuse of authority, misappropriation, tax misconduct, breach of trust, or another economic offense. In reality, the criminal-law instrument begins to service a dispute about ownership, control, contractual obligations, debt, management powers, or distribution of profits. That shift is especially visible where the underlying conflict could have been addressed through civil litigation, arbitration, or corporate remedies, but is instead reframed through the threat of deprivation of liberty. Article 14 ICCPR exists precisely so that the state cannot mask private advantage as criminal legitimacy. ([OHCHR](#))

It cannot be said that every economic dispute accompanied by criminal proceedings is automatically artificial. The problem is not the existence of criminal enforcement in the business sphere as such. The problem is its bad-faith function. The Working Group on Arbitrary Detention makes clear that arbitrariness may arise not only from the absence of a legal basis, but also from abuse of procedure, non-compliance with fair trial guarantees, and deprivation of liberty in circumstances that make the detention incompatible with fundamental standards. In that sense, the issue is functional rather than merely formal. ([OHCHR](#))

In practical terms, the artificial character of the prosecution lies in the substitution of purpose. If criminal proceedings are used to force a person to surrender a shareholding, withdraw a claim, transfer an asset, end resistance in a corporate conflict, accept an unfavorable settlement, leave the jurisdiction, or simply stop defending a legal position, then the criminal process has ceased to be a

forum of adjudication and has become a coercive device. Artificial prosecution is therefore not a rhetorical flourish. It is a legal description of the misuse of public coercive power for private or quasi-political ends. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

### **3. WHY BUSINESS IS ESPECIALLY VULNERABLE TO THE CRIMINALIZATION OF PRIVATE CONFLICT**

Business is especially vulnerable to artificial criminal prosecution for several reasons. First, commercial relationships are factually complex: contracts, board decisions, delegated powers, chains of ownership, tax positions, cross-border transfers, and management responsibilities. That complexity makes it relatively easy to repackage the same facts either in the language of private law or in the language of criminal accusation. Once a dispute already exists, the move from “breach of obligation” to “criminal scheme,” or from “management dispute” to “abuse,” can radically alter the procedural landscape. International fair trial standards are designed precisely because complexity creates room for manipulation where institutions are not acting in good faith. ([OHCHR](http://OHCHR))

Second, business cases offer a high coercive return for a relatively small number of repressive acts. Sometimes one criminal case, one search, one arrest of a manager, or one freezing measure is enough to change the entire balance of power. Counterparties retreat, banks harden their KYC posture, investors freeze decisions, management enters panic mode, and the opposing side obtains leverage without ever winning the dispute on the merits. The OECD Guidelines expressly cover human rights, bribery and corruption, disclosure, and access to remedy, which makes clear that the use of public coercive power as a commercial weapon also affects the wider responsible business environment. ([OECD](http://OECD))

Third, business actors are often highly dependent on time. In criminal proceedings, time usually works against the entrepreneur: frozen accounts, halted projects, inability to sign documents, travel risk, broken financing cycles, and accumulated compliance friction. That makes criminal proceedings an ideal instrument of pressure even before conviction. The WGAD materials are particularly relevant here, because they emphasize that detention can become arbitrary not only through the lack of legal basis, but also through incompatibility with international standards of legality, proportionality, and due process. ([OHCHR](http://OHCHR))

### **4. MAIN LEGAL AND FACTUAL INDICATORS OF ARTIFICIAL PROSECUTION**

The first indicator is a private-law or corporate core to the dispute. If the basis of the conflict lies in a contract, corporate control, investment obligations, inheritance of assets, managerial powers, or debt recovery, and the criminal qualification appears suddenly and at a late stage, that is a serious red flag. By itself, it does not prove abuse, but it requires the case to be analyzed not as pure criminal enforcement, but as a mixed structure with a high risk of substitution of private conflict by criminal form. The guarantee of a fair hearing and equality before courts requires exactly that contextual sensitivity. ([OHCHR](http://OHCHR))

The second indicator is disproportionality of criminal procedural measures. Where a business dispute is followed immediately by arrests, aggressive searches, document seizures, travel bans, publicity campaigns, confiscatory initiatives, or prolonged detention despite disputed facts, the question arises

whether the procedure is being used for a purpose unrelated to establishing the truth. Article 9 ICCPR and the WGAD approach to arbitrariness are directly relevant here. ([OHCHR](#))

