



**International
Lawyers
Project**

MEXICO

**VICTIMS OF CORRUPTION:
DAMAGE REPARATION
AND LEGAL STANDING**

**INTERNATIONAL
DATABASE
2022**

**SOURCE: INTERNATIONAL LAWYERS
PROJECT**

VICTIMS OF CORRUPTION WORKING GROUP

UNCA CIVIL **Coalition**
SOCIETY

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SOURCE: International Lawyers Project

1. Legal Standing	2
1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases	2
1.2 Type of Cases	2
1.3 Legal basis under which citizens have legal standing	2
1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)	4
1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens	4
1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens	4
2. Cases	5
2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.	5
3. Collective Damage	7
3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)	7
3.2 Procedures for advancing class-actions	7
4. The Role of the victims of corruption	8
4.1 Definition of victims of corruption or common definition used by the courts in this country	8
4.2 Cases that recognize the role of victims	8

¹ Note, we are only qualified to advise on US and UK law, and as such are not qualified in this jurisdiction.

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense	9
4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases	9
5. Available Information	9
5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions	9
5.2 Feasible access to information on ongoing or concluded cases	9
5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.	10
6. Supplementary information	10
6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.	11
6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.	11

1. Legal Standing

1.1 Legal standing for civil society organisations and/or citizens in corruption-related cases

Civil society organisations and individuals have legal standing in corruption-related cases.

1.2 Type of Cases

- Civil
- Criminal
- Administrative

1.3 Legal basis under which citizens have legal standing

Legal standing of individuals: The National Anti-Corruption System coordinates the federal, state and municipal levels to prevent, detect, and prosecute corruption offences. However, there are different ways by means of which individuals can initiate or participate in the proceeding:

- Any person who has knowledge of the crime can file a claim (*denuncia*), which will allow the Public Prosecutor to become aware of the crime. The *denuncia* can be used only with respect to crimes are prosecuted *ex officio* (such as corruption cases).
- The victim or offended party² has the right to independently initiate a criminal action (either directly to the judiciary, or via the Public Prosecutor), provided that the following conditions are met³:

² Under Mexican law, there is a difference between the victim, who is the passive subject of the crime (*i.e.*, the person who directly suffers the consequences of the criminal conduct), and the offended party, who is the natural or legal person who owns the affected legal interest.

³ Articles 426 and following of the Mexican National Code of Criminal Procedure

- o The crime can only be prosecuted by means of a formal complaint (*querrela*), with a penalty that is not imprisonment or which does not exceed three years in prison.
- o The party must sufficiently allege to the relevant judge (a) the occurrence of the crime or offence, and (b) the possibility that the defendant concretely participated in its commission.

When prosecuting a private criminal action, the complainant may request the summons of the defendant or their summons to the initial hearing, present evidence, and challenge prosecutors' or judges' decisions (including rulings on damages).⁴ Victims and offended parties have almost the same power as the prosecutor and defendant during the criminal proceeding. However, once a victim or offended party decides to initiate a private criminal action, it cannot rely on the Public Prosecutor.

In addition to the above, the Mexican legal system recognizes the importance of compensation of damages⁵ and the other rights of the victim or offended party,⁶ including the right of access to prompt, free, and impartial justice; the right to a legal advisor; the prohibition of discriminatory treatment; the right to receive all available evidence; the right to intervene in the entire criminal procedure; and the right to have their rights restored and receive the repair of the damages suffered.⁷ Typically, the victim or the offended party will appoint a legal representative who will intervene in the criminal proceeding to represent their interests.⁸ The Mexican Supreme Court has found that victims can challenge a prosecutor's failure to indict through *amparo* proceedings, due to the right to reparations that accrues to victims if there is a guilty verdict.