The third indicator is weak individualization of the accusation. Artificial cases often display generic descriptions of the suspect's role, uncertainty as to timing, inconsistent damage calculations, lack of a direct link between conduct and alleged harm, and the substitution of generalized managerial "control" theories for actual conduct analysis. Article 14 ICCPR requires that an accused person be able to understand the charge and defend against it in real terms, not drown under a vague accusatory construction designed to be maximally convenient for the prosecution. ([OHCHR](#))

The fourth indicator is pressure on lawyers and on the defense. The Basic Principles on the Role of Lawyers state that lawyers shall be able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference. If one sees obstruction of access to the client, threats to counsel, pressure on professional reputation, or practical conditions that make effective defense impossible, the matter is no longer just "hardball litigation." It becomes an internationally recognizable procedural defect. ([OHCHR](#))

The fifth indicator is the presence of an evident external interest in the case. If the criminal proceeding is synchronized with a change of corporate control, a forced settlement, redistribution of assets, selective market exclusion, a tax-administrative campaign, or another extra-procedural result, the argument of artificiality becomes much stronger. At that point criminal law has stopped functioning as a neutral forum and has become a managed instrument of pressure. Where such pressure is linked to corruption logic or abuse of public office, the case also engages the anti-corruption rationale of UNCAC, whose preamble emphasizes the corrosive effects of corruption on democracy, the rule of law, and development. ([UNODC](#))

## **5. VIOLATIONS OF FAIR TRIAL STANDARDS AND DISTORTION OF CRIMINAL PROCESS**

Artificial criminal prosecution almost always comes with a deformation of fair trial standards. That is hardly surprising. If the real goal of the case lies outside justice, then procedural guarantees begin to be treated not as the basis of legitimacy but as obstacles. General Comment No. 32 states that the right to equality before courts and tribunals and to a fair trial is a key element of human rights protection and serves as a safeguard of the rule of law. In artificial prosecutions, that safeguard function is usually one of the first casualties. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

In practice, several patterns appear repeatedly. First, there is excessive alignment between the court and the prosecution, with little real distance between the judicial function and the investigative narrative. Second, there is inequality of arms: defense access to the file is restricted, motions are brushed aside, time is compressed, and defense witnesses are treated as a nuisance rather than as part of adversarial process. Third, there is reputational stigmatization before trial, which undermines the presumption of innocence, a principle consistently tied to the fair trial guarantee. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

The issue of presence and effective participation is especially important. OHCHR fair trial materials emphasize that a defendant has the right to be present and to defend the case in a real sense. In artificial business prosecutions, one often sees in absentia or semi-in-absentia proceedings, merely formal legal representation, technical obstacles to meaningful participation, or procedural conditions in which presence exists on paper but not in reality. That makes such cases particularly vulnerable both in

domestic defense and later in extradition, international search, and challenges to the effects of convictions. ([OHCHR](#))

## **6. ARBITRARY DETENTION, PRESSURE ON THE DEFENSE, AND COERCIVE LEVERAGE**

Arbitrary detention is one of the harshest tools in artificial business prosecutions. In this setting, its function is usually dual: it physically removes a person from management and negotiation, and at the same time creates intense psychological and commercial pressure on the person, the family, shareholders, and counterparties. The WGAD materials make clear that arbitrariness is not limited to detention without legal basis. It also covers deprivation of liberty that becomes incompatible with international standards because of procedural defects, discriminatory logic, or the suppression of fundamental freedoms. ([OHCHR](#))

In artificial business cases, detention often functions as a negotiation device. The point is not always to secure a final conviction. It is enough to create a configuration of risk in which continued resistance becomes commercially irrational. That is why the challenge to arbitrariness is so important. It shifts the discussion from the “efficiency of pressure” back to legality and necessity. International mechanisms respond far better to categories such as arbitrary detention and coercive abuse than to generalized complaints about the cruelty of commercial life. ([OHCHR](#))

A parallel dimension is pressure on lawyers. International standards state plainly that lawyers must be able to advise and defend clients without threats, interference, or retaliation. If the defense itself becomes a target through intimidation, reputational attacks, restrictions on access, or structural obstruction, that is not background noise. It is a strong sign that the proceedings are not oriented toward adjudication but toward forced outcome. Once that feature appears, a serious defense strategy usually has to move beyond the national forum. ([OHCHR](#))

## **7. THE CORRUPTION AND INSTITUTIONAL DIMENSION**

Artificial criminal prosecution in the business sphere almost always has an institutional dimension. It is rarely just an “overreaction by investigators” or a random legal excess. More often, it reflects corruption incentives, administrative-political interest, or an overlap between private pressure and public power. The UNCAC preamble describes corruption as an insidious plague that undermines democracy, the rule of law, and sustainable development. Where criminal machinery is used to secure commercial advantage, one sees exactly that kind of corrosion of the rule of law: a public function being repurposed for a private end. ([UNODC](#))

The corruption dimension does not always mean a classic bribe. It may appear in the form of abuse of office, selective enforcement, administrative dependence, or the knowing refusal of authorities to recognize the obvious private-law nature of a dispute. The OECD Guidelines 2023 place anti-corruption, human rights, disclosure, and remedy within one architecture of responsible business conduct. That allows artificial criminal prosecution to be understood not merely as an individual-defense problem, but also as a sign of wider deterioration in the investment and legal environment. ([OECD](#))

## **8. CONSEQUENCES FOR BUSINESS, INVESTMENT, AND THE LEGAL ENVIRONMENT**

The consequences of artificial criminal prosecution are never confined to one case file. At company level, they can mean loss of management control, blocked accounts and operations, paralysis of decision-making, departure of partners and staff, broken supply chains, and difficulties with auditors and banks. At market level, they reduce trust in courts and enforcement bodies, increase transaction costs, lower legal predictability, and raise the price of jurisdictional risk. At the international level, they can trigger extradition disputes, asylum claims, treaty-body communications, WGAD applications, and reputational costs for the jurisdiction concerned. All of those effects fit within the international logic of business and human rights and access to remedy. ([OHCHR](#))

The UN Guiding Principles on Business and Human Rights articulate the “Protect, Respect and Remedy” framework: the state must protect against human rights abuse by third parties, including business enterprises, and those affected must have access to effective remedy. Where the state itself becomes part of a coercive scheme against business actors, the foundational architecture of remedy is inverted. The entrepreneur or beneficial owner is no longer inside a functioning legal order, but beneath a distorted one. That is one of the clearest ways to show that the issue is not merely criminal or commercial, but also one of human rights. ([OHCHR](#))

## **9. A PRACTICAL MODEL OF DEFENSE**

In practical terms, the defense in such cases should be built as a multi-level model. The first level is forensic qualification: genuine criminal conduct must be separated from the private-law, corporate, or investment core of the dispute. Without that, strategy collapses into scattered reactions to symptoms. The second level is procedural documentation of fair trial violations: access to the file, independence of the court, presumption of innocence, real ability to participate, and the legality and proportionality of procedural measures. The third level is the challenge to detention and coercive measures, including arguments framed in terms of arbitrariness. The fourth level is the protection of the defense itself and the documentation of improper interference with lawyers. The fifth level is the international layer: treaty bodies, WGAD, and asylum or non-refoulement routes where the case acquires international risk or cross-border consequences. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

The most important point here is not to argue only “on the merits of the accusation.” That is not enough. In artificial cases, the conflict must be translated into internationally recognized categories: arbitrary detention, fair trial violation, improper interference with lawyers, misuse of criminal process, lack of effective remedy, and corruption-related abuse of public function. Only then does the defense cease to be an emotional response to coercion and become a legal structure capable of surviving both domestic proceedings and international scrutiny. People love to think the truth will somehow float to the surface by itself. It usually needs competent packaging. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

## **10. CONCLUSION**

The fabrication of artificial criminal prosecution as a tool of pressure on business is not a marginal anomaly and not merely an instance of “overly harsh investigation.” It is one of the most dangerous distortions of the legal system. It damages several basic guarantees at once: fair trial, protection against arbitrary detention, independence of counsel, predictability of the business environment, and trust in justice itself. UN standards, OECD responsible business conduct standards, and the anti-

corruption framework of UNCAC all point in the same direction: such practice is incompatible with the rule of law, with responsible business conduct, and with the idea of effective remedy. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