The Mexican Supreme Court has also established the central role of the complainant in administrative investigation and proceedings: where the authorities decide not to open an administrative proceeding despite a complaint, complainant has standing to fully participate in the administrative proceedings

⁴ Article 432 of the Mexican National Code of Criminal Procedure

⁵ Article 2 of the Mexican National Code of Criminal Procedure

⁶ Article 108 to Article 111 of the Mexican National Code of Criminal Procedure

⁷ Article 109 of the Mexican National Code of Criminal Procedure

⁸ Article 110 of the Mexican National Code of Criminal Procedure

against public employees.⁹ However, because this is an administrative proceeding aimed at sanctioning the public servant, reparations for the complainant are not available.

With respect to corruption, however, for many years, most prosecutors and judges have deemed corruption is a victimless crime. As a result, many of the corruption cases remain unresolved and the perpetrators can act with impunity, although some pivotal judgements have been resolved by the Mexican Supreme Court in favor of victims of corruption (see below).

Legal standing of CSOs: Despite their openness to individual complainants representing the public interest, Mexican courts have been less willing to accept organizations, especially in high-profile cases where the apparent purpose of the intervention is to avoid a sweetheart deal between defendants and prosecutors (see, e.g., the Duarte case, as described in Section 3 below). However, courts have been increasingly finding CSOs qualify as victims such that they can bring corruption claims (see Section 3 below).

1.4 Citizens and/or civil society's intervention in corruption cases in other capacities (e.g. third party contributors, expert input, etc)

See above.

1.5 State's entitlement to represent the citizens collectively in corruption cases and whether its intervention excludes direct intervention by citizens

N/A

1.6 Legal standing of any foreign government or foreign-based non-governmental institution to bring corruption cases on behalf of this country's citizens

⁹ (Undécima Época, Semanario Judicial de la Federación, caso 29993, Corte Suprema de Justicia de la Nación (Mexico), Segunda Sala, CONTRADICCIÓN DE TESIS 253/2020 (QUINTO), Aug. 6, 2021, available at <https://sif.scjn.gob.mx/SJFSem/Paginas/DetalleGeneralScroll.aspx?id=29993&Clase=DetalleTesisEjecutorias>).

Foreign governments or foreign-based non-governmental institutions do not have legal standing to bring corruption cases on behalf of this country's citizens

2. Cases

2.1 Existence of corruption-related cases brought to Court by civil society organisations, journalists, or citizens.

Mexican Supreme Court Recognizes Collective Corruption Claim: In a case involving bribes in highway construction to finance political campaigns in the State of Mexico, Senator Emilio Alvarez and Deputy Ana Riojas (who initially brought the complaint) filed a writ of *amparo* (*mandamus*) seeking to correct a lower court decision denying them access to the case file as “victims.” The politicians cited the evolution of domestic and international law (including UNCAC) to facilitate greater access for victims to criminal proceedings.¹⁰ The lower court first treated the issue as one of standing, and found that to seek this remedy, the complainants had to show that their rights, or their individual or collective interests, had been affected. The generic interest of society was not enough—there had to be specific individual or group interests at stake. The court then found that simply having denounced the illegal conduct to prosecuting authorities was not enough to convert the complainants into victims: they had not personally suffered physical harm, financial loss or negative impact on a fundamental right as a result of the defendants’ alleged crimes, although, the entire society was affected. The appeals panel disagreed.¹¹ They found that the definition of victim has changed in Mexican law over time, and that the constitutional contemplates a progressive definition of victim, giving victims an equal status to offenders, including with regard to participation in criminal

¹⁰ They pointed in particular to (i) Article 20 of the Mexican Constitution, which sets out the rights of victims, (ii) Article 108 of the Mexican Criminal Procedure Code, and (iii) Article 4 of the Mexican Victims Law of 2013, which reads: “*direct victims are physical persons who have suffered economic, physical, emotional or general harm or detriment that endangers or harms their legal goods or rights as a result of the commission of a crime or a human rights violation recognized in the constitution or in ratified treaties.*” In this case, the relevant rights violated was the right to be free from corruption. (Mexico, Ley General de Victimas, Jan. 8, 2013, Art. 4, at https://www.gob.mx/cms/uploads/attachment/file/112957/Ley_General_de_Victimas.pdf).

¹¹ *Amparo en revision*: R.P. 104/2020, Octavo Tribunal Colegiado en Materia Penal del Primer Circuito, Jan

proceedings. The Mexican Supreme Court ultimately held that a broad reading of the rights of victims was necessary given expansive Inter-American jurisprudence and given the growing importance of collective or supra-individual claims. It has recognized the fight against corruption as one such collective claim, and one which any affected member of society can raise. In this respect, the Court has imposed two requirements: the complainant has to be part of the affected community, and the complainant must actively file a complaint about the alleged wrongdoing. Alvarez and Riojas's claims easily met these requirements, and thus the two complainants were entitled, as victims, to copies of the case file and to full participation in the proceedings.

Farmacías del Ahorro Case: An organization called *Los Supercívicos*, together with other CSOs (including UNCAC Coalition members) filed a complaint with the Attorney General of Mexico City against pharmaceutical chain *Farmacías del Ahorro*, alleging it was systematically cutting down trees to build parking lots as part of a possible corruption scheme. The CSOs were recognized as victims during the criminal proceedings against the pharmaceutical company and are collaborating with the Attorney General's Office in clarifying the facts and their investigation. Currently, the case is still pending before a federal court that must rule on the whether the statute of limitations would apply to the crimes committed by the pharmaceutical company.

Duarte Prosecution: Former Veracruz governor Javier Duarte has been accused of stealing up to USD \$35 million and allowed impunity for murders of journalists and others. Duarte reached a plea bargain that greatly reduced the charges and led to a relatively short nine-year sentence. TOJIL, an anti-corruption NGO, alleged that the short sentence was a result of bribes paid to prosecutors, and requested an investigation, as well as to be accorded victim status in that investigation. Although a lower court initially agreed, an appeal panel reversed the decision, finding that the complainants had not shown that they had suffered any legally recognizable harm and that a human rights organization could only claim victim status if its members had been directly harassed or threatened as a result of their

actions.¹² TOJIL subsequently appealed to the Inter-American Commission on Human Rights; the case remains under review regarding admissibility.¹³

Other TOJIL Actions: In another emblematic case, the prosecutors' office refused to let TOJIL intervene in the criminal case against former PEMEX (Mexican oil company) official Enrique Lozoya for grand corruption. The organization, now supported by Mexico's interior ministry, has appealed that decision through an *amparo*. Also, in 2021, TOJIL obtained a favorable in the judgement which recognized TOJIL as a victim of corruption crimes within a criminal proceeding related to the Head of CONADE and other public servants.

3. Collective Damage

3.1 Legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field (environmental damages, human rights, corruption, among others)

There are no legal instruments that enable claiming reparation, compensation, or restoration of collective damages in any field.

3.2 Procedures for advancing class-actions

According to the Mexican Federal Code of Civil Procedure and the Mexican Constitution, the federal courts are charged with the defense and protection of collective interests. However, class actions are still uncommon in Mexico. There is no official record of the number of class actions initiated—by a government agency or by private individuals—that has settled or adjudicated on the merits (so far, it seems that very few class actions have been settled). Nevertheless, the most

¹² Séptimo Tribunal Colegiado en Materia Penal de la Ciudad de México, case 159/2019, Jan. 16, 2020, available at <https://victimasdecorrupcion.wordpress.com/documentos/>.

¹³ See, e.g., https://victimasdecorrupcion.files.wordpress.com/2021/03/recurso-cidh-caso-duarte_-22_01_2021-vf-1.pdf; <https://victimasdecorrupcion.files.wordpress.com/2020/01/0767000024171789027ast.pdf>.

commonly litigated subject matters for class actions are consumer and environmental claims.