For legal practice, the main conclusion is blunt. Where criminal proceedings are used as leverage in a business conflict, the defense must respond not only by denying the accusation, but by structurally exposing the mechanism of abuse itself. Where a criminal case becomes a bargaining instrument, the dispute is no longer only about one defendant. It is about whether law remains law, or becomes a service industry for the stronger player. An old story, unfortunately. That is why it has to be untangled again and again. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

## APPENDIX A. TERMINOLOGY

**Artificial criminal prosecution**  
 A situation in which criminal-law instruments are used not for good-faith response to crime, but as a means of pressure to obtain an external commercial, corporate, political, or other result. The concept is derived from the combined standards of fair trial, arbitrary detention, access to remedy, and the proper role of lawyers. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

**Fair trial**  
 The body of guarantees under Article 14 ICCPR, including equality before courts and tribunals, an independent and impartial tribunal, a public hearing, and rights of defense. ([OHCHR](http://OHCHR))

**Arbitrary detention**  
 Deprivation of liberty that is incompatible with international standards of legality, necessity, proportionality, and procedural fairness. WGAD addresses such cases through urgent appeals, communications, and adopted opinions. ([OHCHR](http://OHCHR))

**Improper interference with lawyers**  
 Intimidation, hindrance, harassment, or other improper interference with the work of lawyers, incompatible with the Basic Principles on the Role of Lawyers. ([OHCHR](http://OHCHR))

**Responsible business conduct**  
 The OECD approach under which business and states must address impacts on people, human rights, disclosure, anti-corruption, and access to remedy. ([OECD](http://OECD))

## APPENDIX B. MATRIX OF INDICATORS OF ARTIFICIAL CRIMINAL PROSECUTION

A strong practical reading of the case usually turns on a cluster of indicators rather than one dramatic fact. The following indicators are especially important, and their relevance follows from the combined standards of fair trial, arbitrary detention, lawyer independence, anti-corruption, and responsible business conduct. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))

Indicator	How it appears	Legal significance
Private-law core	The case is rooted in a contractual, corporate, investment, or debt dispute	Requires scrutiny for substitution of a private dispute by criminal form
Late criminalization	Criminal proceedings begin after a business rupture or corporate conflict	Strengthens the inference of instrumental use of criminal law

Disproportionate measures	Arrests, searches, detention, or freezes despite weak factual basis	Raises arbitrariness and coercive leverage concerns
Weak individualization of accusation	Vague roles, abstract allegations, contradictory facts	Undermines fair trial and the quality of accusation
Pressure on the defense	Restricted access, intimidation, harassment of lawyers	Violates international standards on the role of counsel
External commercial result	The case leads to asset redistribution, exclusion, or forced settlement	Shows displacement of the proper purpose of criminal process
Corruption or administrative interest	Selective enforcement or abuse of public power	Raises rule-of-law and UNCAC-related concerns

## OFFICIAL SOURCES

1. **International Covenant on Civil and Political Rights** - Article 14 on equality before courts and fair trial. ([OHCHR](#))
2. **Human Rights Committee, General Comment No. 32** - interpretation of Article 14 as a safeguard of the rule of law. ([tbinternet.ohchr.org](http://tbinternet.ohchr.org))
3. **Working Group on Arbitrary Detention, complaints and urgent appeals** - procedures for urgent appeals and communications. ([OHCHR](#))
4. **Working Group on Arbitrary Detention, Fact Sheet No. 26 / revised materials** - framework on arbitrary detention and WGAD practice. ([OHCHR](#))
5. **Basic Principles on the Role of Lawyers** - international standards on independence and protection of the legal profession. ([OHCHR](#))
6. **United Nations Convention against Corruption** - anti-corruption framework and the link between corruption and rule of law. ([UNODC](#))
7. **UN Guiding Principles on Business and Human Rights** - the “Protect, Respect and Remedy” framework. ([OHCHR](#))
8. **OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023)** - leading international standard on human rights, anti-corruption, disclosure, and remedy in the business environment. ([OECD](#))
9. **OECD Responsible Business Conduct materials** - official overview of the standard and its implementation context. ([OECD](#))
10. **OHCHR fair trial materials** - practical guidance on presumption of innocence, participation, and due process. ([OHCHR](#))