In class actions, the relief sought can consist of monetary damages, the restitution of the status prior to the damage (if possible), and the specific performance. Disgorgement has not been expressly recognized by the Mexican courts as a claim that can be sought in class proceedings. The remedies available depend on the type of class action that is to be filed. There are three types of collective actions:

- ***Diffuse actions*** are indivisible claims brought to protect diffuse rights or interests belonging to an undetermined community. Their purpose is to obtain from the defendant the repair of the damage. Such repair can consist of the restitution of status prior to the damage or, if this is not possible, the substitution of compliance according to the harm caused to the rights and interests of the community. The existence of a legal relationship between the community and the defendant is not necessary.
- ***Collective actions in the strict sense*** are indivisible claims brought to protect common rights or interests belonging to a determined or determinable community or group based on common circumstances. Their purpose is to obtain from the respondent the remedy of the damage (usually through the performance of or abstention from certain activities), as well as compensation for damages for each member of the group. It is required for the members of the group to have a legal relationship with the respondent, and this relationship must be established in statutory law.
- ***Individual homogeneous actions*** are divisible claims brought to protect individual rights or interests that have a collective impact, belonging to individuals in common circumstances. Their purpose is to obtain from the defendant the specific performance of a contract or its termination, along with the applicable legal effects and consequences.

4. The Role of the victims of corruption

4.1 Definition of victims of corruption or common definition used by the courts in this country

Please refer to Section 1 above.

4.2 Cases that recognize the role of victims

Please refer to Section 1 above.

4.3 Corruption-related court cases (criminal, civil, administrative) that awarded compensation to individuals or to identifiable or non-identifiable groups of victims to repair the damage caused by the corruption offense

N/A

4.4 Innovative or effective mechanisms that can be considered good practice regarding the recognition and compensation of victims in corruption-related cases

N/A

5. Available Information

5.1 Information published by enforcement authorities (including control agencies) about corruption enforcement actions

There is information published by enforcement authorities. Type of information:

- The enactment of sanctions
- The grounds for sanctioning or acquitting (the case)

5.2 Feasible access to information on ongoing or concluded cases

In terms of access to ongoing and concluded cases, the Mexican Constitution states that “*the right to information will be guaranteed by the State.*”¹⁴ Also, the Mexican General Act of Transparency and Access to Public Information requires state authorities in all branches, autonomous organizations, trade unions, and any other entities dealing with public funds to make all information available to the public. The law also prohibits information related to corruption from being withheld from the general public. Furthermore, the General Law of Transparency and Access to Public Information established that “the public versions of all the sentences issued” must be published.

The Mexican Supreme Court, under the pressure of CSOs, has also begun a gradual opening of information relating to its judgements by making public all its hearings. However, state and municipal governments do not perform at such a high level in terms of access to information. As a result, only rulings of the Supreme Court of Justice, the Electoral Court of the Judicial Power of the Federation, the Circuit Plenaries and the Collegiate Circuit Courts, are published periodically on the page of the Weekly Judicial of the Federation.¹⁵

An important case was brought by TOJIL (a Mexican CSO) which filed various petitions before (i) the transparency institutes and (ii) justice centers (*centros de justicia*) to access the video recordings of various criminal hearings (such as, the corruption case of Emilio Lozoya). These petitions have resulted in various *amparo* lawsuits that were presented following several refusals to give access to copies of the videos and audios of the criminal hearings within the criminal proceedings. TOJIL filed a complaint with INFOCDMX for the failure of the Superior Court of Justice of Mexico City to allow access through its website to public hearings on criminal matters and judgements. This complaint led to a historical precedent that recognizes the court’s obligation to make public the oral trial hearings in which a sentence has been issued. The case continues at the federal level.

5.3 Ways for citizens or civil society organisations to gather information on whether corruption cases are being investigated or trialed.

¹⁴ Article 6 of the Mexican Constitution

¹⁵ See <https://sif2.scjn.gob.mx/busqueda-principal-tesis>.

Please refer to the above answers.

6. Supplementary information

6.1 Main identified barriers that prevent CSOs, citizens, and journalists from standing as victims of corruption cases.

Please refer to Section 1 above.

6.2 Other aspects, issues, provisions, or practices linked to the role, recognition, and compensation of victims of corruption.

N/A